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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

[FNS–2007–0004]

RIN 0584–AD27

Afterschool Snacks in the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule incorporates into the Child and Adult Care Food Program (CACFP) regulations the provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998, which authorized afterschool care centers meeting certain criteria to be reimbursed for snacks served to at-risk children 18 years of age and younger. This rule establishes the eligibility of at-risk afterschool care centers to serve free snacks to children who participate in afterschool programs. The centers, which must be located in low-income areas, are reimbursed at the free rate for snacks. The intended effect of this rule is to support afterschool care programs through the provision of snacks that meet CACFP meal pattern requirements. The additional benefits provided by the 1998 reauthorization act and codified by this final rule were extended to institutions and children immediately after enactment. These changes were originally proposed by the Department in a rulemaking published on October 11, 2000.

DATES: This final rule is effective August 30, 2007.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590.

SUPPLEMENTARY INFORMATION: The preamble is organized into two main parts. Part I, Background, describes the provisions in this final rule, including a discussion of the comments received on the proposed rule. A question and answer format is used to guide this discussion. The Background concludes with a description of other changes made in the final rule that were not part of the proposed rule. Part II, Procedural Matters, contains information required to be included in publishing Federal rules.

I. Background

What changes did the law make about afterschool snacks?

The William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) provided for the nationwide availability of snacks in the National School Lunch Program (NSLP), and it expanded the availability of snacks to children ages 13 through 18 in the Child and Adult Care Food Program (CACFP) through at-risk afterschool care centers (at-risk centers). CACFP at-risk centers must be located in the attendance area of a school where 50 percent or more of the enrolled children are certified as eligible to receive free or reduced price school meals.

How did USDA propose to implement these changes?

The proposed rule to implement the statutory provisions for afterschool snacks in the NSLP and CACFP was published on October 11, 2000 (65 FR 60502). Although we included proposed changes for both programs in the same rulemaking, the proposed changes were not identical in both programs. Rather, we proposed to implement afterschool snacks within each program in a way that fit the unique characteristics of each program.

The proposal had a 90-day comment period. A total of 33 comment letters were received, 26 letters were from State and local agencies administering the NSLP and/or the CACFP, five letters came from advocacy groups, and two comment letters were received from individuals not representing any group.

Why is USDA publishing two final rules on afterschool snacks?

There were a number of reasons why we decided to publish separate final rules. Perhaps the strongest reason was that many of the proposed procedures for administering afterschool snacks were specific to each program. Most commenters provided program-specific comments. In addition, not all commenters addressed both programs, reflecting the fact that the NSLP and the CACFP are administered by different agencies or offices in 15 States.

Another reason we chose to publish separate afterschool snack final rules is the need to explain changes made to the CACFP regulations, 7 CFR part 226, by previously published final or interim CACFP rulemakings.

Which recently published CACFP rules impact the afterschool provisions?

Published CACFP rules that impact this final rulemaking include:

1. Implementing Legislative Reforms to Strengthen Program Integrity (67 FR 43448) (first integrity rule), an interim rule published in the **Federal Register** on June 27, 2002, which implemented provisions of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224) designed to strengthen the integrity of the program;

2. Improving Management and Program Integrity (69 FR 53502) (second integrity rule), an interim rule published in the **Federal Register** on September 1, 2004, which implemented additional provisions of a proposed rule by the same name, published on September 10, 2000, to improve program integrity through State agency management;

3. Increasing the Duration of Tiering Determinations for Day Care Homes (70 FR 8501) (duration of tiering rule), a final rule published in the **Federal Register** on February 22, 2005, which implemented a provision of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) to increase the length of certain tier I determinations from three years to five years;

4. Child and Adult Care Food Program: Age Limits for Children Receiving Meals in Emergency Shelters, (71 FR 1), an interim rule published on January 3, 2006 (emergency shelter rule), which implemented a provision of Public Law 108–265 that raised the age of children receiving CACFP meals in emergency shelters from 12 to 18; and

5. For-Profit Center Participation in the Child and Adult Care Food Program (71 FR 62057) (for-profit center rule), a final rule published in the **Federal Register** on October 23, 2006, which implemented a provision of Public Law 108–265 that permanently authorized for-profit centers to participate in the program based on the income eligibility of children for free or reduced price meals.

The two integrity rules, published in 2002 and 2004, made significant changes to the Program affecting all participating and applicant institutions, including at-risk afterschool care centers. In doing so, these interim rules revised and reorganized sections of the CACFP regulations that are additionally amended by this final rule, especially §§ 226.6, 226.10, 226.11, 226.15, and 226.19. The other three rules, published in 2005 and 2006, impact the afterschool snack provisions in specific areas of program operations. We will discuss the effect that all five rules have had on the final afterschool snack provisions throughout this preamble.

How are comments on the proposed rule addressed in this preamble?

We organized and analyzed the comments on the proposed rule under the following topics:

1. General comments supporting/opposing the proposed rule.
2. At-risk afterschool care centers.
3. Eligible afterschool care programs.
4. Eligible children.
5. Area eligibility:

—Definition (eligible area).
—Data used.
—Procedures for determining.

6. Licensing and approval provisions.
7. Application processing.
8. For-profit center provisions.
9. Meal requirements.
10. Monitoring:

—By State agencies.
—By sponsors.

11. Reimbursement provisions.
12. Reporting and Recordkeeping provisions.
13. Other provisions.

Following is a discussion of the comments and our responses to the comments received on these topics.

1. Did commenters provide any comments that addressed the general design or scope of the proposed CACFP afterschool snack component?

Yes. We received three comments that generally supported the proposed rule. One supportive comment was from a sponsoring organization that stated it had been operating under FNS guidance issued after the at-risk snack component was authorized, most of which was incorporated into the proposed rule, and had experienced few problems following the requirements.

We also received three comments that opposed our general objective of ensuring that the snack component made sense within each respective child nutrition program. In achieving this objective, we were obliged to incorporate some afterschool snack policies that recognize differences between the programs, resulting in two similar afterschool snack components with some variation in operating provisions. These commenters encouraged the Department to make the snack components in the CACFP and NSLP as similar as possible. One commenter urged us to create a ''seamless'' afterschool snack component that would include three child nutrition programs, the NSLP, CACFP, and Summer Food Service Program.

Although we support seamless child nutrition programs, statutory requirements vary among the child nutrition programs, and we must draft the respective program rules accordingly.

2. What is an at-risk afterschool care center?

We proposed to define an at-risk afterschool care center as a public or private nonprofit organization or a for-profit center that is eligible to participate in the CACFP, which provides nonresidential child care to children after school through an approved afterschool care program in an eligible area, and which participates either as an independent center or as a sponsored center.

We received no comments on our proposed definition of an at-risk afterschool care center at § 226.2 or on the proposed requirement at § 226.17a(a)(1)(i) that organizations must meet this definition in order to receive reimbursement for at-risk afterschool snacks.

Since the October 2000 publication of the proposed rule, we have had to address an issue that was not included in the proposed rule concerning eligibility of emergency shelters. Questions were raised about the eligibility of homeless children to receive afterschool snacks under the at-risk provisions when the emergency shelter where they reside is not located in an eligible area. To ensure that homeless children receive benefits under the at-risk snack component, we provided written guidance in June 2002 that emergency shelters may participate in the at-risk afterschool snack component regardless of location. This policy on emergency shelters is incorporated in this final rule in §§ 226.2 (definition of at-risk afterschool care centers), 226.17a(b)(1)(iv), and 226.17a(i).

The Department proposed to add ''at-risk afterschool care center'' to the definitions of child care facility, independent center, and institution. We received no comments on these proposals. Therefore, the proposed revisions are retained in the final rule. For consistency, we have also added the term ''at-risk afterschool care center'' to the definition of ''Center'' in this final rule.

3. What did commenters say about proposed criteria for eligible afterschool programs?

We proposed that organizations that want to participate in the at-risk afterschool snack component must have a program that meets the following four criteria: (1) is organized primarily to provide care for children after school and on weekends, holidays, or school vacations during the school year (but not during summer vacation); (2) has regularly scheduled activities (i.e., in a structured and supervised environment); (3) includes education or enrichment activities; and (4) is located in an eligible area. In addition, we proposed to exclude organized athletic sports programs that compete interscholastically or at the community level. These criteria resemble those proposed for afterschool programs serving snacks in the NSLP, except that an afterschool snack service under the NSLP may not operate on weekends or holidays and does not have to be located in an eligible area.

We received eight comments on these provisions.

Commenters asked the Department to clarify the term ''care for children''. The Richard B. Russell National School Lunch Act (NSLA) at section 17(r)(2)(A), 42 U.S.C. 1766(r)(2)(A), requires that at-risk afterschool care centers must be organized primarily to provide care to at-risk school children during after school hours, weekends, or holidays during the regular school year. Care for children in at-risk centers would reasonably encompass:

1. Adult supervision,
2. A facility that provides a safe environment, and
3. An organization that assumes responsibility for the children or youth while they are present.

Care for children should be given in a context that is appropriate for the age of the participants. Preschool children, for example, require close adult

supervision in a structured environment; adolescents need adult supervision, which may be provided in a more informal, less structured environment.

Commenters also asked us to clarify ''education or enrichment activity'' and the State agency's responsibility for reviewing organized activities/educational components. Examples of educational or enrichment activity would include homework help, tutoring, supervised drop-in athletic or other activity programs. A State agency must review the activities/educational components to the extent needed in order to approve or deny the application for the at-risk center. State agencies should instruct applicant organizations to describe the planned activities or educational components in enough detail so that it is possible for State agencies to determine the adequacy of the program based on the information provided in the application.

Commenters stated that at-risk snack programs should be able to operate during the summer. Section 17(r)(2)(A) of the NSLA (42 U.S.C. 1766(r)(2)(A)) limits reimbursement to snacks served during the regular school year. However, afterschool snacks can be served year-round through the CACFP if an at-risk center is located in the attendance area of a school operating on a year-round schedule. We have clarified the restriction on summer service at § 226.17a(b)(1)(i) and 226.17a(m). At-risk centers that are affected by this restriction (i.e., are located in the attendance area of a school that is on a traditional school calendar) may be able to participate in the Summer Food Service Program.

Several commenters opposed other restrictions on eligible programs that were in the proposed rule, including limiting at-risk programs to low-income areas and excluding organized sports from participating in the snack service. The NSLA restricts the CACFP afterschool snack component to low-income areas, specifically defined at section 17(r)(1)(B) (42 U.S.C. 1766(r)(1)(B)) as programs that are located in the attendance area of a school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals. Since this restriction is a statutory requirement, we must include it in the regulations.

Concerning the proposed exclusion of organized sports, some commenters stressed the important role of sports in providing afterschool activity for youth. However, as we explained in the preamble to the proposed rule, House and Senate conferees declared in the Conference Report accompanying Public Law 108–265 (House Report 105–786) that they did not intend for afterschool snacks to be provided to members of athletic teams. Rather, the conferees intended that children receiving afterschool snacks would be participating in the types of programs that provide education or enrichment activities, which are known to help reduce or prevent involvement in juvenile crime. This statement provides a clear indication of Congressional intent, and thus we have retained the restriction on interscholastic or community level sports teams in the final rule. This same exclusion applies to the NSLP afterschool snack component as proposed, as well.

We would, however, like to clarify participation by student athletes in afterschool snacks. One commenter suggested that even though organized athletic teams would be excluded, individual student athletes participating in center activities should be allowed to receive a snack or a meal from an at-risk afterschool care center that is operating to serve children in the eligible area where the athletes live or attend school. We agree. This situation would not violate the intent of Congress as expressed by the House and Senate conferees, which addressed the ineligibility of athletic teams as an afterschool activity to qualify as at-risk snack programs.

We would also like to clarify, as stated in the proposed rule, that programs could include supervised athletic activity along with education or enrichment activities, such as those typically sponsored by the Police Athletic League, Boys and Girls Clubs, and the YWCA. The key requirement for afterschool programs that include sports would be that they are ''open to all'' and would not limit membership for reasons of athletic ability, or would not exist principally for the pursuit of competitive athletics.

Accordingly, the proposed limitation on eligible afterschool care programs, proposed at § 226.17a(b)(2), is retained in this final rule.

4. Who is eligible for afterschool snacks?

One of the hallmarks of the afterschool snack provisions for CACFP as mandated by section 107(h) of Public Law 105–336 was to extend benefits to youth through age 18. Accordingly, we proposed at § 226.17a(c) and in the definition of ''Children'' at § 226.2 that children are eligible for at-risk afterschool snack programs if they participate in an approved afterschool care program and are 18 and under at the start of the school year or meet the definition of ''Person with disabilities'', as proposed at § 226.2.

We received three comments on this proposed provision.

Two State agencies encouraged the Department to set a minimum age limit for participation in the at-risk afterschool snack component. They questioned whether this program is really appropriate for infants and preschoolers. The statute did not set a minimum age for participation in at-risk afterschool snacks. We are concerned that a lower age limit might discourage otherwise eligible child care centers from offering afterschool programs to the at-risk population if they could not be reimbursed for snacks served to pre-school children. Furthermore, if centers provided afterschool activities suitable only for school-age children, older siblings might not attend the afterschool program if care was not extended to their younger brothers or sisters.

One commenter encouraged the Department to expand the age limit to 18 also for outside-school-hours care centers. We are unable to adopt this suggestion because the age limitation for outside-school-hours centers remains at age 12 (age 15 for children of migrant workers) as mandated at section 17(a)(3) of the NSLA (42 U.S.C. 1766(a)(3)). As discussed in the preamble to the proposed rule, both at-risk centers and outside-school-hours care centers are reimbursed for snacks served to children in afterschool care, but they are intended to serve different populations and consequently have different provisions. The following chart highlights some of the similarities and differences between at-risk centers and outside-school-hours care centers.

COMPARISON BETWEEN AT-RISK CENTERS AND OUTSIDE-SCHOOL-HOURS CARE CENTERS (OSHCCS)

Provision	At-risk centers		OSHCCS	
	Regulatory citation	Description	Regulatory citation	Description
Eligible institutions	§§ 226.17a(a) and 226.6(b).	Public, private nonprofit, and for-profit organizations that operate an eligible afterschool care program, are licensed or approved (if required). In addition, centers must meet other CACFP requirements, as applicable.	§ 226.2 definition of ''Outside-school-hours care center'' and § 226.6(b).	Public, private nonprofit, and for-profit organizations that are licensed or approved (if required) to provide organized nonresidential child care services to children during hours outside of school. In addition, centers must meet other CACFP requirements, as applicable.
Eligible afterschool care program.	§ 226.17a(b)	Must be organized primarily to provide care for children after school or on weekend, holidays, or school vacations during the regular school year, have organized, regularly scheduled activities, include education or enrichment activities, and be located in a low-income area (see Eligible area below).	N/A	N/A.
Licensing	§ 226.6(d)(1)	If there is no Federal, State, or local licensing requirement, must only meet State or local health and safety standards (see also sec. 17(a)(5) of the NSLA.).	§ 226.6(d)(1)	If there is no Federal, State, or local licensing requirement, must only meet State or local health and safety standards (see also sec. 17(a)(5) of the NSLA).
Eligible area	§ 226.2 definition of ''Eligible area'', paragraph (a).	Attendance area of an elementary, middle, or high school with 50% or more free/reduced-price eligible children.	N/A	May operate in any area.
Reimbursement	§ 226.17a(n)	All afterschool snacks are reimbursed at the free rate.	§ 226.12(c)	Reimbursement is at the free/reduced price/paid rates based on individual income eligibility of children.
Eligible children	§ 226.2, definition of ''Children'', paragraphs (c) and (e).	Persons age 18 and under at the start of the school year and persons of any age who meet the definition of ''Persons with disabilities''.	§ 226.2, definition of ''Children'', paragraphs (a), (b), (c).	Children who are age 12 and under, children age 15 and under who are children of migrant workers, and persons of any age who meet the definition of ''Persons with disabilities''.
Types of meals eligible for reimbursement.	§ 226.17a(l)	Snacks	§ 226.19(b)(4)	Breakfast, snack, and supper (lunch may also be served under certain conditions).
Number of reimbursable meals.	§ 226.17a(k)	One snack per day	§ 226.19(b)(5)	Two meals and one snack per child per day (or two snacks and one meal).
Meal patterns	§§ 226.17a(l) and 226.20(b)(6) and (c)(4).	Requirements for at-risk snacks are the same as CACFP snack pattern requirements for infants and children.	§§ 226.19(b)(6), 226.20(b) and (c).	Requirements for meals served by OSHCCs are the same as CACFP meal patterns for infants and children.
Days of operation ..	§ 226.17a(m)	School days, weekends, holidays, and school vacations during the school year; not in the summer except in areas served by year-round schools.	§ 226.19(b)(4)	School days, school vacation, including weekends and holidays; no weekend-only programs.
Time restrictions on meal service periods.	§ 226.20(k)	States may establish requirements concerning time restrictions for CACFP institutions.	Same	Same.
Monitoring	§ 226.6(m) for State agency review of independent centers and sponsoring organizations; § 226.16(d)(4)(iv) for sponsoring organizations review of their facilities.	The State agency must review ⅓ of all institutions each year; percentages of sponsored facilities sponsored by the institution vary depending on the size of the institution. Large sponsoring organizations <100 must be reviewed every two years. New institutions with five or more facilities must be reviewed within the first 90 days of operation. Sponsoring organizations must review their facilities three times each year. At least one review must occur during the first six weeks of program operations; reviews cannot be spaced more than six months apart. Two reviews must be unannounced.	Same	Same.

Readers should note that Public Law 108–265 raised the age for participation in CACFP meals in emergency shelters to 18. FNS notified CACFP State agencies of this statutory change, which was effective on October 1, 2004, and the emergency shelter rule, published on January 3, 2006 (71 FR 1) codified the increase to age 18 in the CACFP regulations. There are now two types of centers that may serve CACFP meals or snacks to children through age 18: at-risk afterschool care centers and emergency shelters.

The provision describing the eligibility of children for receiving afterschool snacks as proposed at § 226.17a(c) remains unchanged in this final rule. We have made some minor changes, however, to the definition of ''Children'', revising proposed text of children's eligibility for afterschool snacks and current text of children's eligibility for meals at emergency shelters, which was revised by the emergency shelter rule. We have removed the references to persons with disabilities specific to either at-risk centers or emergency shelters; these references are unnecessary because the definition of ''Children'' includes persons with disabilities as a category of eligible children. This final rule adopts the proposed definition for participation by disabled persons with minor changes. Longstanding CACFP policy has recognized that disabled persons meeting the regulatory definition are eligible to participate in any CACFP component serving children, including not only at-risk afterschool care centers or emergency shelters, but also child care centers, outside-school-hours care centers, and family or group day care homes. This rule codifies the policy by providing a separate definition for ''Persons with disabilities''.

5. Area Eligibility

Because of the number of the issues involved in area eligibility, the next seven questions address the proposed provisions, comments received, and changes made to area eligibility requirements.

How did the Department propose to define area eligibility and did anyone comment on the definition?

We proposed to define an eligible area for the at-risk afterschool snack component as the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals. As previously mentioned, we also proposed to use area eligibility as one of four key criteria that an afterschool program must meet in order to be eligible for participation in the CACFP at-risk component. We have provided guidance on questions of area eligibility of schools involved in busing. This policy permits area eligibility to be extended to sites if the majority of children at the site come from schools where at least 50 percent of the enrolled children are eligible for free or reduced-priced school meals.

We received comments from two State agencies that opposed the inclusion of data for middle and high schools; they stated that it would be a reporting burden for NSLP State agencies. Although we acknowledge that the addition of middle and high schools may require more work for NSLP State agencies, we believe it is important to identify as many area eligible locations as possible to reach the population of needy children and youth targeted by the at-risk snack provisions in the NSLA, especially now that the statute expands afterschool snacks to teenagers through age 18.

In this final rule, we have revised the definition for eligible area to provide a two-part definition that distinguishes between two different uses of the term in CACFP. Although the term is more frequently associated with the at-risk snack component, it is also used to describe the geographic area of tier I day care homes. Therefore, to avoid possible confusion, we have provided both definitions of eligible area.

Eligible area as it applies to the at-risk snack component, which is unchanged from the proposed rule, includes the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals. Eligible area for tiering purposes, which is taken from the definition of tier I day care home in section 17(f)(3)(A)(ii)(I)(aa) and (bb) of the NSLA (42 U.S.C. 1766(f)(3)(A)(ii)(I)(aa) and (bb)), includes the attendance areas of elementary schools in which at least 50 percent of the total number of children are certified eligible to receive free or reduced-price meals, or neighborhoods that meet the 50 percent threshold of income eligibility for free or reduced-price meals based on census data. Eligible areas for at-risk snacks include middle and high school attendance areas as well as the attendance areas of elementary schools; eligible areas for tiering purposes do not include middle or high school attendance areas but do include neighborhood areas defined by census data that meet the 50 percent threshold of households eligible for free or reduced-price meals. The inclusion of a definition of eligible area for tiering purposes is not intended to change any aspect of current requirements for determining tier I status for day care homes.

Accordingly, the definition of ''Eligible area'' as proposed in § 226.2 is revised, and reference to this definition is added at new § 226.17a(i)(1).

What data did the Department propose to require for determining area eligibility?

We proposed that the data used to determine area eligibility must be based on the school's total number of children approved for free and reduced-price school meals for the preceding October. However, we stipulated that the NSLP State agency, which provides the data, may designate another month. If the NSLP State agency chooses to designate a month other than October, it must do so for the entire State. The other critical data element in determining the area eligibility of an at-risk center is documentation that the center is located in the school's attendance area. If not available from the NSLP State agency, information on a school's geographical boundaries would be provided by the individual school or by the school district. We did not propose to require the NSLP State agency to provide attendance area data.

What did commenters say about data for determining area eligibility?

One State agency commented that the regulations should restrict the use of private school data in establishing area eligibility because private schools often have very large attendance areas. This commenter stated that Federal regulations should specify that only public school data could be used to establish area eligibility.

We agree that private school data may often be an inappropriate source to establish area eligibility for at-risk centers, but we recognize that there may be exceptions, making the use of private school data reasonable to establish area eligibility in some situations. Thus, we conclude that State agencies should have the flexibility to approve the use of private school data for establishing area eligibility when necessary.

One commenter suggested that eligibility determinations made for open sites in the Summer Food Service Program (SFSP) should be allowed to establish area eligibility for at-risk care centers also.

We are bound by the specific requirement of section 17(r)(1)(B) of the NSLA, 42 U.S.C. 1766(r)(1)(B), that area eligibility must be based on eligibility for free or reduced-price school meals.

For this reason, the SFSP open site eligibility may be used only if it is based on the same criteria required for determining area eligibility for at-risk centers.

Accordingly, the data required to document the area eligibility of an at-risk afterschool care center, proposed at §§ 226.6(f)(9)(i) and 226.17a(h)(2) are retained but redesignated at §§ 226.6(f)(1)(ix) and 226.17a(i)(2).

What did the Department propose about the process of determining area eligibility?

We proposed a process of determining area eligibility that is similar to the process of determining the tiering status of day care homes. Like the tiering process, which is redesignated in this final rule at § 226.6(f)(1)(viii), the process of determining area eligibility starts with the receipt of free and reduced-price school data from the NSLP State agency. As with tiering, we charged the CACFP State agency with the task of coordinating with the NSLP State agency to receive the school data (i.e., the list of elementary, middle, and high schools that meet the definition of eligible area) on an annual basis. Unlike the tiering process, however, the CACFP State agency is not required to provide the school data to sponsoring organizations of at-risk centers or to independent at-risk centers by a certain date each year. Instead, we proposed that the CACFP State agency must only provide the list upon request by sponsoring organizations or independent at-risk centers.

We proposed that CACFP State agencies must determine the area eligibility for all independent at-risk centers, using the most recent free and reduced-price school data and attendance area data obtained or verified from school officials within the last school year. However, we proposed that a sponsoring organization must provide information required by the State agency that would enable the State to determine the area eligibility of each sponsored at-risk center. This information may include current free and reduced-price school data from the list and related attendance area data. As proposed, area eligibility determinations would be valid for three years to match the tiering determination provisions for tier I status based on school data, which were in effect at the time the proposed rule was published.

We also proposed two provisions for redetermining area eligibility that were consistent with those for tiering determinations based on school data. One of these provisions would allow the sponsoring organization, the State agency, or FNS to redetermine area eligibility if the attendance area data received annually from the NSLP State agency indicates that an at-risk center is no longer eligible. The second provision would limit this flexibility by prohibiting routine redeterminations of area eligibility based on annual data. Both provisions duplicate current regulatory language for tiering redeterminations found at § 226.6(f)(3)(i) in this final rule.

The annual collection of area eligibility data provides the State agency current and accurate information to approve new applications as well as for use in redeterminations at the end of a center's eligibility cycle. This annual information can also be used if the sponsoring organization, the State agency, or FNS has identified a particular area that has had a dramatic change in economic status and wants to use this information in redetermining a center's area eligibility.

What has changed about area eligibility determinations in the final rule?

We received six comments from State agencies that addressed the frequency or timing of the determination or redetermination. Three commenters weighed in on the proposal to allow area eligibility to be valid for three years; two supported and one opposed.

Since the October 11, 2000 publication of the proposed rule, Congress authorized the increase in the duration of tier I status determinations based on school data to five years. The provision of Public Law 108–265 was effective on July 1, 2004, and the change was codified in the CACFP regulations by the duration of tiering rule.

This final rule reflects an increase in longevity of area eligibility determinations from the proposed three years to five years. Please note that those centers that were deemed not eligible to participate in the CACFP as at-risk afterschool centers would not have to wait for five years before they could apply again to participate in the CACFP as an at-risk afterschool center.

We increased the duration of area eligibility determinations in order to achieve the coordinated use of school data for redeterminations of tiering and area eligibility that we had sought in the proposed rule. The Department wants to point out that because applications are approved on a three-year cycle, for administrative efficiency State agencies may choose to make area eligibility determinations on that three-year cycle. However, we encourage State agencies wherever possible to adopt the five-year cycle for area eligibility determinations.

Two commenters addressed the proposal to allow sponsoring organizations, State agencies, or FNS the option of changing a determination of area eligibility based on updated school data. One commenter opposed the option entirely, and the other commenter noted what seemed to be conflicting language between proposed § 226.6(b)(11)(iii), which stated that State agencies must document area eligibility at least once every three years, and proposed § 226.6(f)(9)(v), which stated that State agencies may not routinely redetermine area eligibility during the three-year period. In this final rule, State agency responsibilities for area eligibility redeterminations are clarified and addressed in § 226.6(f)(3)(ii).

We want to clarify the issue of what was received as conflicting language. Although sponsoring organizations, State agencies, or FNS may redetermine area eligibility if the attendance area data received annually from the NSLP State agency indicates that an at-risk center is no longer eligible, they would not be permitted to do so routinely based on annual data. The intention is that existing at-risk afterschool centers would remain area eligible for the entire period of time (i.e. five years), and annual data would not be used to respond to minor variations in eligibility (for example, centers that are located in the attendance areas of schools where the percentage of students eligible for free or reduce-priced meals drops negligibly below the 50 percent level in any given year during the five-year period). The intention is to give sponsoring organizations, State agencies, or FNS the flexibility to make redeterminations in those situations where this percentage drops markedly due to underlying demographic changes.

In this final rule, State agency responsibilities for area eligibility redeterminations are clarified and addressed in § 226.6(f)(3)(ii).

Finally, one State agency commented that eligibility periods should begin with the fiscal year or school year, not in the month in which the first determination is made; this is too much work for State agencies to track.

We agree that State agencies should have the flexibility to determine within the last year of area eligibility when the next cycle should begin. This would allow State agencies the option of synchronizing all area eligibility redeterminations so that at-risk centers could begin the next cycle on a particular date, such as the first day of the fiscal year or school year. Note that this flexibility to set the date extends

only with redeterminations, not with the initial determination and approval to begin program operations. State agencies that opt to synchronize area eligibility redeterminations should notify all newly participating at-risk centers of the date in the last year when current area eligibility will expire and new area eligibility data must be submitted.

Accordingly, proposed §§ 226.6(f)(9)(v) and 226.17a(h)(2) are revised and redesignated as §§ 226.6(f)(3)(ii) and 226.17a(i)(3) to increase the duration of area eligibility determinations to five years and to specify that State agencies may determine the date in the fifth year by which the next five-year cycle of area eligibility will begin.

What other changes have been made to the regulations affecting the area eligibility determination process?

The second integrity rule substantially revised § 226.6(f) by sorting provisions into annual, triennial or other time periods when data are due or actions are required. These changes compelled us to sort the proposed afterschool snack provisions in current § 226.6(f) into the appropriate time periods. The result is that these provisions are reorganized and in some instances, revised to clarify the process of determining area eligibility; the substance of the proposed provisions has not changed, with one exception. That exception, as previously described, permits State agencies to determine the date during the fifth year of area eligibility when the next cycle of area eligibility will begin. We have also included the tiering determination process for day care homes in the reorganization of § 226.6(f); the tiering provisions previously located at § 226.6(f)(1)(iii) have been revised and redesignated at § 226.6(f)(1)(viii) and (f)(3)(i).

6. What licensing and approval requirements did the Department propose for at-risk centers?

Public Law 105–336 eased licensing and approval requirements for afterschool care programs by allowing institutions to meet State or local health and safety standards if Federal, State, or local licensing or approval is not required. Accordingly, we proposed to require that at-risk and outside-school-hours care centers must only meet State or local health and safety standards if Federal, State, or local licensing or approval is not otherwise required.

What did commenters say about this proposed change in licensing/approval standards?

This proposed provision generated 11 comments from State agencies, advocates and associations, and sponsoring organizations. Commenters focused on difficulties that exist due to State and local variations in establishing health and safety standards appropriate for at-risk centers and in maintaining those standards through inspection of facilities. At-risk programs in some areas have been prevented from operating because of non-existent or inappropriate health and safety standards or backlogs in obtaining inspection and approval.

One State agency opposed the reduced licensing requirements for outside-school-hours centers in the proposed rule.

The statutory language, found at section 17(a)(5)(C) in the NSLA (42 U.S.C. 1766(a)(5)(C)), does not distinguish between the types of CACFP afterschool centers that may operate based on compliance with health and safety standards in the absence of licensing requirements. Broadly stated, this provision applies to both types of afterschool centers operating in the CACFP, at-risk centers and outside-school-hours centers. We would like to emphasize that this provision applies only in those localities where Federal, State, or local licensing is not required for afterschool care programs.

One commenter asked the Department to clarify whether CACFP State agencies could require licensing of at-risk and outside-school-hours centers.

Since the authority to establish standards resides with the licensing agency at the Federal, State, or local level, the CACFP State agency may establish or change licensing requirements for outside-school-hours and at-risk centers only if it is also the licensing authority for the State.

Commenters asked what are appropriate health and safety standards for at-risk and outside-school-hours centers. State agencies have informed us that in some localities these centers must meet stringent requirements that apply to restaurants because health authorities are unfamiliar with CACFP meal services. In other instances, minimal or no standards exist.

We encourage CACFP State agencies to work closely with State and local health and safety authorities to determine the specific requirements for each type of facility. This will help ensure that appropriate requirements are being applied to organizations seeking to participate in the CACFP.

Some commenters encouraged the Department to specify not only the types of standards that are appropriate but also a reasonable time interval between inspections. In some localities, an occupancy permit may be issued only once, such as prior to initial occupancy of a newly constructed building.

The Department lacks the statutory authority to regulate either standards or time intervals for health and safety certification of facilities. Because of the variations that exist among communities, the CACFP State agency should work with State and/or local health and safety officials to promote reasonable standards with appropriate time intervals established between inspections and/or certifications.

Commenters asked what information should be provided to document that health and safety standards are met before a State agency approves the at-risk or outside-school-hours center for CACFP participation.

Documentation requirements will vary by State or locality. An application for participation as an at-risk center or outside-school-hours center should include a copy of the documentation that is provided by the health or safety inspection agency. Ideally, this would include a copy of the permit and/or a copy of the inspection report with the date, name, and signature of the inspecting official. In some jurisdictions, however, occupancy permits may serve as the only evidence that a facility is in compliance with State or local health or safety standards. In situations where an at-risk center or outside-school-hours center is located in a school building where school lunch or breakfast is served and food safety inspections have occurred (as required by section 9(h) of the NSLA, 42 U.S.C. 1758(h)), the center may not need to meet any additional health and safety requirements. The school's participation in the National School Lunch Program or the School Breakfast Program would be proof of meeting applicable standards. In all cases, the State agency should ensure that the documentation provided is appropriate and current (i.e., not revoked or expired).

Some commenters suggested that at-risk centers and outside-school-hours centers be allowed to simply notify the State or local health department prior to starting operations, in the same way that sponsors of Summer Food Service Program (SFSP) sites are required to do, as described at 7 CFR 225.16(a).

In localities where health and safety standards exist for afterschool programs and the health inspection requirements are the same for meals served under CACFP afterschool programs and SFSP,

State agencies may accept documentation of a current health inspection of a facility that was previously obtained for the SFSP. CACFP may do this as long as the current SFSP inspection has not been revoked or expired. However, the notification letter to the health department, which serves simply as a notice of intent to begin meal services, must not be considered documentation for meeting health and safety standards for at-risk or outside-school-hours centers. An inspection of the facilities must have occurred.

Some commenters asked what requirements should apply if there are no State or local health and safety standards for at-risk and outside-school-hours centers.

The NSLA did not establish any form of ''alternate approval'' for centers providing afterschool care, as it did for other types of child care facilities (see section 17(a)(5)(B) of the NSLA 42 U.S.C. 1766(a)(5)(B)). The Department concludes, therefore, that CACFP State agencies are not required to develop health and safety standards for these facilities.

To eliminate possible confusion about actions that State agencies must take in the absence of licensing or approval standards for outside-school-hours care centers, we made the following changes. First, we revised the definition of ''CACFP child care standard'' by removing the words ''outside-school-hours care centers''. Second, in the definition of ''Outside-school-hours care center'', we added a reference to § 226.6(d)(1)(v), which provides the specific licensing and approval requirements for this type of center. Third, we removed § 226.6(d)(3)(ii) because it referred to alternate child care standards that may be used as approval standards for outside-school-hours care centers when no other licensing/approval standards are available. This change required a revision to the structure of § 226.6(d)(3), which we have set out in this rule.

The Department wants to make clear that in the absence of licensing or approval standards, at-risk centers and outside-school-hours care centers must meet State or local health and safety standards. When State or local health and safety standards have not been established, State agencies are encouraged to work with appropriate State and local officials to create such standards. Meeting these standards will remain a precondition for any afterschool center's eligibility for CACFP nutrition benefits. Therefore, at-risk afterschool care centers and outside-school-hours care centers will not be eligible for CACFP in areas where State or local health and safety standards have not been established. However, as described at § 226.6(d)(1)(iv), an at-risk afterschool care center or an outside-school-hours care center in an area where State or local health and safety standards have not been established will still have the option to demonstrate, to the State agency, compliance with CACFP child care standards, as described at § 226.6(d)(3).

This final rule retains the requirement, proposed at § 226.6(d)(1)(v), which requires at-risk centers and outside-school-hours centers to meet State or local health and safety standards in the absence of Federal, State, or local licensing requirements. This requirement is also restated at § 226.17a(d) for at-risk centers and at § 226.19(b)(1) for outside-school-hours centers.

7. What were the features of the Department's proposal for processing at-risk center applications?

We did not propose an extensive application process. An official of the applicant organization must apply in writing. The organization must meet the general application requirements for CACFP located at §§ 226.6(b), and 226.15(b) or 226.16(b). Sponsoring organizations that are applying on behalf of sponsored at-risk centers must provide information, including documentation of area eligibility, to enable the State agency to determine each center's eligibility as an at-risk center. State agencies must determine the eligibility of independent centers that are applying to participate.

We proposed that once the application is approved, the organization must enter into an agreement with the State agency; the agreement or amendment to an existing agreement must meet all general requirements located at § 226.6(b)(4). We also proposed to allow State agencies to require sponsoring organizations of at-risk centers to enter into separate agreements for the administration of separate types of CACFP facilities. In subsequent years, renewing independent at-risk centers or sponsoring organizations must inform the State agency of any substantive changes to their afterschool care programs.

One State agency questioned the proposed inclusion of at-risk centers in the provision allowing State agencies to require separate agreements for each type of center operated by a sponsoring organization. This commenter thought that the provision allowing State agencies to require separate agreements conflicted with the movement toward single agreements.

Single agreement requirements mandated by Public Law 105–336 apply only to School Food Authorities (SFAs) operating more than one child nutrition program under the same State agency. Other CACFP institutions are not included in the single agreement requirements. To avoid confusion about the type of agreement an SFA must sign to operate an at-risk afterschool care center, we have clarified §§ 226.16(f) and 226.17a(f)(2) in this final rule to specify that SFAs must continue to operate under single, permanent agreements in accordance with § 226.6(b)(4)(ii)(A).

Are there any changes to application processing procedures in the final rule?

There are no new application requirements specific to at-risk afterschool care centers. However, applying to participate in the CACFP is a more comprehensive process than at the time the proposed rule was published. The first integrity rule strengthened application and participation requirements for all CACFP institutions. Because the application process is the initial opportunity to address an institution's fitness in operating the program, applicant institutions must provide documentation that demonstrates financial viability, demonstrates administrative capability to operate the program, and establishes internal controls that ensure program accountability.

Although at-risk centers must meet all CACFP application requirements, which are described at § 226.6(b), we recognize that some of the smaller afterschool care organizations that are applying to participate in CACFP for the first time may find the application process to be complex and demanding. In order to foster their participation, we encourage State agencies to offer technical assistance whenever possible to independent institutions that want to participate in the at-risk afterschool snack component.

To clarify the process of application renewal for at-risk centers, we added language at § 226.17a(g) on the responsibilities of renewing independent at-risk centers and sponsoring organizations of at-risk centers. We have also clarified in §§ 226.17a(h) and 226.6(f)(3)(iii) how changes are handled between application periods. Finally, we updated citations of general application processing requirements to reflect

changes made by the second integrity rule.

Accordingly, the provisions on application processing for at-risk centers are revised and redesignated at § 226.6(f)(2)(ii) and (f)(3)(ii); these provisions are also described in § 226.17a(f), (g), and (h).

8. For-Profit Center Participation

The following questions address the issue of for-profit center participation in the CACFP and the at-risk snack component.

What did the Department propose regarding for-profit organizations participating in at-risk afterschool snacks?

We proposed that children who only participate in the at-risk afterschool snack component at a for-profit center must not be included in the count that qualifies the center for program participation each month. At the time the proposed rule was published, participating for-profit centers could be reimbursed for CACFP meals and snacks only during the months in which 25 percent of enrolled children or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries.

We had also proposed to define at § 226.2, the criteria for participation in the Iowa/Kentucky demonstration project, which had been permanently authorized under Public Law 105–336. The proposed definition described the criteria for participation by for-profit centers in these two States as: providing nonresidential child care and having at least 25 percent of the children, based on the enrollment or licensed capacity of the center (whichever is less), eligible to receive free or reduced-price meals.

What did commenters say about the proposed provisions about for-profit centers?

Three State agencies commented on the proposed provisions affecting for-profit centers; one supported, one opposed, and a third State agency encouraged us to allow for-profit organizations to count all Federal and State funding sources, not just the title XX funding, toward meeting the 25 percent eligibility criteria. The commenter who opposed the provision thought it would be confusing because children who are enrolled in for-profit centers for part-time care (not necessarily as part of the at-risk component) are currently counted toward the 25 percent participation qualifying level.

For purposes of determining a for-profit center's eligibility, there is a difference between part-time children who are enrolled in the for-profit child care center and children who are not required to be enrolled but may just drop-in to participate in the afterschool activities and receive a snack. Current program regulations at §§ 226.10(c), 226.11(b) and (c), 226.17(b)(4), and 226.19(b)(5), stipulate that participating for-profit centers must meet eligibility criteria on a monthly basis in order to be reimbursed.

For this reason, we are retaining the exclusion of children who only participate in the at-risk afterschool snack component toward meeting the monthly eligibility criteria for participation and claiming reimbursement. This provision is described at §§ 226.2 (definition of ''For-profit center''), 226.9(b)(2), 226.10(c), 226.11(b)(3) and (c)(4), 226.17(b)(4), and 226.17a(a)(2) in this final rule.

How do the recent changes to for-profit center participation impact the provisions in this final rule?

The afterschool snack provisions in this final rule reflect the statutory and regulatory changes that permit for-profit centers to participate in CACFP based on the income eligibility of children in care. The proposed rule was published for comment before the Miscellaneous Appropriations Act of 2001 (Appendix D, Division B, Title I of the Consolidated Appropriations Act of 2001, Pub. L. 106–554) permitted for-profit organizations nationwide to participate in CACFP as long as 25 percent of the children served are eligible for free or reduced-price meals. Initially, Congress limited this change to one year but later extended the provision annually through appropriation legislation. Public Law 108–265 permanently established this provision in the NSLA. With the permanent authorization of the participation of for-profit centers based on children's income eligibility for free or reduced-price meals, the pilot project that had operated in Iowa, Kentucky, and Delaware was no longer needed; accordingly, its authority was removed by Public Law 108–265. (Note: The third state to participate in the for-profit pilot project, Delaware, was authorized by the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224); for reasons of timing, Delaware was not included in the proposed rule.)

The for-profit center rule codified the for-profit center eligibility criteria as mandated by the NSLA, at section 17(a)(2)(B)(i) and (ii), 42 U.S.C. 1766(a)(2)(B)(i) and (ii). As defined in § 226.2, for-profit centers that are otherwise eligible may participate if:

1. 25 percent of the children in care (enrolled or licensed capacity, whichever is less) are eligible for free or reduced-price meals; or

2. 25 percent of the children in care (enrolled or licensed capacity, whichever is less) receive benefits from title XX funding and the center receives compensation from amounts granted to the States under title XX.

The for-profit center rule also changed the terminology used in the regulations to describe these types of centers from proprietary title XIX and proprietary title XX centers to for-profit centers. This final rule uses the new term ''for-profit centers'' to describe participating for-profit organizations, replacing all references to ''proprietary title XX centers'' used in the proposed rule.

9. Meal Service

Did commenters say anything about the proposed meal pattern requirements for afterschool snacks?

We proposed that current meal pattern requirements for CACFP snacks be used for afterschool snacks served to children and youth participating in at-risk afterschool programs. Two State agency commenters urged the Department to establish different quantities for snacks served to children ages 13 through 18. One of these commenters also suggested that the CACFP adult portions be used for adolescents.

Although we agree that CACFP meal pattern requirements need to address the nutritional needs of adolescents ages 13 through 18, this would require a separate rulemaking.

Concerning the suggestion to permit at-risk centers to serve adult quantities to the 13–18 age group, we do not believe that this is an appropriate substitution. The CACFP adult meal patterns are intended for adults over the age of 60, and the quantities provided for some food groups do not address the nutritional needs of youth. We recommend that snack portion sizes larger than those for the 6 to 12 age group, as described at § 226.20(c)(4), be given to adolescents. To clarify the difference between portions for adult participants and teenage participants, we have made a technical correction to the footnote following the meal pattern tables at § 226.20(c)(1), (c)(2), (c)(3), and (c)(4). More information about the correction to the footnote is provided in topic # 13 of this preamble.

Accordingly, the proposed provision on meal pattern requirements for afterschool snacks served by at-risk centers is retained but is redesignated as § 226.17a(l).

Were other comments made about meal service requirements for at-risk afterschool snacks?

One State agency asked us to clarify whether family style service is allowed for afterschool snacks. If so, the commenter stated that this flexibility conflicts with prohibiting offer versus serve in the NSLP afterschool snack component. CACFP snacks, whether served at a child care center, day care home, or at-risk facility, may be served family style if conducive to the meal service. At-risk centers that choose a family style snack service must comply with the procedures outlined in FNS Instruction 783–9, Rev. 2. Given the nature of afterschool programs, we don't expect that family style service will be commonly used.

We also received a comment from an at-risk center that noted the difficulty in observing the time restrictions that require that three hours elapse between the beginning of one meal service and the beginning of the next meal service.

The second integrity rule eliminated Federal regulatory time restrictions for all CACFP centers and provided State agencies with the authority to determine appropriate serving times for meals (see § 226.20(k)). This change had been proposed in a rulemaking published on September 12, 2000 (65 FR 55101) and overwhelmingly approved by commenters of that proposed rule. This provision gives State agencies a tool to respond to situations in order to better meet children's needs.

As previously discussed in this preamble, we have clarified that afterschool snacks may be served in the summer by an at-risk center that is located in the attendance area of a school that operates on a continuous year schedule. Accordingly, we have revised the provision on time periods for snack service, which was proposed at § 226.17a(l) and is redesignated at § 226.17a(m) in this final rule.

10. Monitoring Requirements

How did commenters respond to the proposed monitoring requirements by State agencies?

Twelve commenters responded to our proposal at § 226.6(l)(4) to require State agencies to conduct a technical assistance visit to all newly participating independent at-risk afterschool care centers during the first 90 days of program operation. All but one opposed the proposed requirement. Most commenters objected that the visits would duplicate pre-approval visits that State agencies must conduct before approving new independent private child care centers (as well as sponsors of group and home day care facilities). Commenters pointed out that under this proposal, State agencies would be obligated to visit the same centers twice within 120 days. This additional visit, commenters believed, would strain State agency workloads and possibly even discourage the State from promoting the afterschool snack component to at-risk care centers. Instead, several commenters urged the Department to allow State agencies flexibility in providing technical assistance to new centers. They suggested several alternatives to the on-site visits such as allowing States to require attendance at pre-approval training sessions, substituting desk reviews of menus or claim records with follow-up visits as necessary, and extending the time period for conducting the technical visit.

We recognize that many State agencies are over-burdened due to financial restraints in response to economic conditions. As a result, many State agencies have found it necessary to prioritize CACFP administrative activities. Although we continue to believe that technical assistance visits would be very helpful to independent at-risk afterschool care centers that are new to CACFP, we believe that limited State resources would be better spent in conducting the reviews as required at § 226.6(m)(6). We encourage State agencies to find ways to assist these newly participating CACFP institutions, using the above-mentioned activities suggested by State agency commenters. We also encourage State agencies to make use of the pre-approval visits to provide technical assistance to newly participating CACFP institutions.

Accordingly, in response to the concerns expressed about State agency workload, we have not included in this final rule the proposed requirement for technical assistance visits by State agencies within the first 90 days of new participating independent at-risk centers.

What did commenters say about proposed monitoring requirements by sponsoring organizations?

We had proposed that sponsors must review at-risk afterschool care centers three times each year, including at least one review during the first six weeks of program operations and not more than six months between reviews. Three commenters supported this proposal and two commenters provided suggestions for improving monitoring of at-risk facilities. Other commenters either recommended adopting these monitoring provisions for outside-school-hours care centers or noted that the number and frequency of CACFP monitoring requirements by sponsoring organizations of facilities had been changed by Public Law 106–224.

Due to the changes made to monitoring requirements in the second integrity rule, the monitoring provisions as proposed for at-risk centers are not included in this final rule. Instead, the monitoring requirements that are now in place at § 226.16(d)(4) include all sponsored centers, including at-risk centers and outside-school-hours centers. The principle features of these new monitoring requirements by sponsors of their sponsored centers, which are similar to the proposed at-risk monitoring requirements in frequency and number, include the following:

1. Centers must be reviewed at least three times per year;

2. Two of the three reviews must be unannounced;

3. At least one of the unannounced reviews must include observation of a meal service;

4. At least one review must be made within four weeks of a newly participating center; and

5. Reviews must be no more than six months apart.

Accordingly, for the reasons stated above, the proposed monitoring provisions at §§ 226.6(l)(4) and 226.16(d)(4)(iii) are not adopted in this final rule.

11. What did the Department propose about reimbursement for afterschool snacks and did anyone comment?

We proposed that at-risk centers may claim only one afterschool snack per child per day. An organization that provides care to a child under another CACFP component (such as a child care center) may not claim reimbursement for more than two meals and one snack or one meal and two snacks served to the same child on the same day, including a snack served in an at-risk program. This provision ties the provision of at-risk afterschool snacks to the total number of reimbursable meals permitted under CACFP, and it is specified in the final rule at §§ 226.17(b)(6) and 226.17a(k).

We received only one comment on these provisions, and this commenter supported the proposal to count the snacks served by at-risk afterschool care centers toward the total number of meals that may be reimbursed to the organization under the CACFP.

Accordingly, the provision allowing one afterschool snack per child per day is adopted as proposed.

12. What types of reporting and recordkeeping requirements did the Department propose for at-risk centers?

Due to the drop-in nature of many afterschool programs, we did not propose extensive reporting and recordkeeping requirements. Consistent with the objective of keeping program administration for at-risk centers minimal, we purposely excluded enrollment records and point-of-service meal counts from recordkeeping requirements. We proposed minimum recordkeeping requirements for at-risk centers. In addition to other records that an at-risk center must keep as a participating organization in the CACFP, an at-risk center must document:

1. Daily attendance using rosters, sign-in sheets, or other methods of recording attendance as required by the CACFP State agency;

2. The number of snacks prepared or delivered for each meal service;

3. The number of snacks served to children; and

4. Menus for each snack service.

Another recordkeeping requirement is that applicant organizations must be able to document afterschool program eligibility and area eligibility (although State agencies are responsible for determining area eligibility of independent at-risk centers).

We proposed only one additional reporting requirement at § 226.17a(o) that at-risk centers must report the total number of snacks served to children who meet the age limitation requirements.

We received eight comments on recordkeeping and reporting issues. Commenters were split on their opinions of our proposal for limited recordkeeping/reporting requirements for at-risk centers. Three out of four commenters who addressed the issue supported the proposal to not require enrollment records of children who only participate in the at-risk snack service. However, other commenters objected to the proposal to allow attendance rosters or sign-in sheets instead of requiring point-of-service meal counts. One opposing commenter reasoned that since NSLP State agencies have the option of requiring point-of-service counts at the afterschool snack service, CACFP State agencies should also have this flexibility. Another commenter argued in favor of allowing States to require point-of-service counts because of the need to improve program integrity.

The Department appreciates concerns expressed about the need to protect program integrity. However, we believe that at-risk afterschool care centers should be able to participate under reduced administrative requirements to the extent possible.

As stated at § 226.17a(o) in this final rule, institutions providing afterschool care to at-risk children, whether sponsoring organizations or independent at-risk afterschool care centers, are bound by the applicable recordkeeping requirements for CACFP institutions. General recordkeeping requirements, found at § 226.15(e), were amended by the second integrity rule. In addition, this final rule revises § 226.15(e)(2) to specifically exclude at-risk centers and outside-school-hours centers from maintaining enrollment records and to exclude at-risk centers from the requirement to maintain participant information used to determine eligibility for free or reduced-price meals.

Following is a summary of those recordkeeping requirements at § 226.15(e), as amended, that are applicable to at-risk centers. In addition to the requirements of § 226.17a(o), at-risk centers must keep:

1. Daily records of the number of meals (snacks for at-risk centers) served to adults who provide the meal service;

2. Copies of invoices, receipts, or other records as required by the State agency;

3. Copies of claims for reimbursement;

4. Receipts for Program payments received from the State agency;

5. In addition to copies of menus, other food service records that the State agency may require;

6. Records on staff training conducted including dates, locations, topics and participants; and

7. Documentation of nonprofit food service.

Sponsoring organizations of at-risk centers must also keep:

1. Records of the dates and amounts of funds disbursed to sponsored facilities;

2. Records of dates and locations of reviews of facilities, problems noted, and corrective action required; and

3. Records verifying training provided to monitoring staff.

Accordingly, proposed recordkeeping requirements at § 226.17a(n) are retained but redesignated at § 226.17a(o). Section 226.15(e)(2) is revised in this final rule to exclude at-risk centers from the requirement to maintain enrollment records of children and to exclude at-risk centers from the requirement to maintain information on the eligibility of participating children for free and reduced-price meals. Reporting requirements for at-risk centers as proposed at § 226.17a(o) are retained but redesignated at § 226.17a(p).

13. What other changes to the CACFP regulations are made in this rulemaking?

This final rule incorporates a mandatory provision from section 107(a)(2) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336), which amended section 17(a)(1) of the NSLA, 42 U.S.C. 1766(a)(1), to remove the receipt of title XX funds by institutions or group or family day care homes as an acceptable substitute for Federal, State or local licensing or approval. As stated in the Conference Report (105–786) accompanying Public Law 105–336, this change is not intended to disqualify any institution that originally qualified under title XX.

Accordingly, §§ 226.6(d)(1), 226.17(b)(1), and 226.19(b)(1) are revised to remove references to receipt of title XX funds as a substitute for licensing or approval by a Federal, State, or local licensing authority.

We proposed to revise the definitions of ''Nonpricing program'' and ''Pricing program'' at § 226.2 to include child care facilities and adult day care facilities. This ensures that all sponsored facilities of institutions, including sponsored at-risk centers, are covered in the requirements for pricing and nonpricing programs described in §§ 226.6(f)(1)(i) and 226.23(e) and (h).

We received no comments on these proposed revisions to the definitions of nonpricing programs and pricing programs. Accordingly, we have adopted the revisions to the definitions of ''Nonpricing program'' and ''Pricing program'' at § 226.2.

Another change that we made in this final rule was to specify in the definition of ''Meals'' in § 226.2 that at-risk centers, emergency shelters, and outside-school-hours care centers do not have to enroll children in CACFP in order to receive reimbursement for the meals served to these participants. CACFP enrollment continues to be required for participants of day care homes, traditional child care centers, and adult day care centers.

Finally, a revision is made in this final rule to correct the first footnote that is displayed under the tables for meal pattern requirements in § 226.20(c)(1), (c)(2), (c)(3), and (c)(4). This footnote states that children age 12 and up may be served adult size portions. The adult portions in the meal pattern requirements are based on the nutritional needs of adults age 60 and older and do not take into account the

different nutritional needs of youth. Therefore, we have revised this footnote to state that children ages 13 through 18 may be served larger portions based on greater food needs but must be served not less than the minimum quantities required for children ages 6 through 12.

Accordingly, the first footnote under the tables that display meal pattern requirements in § 226.20 (c)(1), (c)(2), (c)(3), and (c)(4) is revised.

II. Procedural Matters

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Impact Analysis

Need for Action

This final rule changes the Child and Adult Care Food Program (CACFP) regulations as proposed by the Department in a rulemaking published on October 11, 2000 (65 FR 60502). These changes implement provisions of Public Law 105–336, which authorized afterschool care centers meeting certain criteria to be reimbursed for snacks served to at-risk children 18 years of age and younger. In addition to codifying these benefits, this rule establishes the administrative provisions necessary to manage afterschool snacks.

Benefits

This final rule codifies benefits provided by Public Law 105–336, which expands the opportunity for children to receive subsidized snacks through afterschool programs, thereby encouraging positive youth development. A regulatory impact analysis of the rule indicated that since the enactment of Public Law 105–336, participation in afterschool programs has increased. Research indicates that afterschool programs can have a positive effect on juvenile crime, drug and alcohol use, and teen pregnancy, and can also improve educational achievement and support personal development, although it is not feasible to assign a monetary value to these benefits.

Costs

The analysis of the rule estimated that these provisions will cost the Federal government about $120 million between Fiscal Years 2005–2009. Also, due to the training, monitoring, recordkeeping, and other administrative and managerial requirements of the provisions, some additional burden will be imposed on the staff of at-risk centers, at-risk sponsors, State agencies, and the USDA.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. Institutions choose whether they wish to participate in this additional meal service. Because most institutions that will choose to add a snack service are already participating in the CACFP, the snack service will not have a significant paperwork or reporting burden because it is incorporated under the existing agreement and Claim for Reimbursement.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Child and Adult Care Food Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice published at 48 FR 29114, June 24, 1983, this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State and Local Officials

Since the CACFP is a State-administered, federally funded program, our regional offices have had informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. This arrangement allows State agencies and sponsoring organizations to provide feedback that forms the basis for any discretionary decisions in this and other CACFP rules. Additionally, the issue of this rule, at-risk afterschool snacks, has been discussed in many formal and informal meetings.

Nature of Concerns and the Need To Issue This Rule

This component of the CACFP responds to a growing national concern that at-risk children need appropriate and meaningful activities in a safe environment during the hours after school. The provision of reimbursable nutritious snacks assists organizations currently providing afterschool care to at-risk children and encourages other organizations to begin serving the at-risk population. The William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) enlarged the scope of the CACFP by authorizing the reimbursement of snacks served to at-risk children through age 18 by organizations operating eligible afterschool programs in low-income areas. This final rule implements the at-risk afterschool provisions mandated by the law.

Extent To Which We Meet These Concerns

This final rule amends the CACFP regulations at 7 CFR part 226 by incorporating at-risk afterschool provisions that were proposed on October 11, 2000 and commented on by the public. We analyzed the public comments, most of which were provided by State agencies that administer the CACFP. In this final rule, we responded to commenters' requests for clarification, and where possible, accommodated preferences stated by the

majority of commenters on discretionary provisions contained in the rule.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which otherwise impede its full implementation. This final rule does not have retroactive effect unless so specified in the Dates section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the Child and Adult Care Food Program, the administrative procedures are set forth at 7 CFR 226.6(k), which establishes appeal procedures, and 7 CFR 226.22, 3016, and 3019, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no negative effect on these groups. All data available to FNS indicate that protected individuals have the same opportunity to participate in the CACFP as non-protected individuals. Regulations at § 226.6(b)(4)(iv) require that CACFP institutions agree to operate the Program in compliance with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964, title IX of the Education amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a, and 15b). At § 226.6(m)(1), State agencies are required to monitor CACFP institution compliance with these laws and regulations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap., 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The information collection requirements contained in this rule have been approved by OMB under OMB Number 0584–0055.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR part 226 is amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

§§ 226.4, 226.13, 226.19, and 226.23 [Amended]

■ 2. In part 226, remove the words ''supplement'' or ''supplements'' wherever they appear in the following locations and add the words ''snack'' or ''snacks'', respectively, in their place: § 226.4(b)(7); § 226.4(b)(8); § 226.4(b)(9); § 226.4(d)(7); § 226.4(d)(8); § 226.4(d)(9); § 226.13(b); § 226.19(b)(4); and § 226.23(c)(6).

■ 3. In § 226.2:

■ a. Add new definitions of ''At-risk afterschool care center'', ''Eligible area'', ''Persons with disabilities'', and ''Snack'' in alphabetical order;

■ b. Amend the definition of ''CACFP child care standards'' by removing the words '', outside-school-hours care centers,'';

■ c. Revise the definitions of ''Children'', ''Nonpricing program'', ''Pricing program'', ''Reduced-price meal'', and ''Sponsoring organization'';

■ d. Add a new last sentence to the definition of ''Enrolled child'';

■ e. Revise the introductory paragraph of the definition of ''For-profit center'';

■ f. Amend the definition of ''Free meal'' by adding in the first sentence the words ''a child participating in an approved at-risk afterschool care program;'' after the words ''a child who is receiving temporary housing and meal services from an approved emergency shelter;'';

■ g. Amend the definitions of ''Center'' and ''Child care facility'' by adding the words ''at-risk afterschool care center,'' after the words ''child care center,'';

■ h. Amend the definitions of ''Independent center'' and ''Institution'' by adding the words ''at-risk afterschool care center,'' after the words ''child care center,'';

■ i. Amend the definition of ''Meals'' by adding a new last sentence; and

■ j. Add the words ''in accordance with § 226.6(d)(1)'' in the first sentence of the definition of ''Outside-school-hours care center'' after the words ''licensed or approved''.

The additions and revisions read as follows:

§ 226.2 Definitions.

* * * * *

At-risk afterschool care center means a public or private nonprofit organization that is participating or is eligible to participate in the CACFP as an institution or as a sponsored facility and that provides nonresidential child care to children after school through an approved afterschool care program located in an eligible area. However, an *Emergency shelter,* as defined in this section, may participate as an at-risk afterschool care center without regard to location.

* * * * *

Children means:

(a) Persons age 12 and under;

(b) Persons age 15 and under who are children of migrant workers;

(c) *Persons with disabilities* as defined in this section;

(d) For emergency shelters, persons age 18 and under; and

(e) For at-risk afterschool care centers, persons age 18 and under at the start of the school year.

* * * * *

Eligible area means:

(a) For the purpose of determining the eligibility of at-risk afterschool care centers, the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals; or

(b) For the purpose of determining the tiering status of day care homes, the area served by an elementary school in which at least 50 percent of the total number of children are certified eligible to receive free or reduced-price meals, or the area based on census data in which at least 50 percent of the children residing in the area are members of households that meet the income

standards for free or reduced-price meals.

* * * * *

Enrolled child * * * For at-risk afterschool care centers, outside-school-hours care centers, or emergency shelters, the term ''enrolled child'' or ''enrolled participant'' does not apply.

* * * * *

For-profit center means a child care center, outside-school-hours care center, or adult day care center providing nonresidential care to adults or children that does not qualify for tax-exempt status under the Internal Revenue Code of 1986. For-profit centers serving adults must meet the criteria described in paragraph (a) of this definition. For-profit centers serving children must meet the criteria described in paragraphs (b)(1) or (b)(2) of this definition, except that children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining the percentages under paragraphs (b)(1) or (b)(2) of this definition.

* * * * *

Meals * * * However, children participating in at-risk afterschool care centers, emergency shelters, or outside-schools-hours care centers do not have to be enrolled.

* * * * *

Nonpricing program means an institution, child care facility, or adult day care facility in which there is no separate identifiable charge made for meals served to participants.

* * * * *

Persons with disabilities means persons of any age who have one or more disabilities, as determined by the State, and who are enrolled in an institution or child care facility serving a majority of persons who are age 18 and under.

Pricing program means an institution, child care facility, or adult day care facility in which a separate identifiable charge is made for meals served to participants.

* * * * *

Reduced-price meal means a meal served under the Program to a participant from a family that meets the income standards for reduced-price school meals. Any separate charge imposed must be less than the full price of the meal, but in no case more than 40 cents for a lunch or supper, 30 cents for a breakfast, and 15 cents for a snack. Neither the participant nor any member of his family may be required to work in the food service program for a reduced-price meal.

* * * * *

Snack means a meal supplement that meets the meal pattern requirements specified in § 226.20(b)(6) or (c)(4).

Sponsoring organization means a public or nonprofit private organization that is entirely responsible for the administration of the food program in:

(a) One or more day care homes;

(b) A child care center, emergency shelter, at-risk afterschool care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

(c) Two or more child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care center, or adult day care centers; or

(d) Any combination of child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care centers, adult day care centers, and day care homes. The term ''sponsoring organization'' also includes an organization that is entirely responsible for administration of the Program in any combination of two or more child care centers, at-risk afterschool care centers, adult day care centers or outside-school-hours care centers, which meet the definition of *For-profit center* in this section and are part of the same legal entity as the sponsoring organization.

* * * * *

■ 4. In § 226.4:

■ a. Revise the second and third sentences of paragraph (a);

■ b. Redesignate paragraphs (d) through (k) as paragraphs (e) through (l), respectively;

■ c. Add a new paragraph (d);

■ d. Amend the first sentence of newly redesignated paragraph (i)(1) by adding the words, '', including snacks,'' after the word ''meals''; and

■ e. Revise the first sentence of newly redesignated paragraph (i)(2).

The revisions and addition read as follows:

§ 226.4 Payments to States and use of funds.

(a) * * * Funds must be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e), (f), (g), and (j) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part must not exceed the sum of the Federal funds provided by the State to participating institutions within the State for that fiscal year and any funds used by the State under paragraphs (j) and (l) of this section.

* * * * *

(d) *At-risk afterschool care center funds.* For snacks served to children in at-risk afterschool care centers, funds will be made available to each State agency in an amount equal to the total calculated by multiplying the number of snacks served in the Program within the State to such children by the national average payment rate for free snacks under section 11 of the National School Lunch Act.

* * * * *

(i) * * *

(2) The rates for meals, including snacks, served in child care centers, emergency shelters, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers will be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

* * *

* * * * *

■ 5. In § 226.6:

■ a. Redesignate paragraphs (b)(1)(viii) through (b)(1)(xvii) as paragraphs (b)(1)(ix) through (b)(1)(xviii), respectively, and add a new paragraph (b)(1)(viii);

■ b. Amend paragraphs (c)(2)(ii)(B) and (c)(3)(ii)(C) by removing the reference ''(b)(1)(xvii)'' and adding in its place the reference ''(b)(1)(xviii)'';

■ c. Amend paragraphs (c)(7)(ii), (c)(7)(iii), (c)(7)(iv)(A), (c)(7)(iv)(B), and (c)(7)(iv)(C) by removing the reference ''(b)(1)(xi)'' and adding in its place the reference ''(b)(1)(xii)'';

■ d. Revise the first sentence of the introductory text of paragraph (d);

■ e. Revise paragraphs (d)(1) and (d)(3);

■ f. Amend the second sentence of paragraph (d)(4) by removing the words, '', outside-school-hours care centers,'';

■ g. Remove paragraphs (f)(1)(iii), (f)(1)(iv), and (f)(1)(x) and redesignate paragraphs (f)(1)(v) through (f)(1)(ix) as paragraphs (f)(1)(iii) through (f)(1)(vii), respectively, and add new paragraphs (f)(1)(viii) and (f)(1)(ix);

■ h. Revise paragraphs (f)(2) and (f)(3); and

■ i. Remove the words '', outside-school-hours care centers,'' from the first sentence of paragraph (o).

The additions and revisions read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(b) * * *

(1) * * *

(viii) *At-risk afterschool care centers.* Institutions (independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers) must submit documentation

sufficient to determine that each at-risk afterschool care center meets the program eligibility requirements in § 226.17a(a), and sponsoring organizations must submit documentation that each sponsored at-risk afterschool care center meets the area eligibility requirements in § 226.17a(i).

* * * * *

(d) * * * This section prescribes State agency responsibilities to ensure that child care centers, at-risk afterschool care centers, outside-school-hours care centers, and day care homes meet the licensing/approval criteria set forth in this part. * * *

(1) *General.* Each State agency must establish procedures to annually review information submitted by institutions to ensure that all participating child care centers, at-risk afterschool care centers, outside-school hours care centers, and day care homes:

(i) Are licensed or approved by Federal, State, or local authorities, provided that institutions that are approved for Federal programs on the basis of State or local licensing are not eligible for the Program if their licenses lapse or are terminated; or

(ii) Are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied; or

(iii) Demonstrate compliance with applicable State or local child care standards to the State agency, if licensing is not available; or

(iv) Demonstrate compliance with CACFP child care standards to the State agency, if licensing or approval is not available; or

(v) If Federal, State or local licensing or approval is not otherwise required, at-risk afterschool care centers and outside-school-hours care centers must meet State or local health and safety standards. When State or local health and safety standards have not been established, State agencies are encouraged to work with appropriate State and local officials to create such standards. Meeting these standards will remain a precondition for any afterschool center's eligibility for CACFP nutrition benefits.

* * * * *

(3) *CACFP child care standards.* When licensing or approval is not available, independent child care centers, and sponsoring organizations on behalf of their child care centers or day care homes, may elect to demonstrate compliance, annually, with the following CACFP child care standards or other standards specified in paragraph (d)(4) of this section:

(i) *Staff/child ratios.* (A) Day care homes provide care for no more than 12 children at any one time. One home caregiver is responsible for no more than 6 children ages 3 and above, or no more than 5 children ages 0 and above. No more than 2 children under the age of 3 are in the care of 1 caregiver. The home provider's own children who are in care and under the age of 14 are counted in the maximum ratios of caregivers to children.

(B) Child care centers do not fall below the following staff/child ratios:

(*1*) For children under 6 weeks of age—1:1;

(*2*) For children ages 6 weeks up to 3 years—1:4;

(*3*) For children ages 3 years up to 6 years—1:6;

(*4*) For children ages 6 years up to 10 years—1:15; and

(*5*) For children ages 10 and above—1:20.

(ii) *Nondiscrimination.* Day care services are available without discrimination on the basis of race, color, national origin, sex, age, or handicap.

(iii) *Safety and sanitation.* (A) A current health/sanitation permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(B) A current fire/building safety permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(C) Fire drills are held in accordance with local fire/building safety requirements.

(iv) *Suitability of facilities.* (A) Ventilation, temperature, and lighting are adequate for children's safety and comfort.

(B) Floors and walls are cleaned and maintained in a condition safe for children.

(C) Space and equipment, including rest arrangements for preschool age children, are adequate for the number of age range of participating children.

(v) *Social services.* Independent centers, and sponsoring organizations in coordination with their facilities, have procedures for referring families of children in care to appropriate local health and social service agencies.

(vi) *Health services.* (A) Each child is observed daily for indications of difficulties in social adjustment, illness, neglect, and abuse, and appropriate action is initiated.

(B) A procedure is established to ensure prompt notification of the parent or guardian in the event of a child's illness or injury, and to ensure prompt medical treatment in case of emergency.

(C) Health records, including records of medical examinations and immunizations, are maintained for each enrolled child. (Not applicable to day care homes.)

(D) At least one full-time staff member is currently qualified in first aid, including artificial respiration techniques. (Not applicable to day care homes.)

(E) First aid supplies are available.

(F) Staff members undergo initial and periodic health assessments.

(vii) *Staff training.* The institution provides for orientation and ongoing training in child care for all caregivers.

(viii) *Parental involvement.* Parents are afforded the opportunity to observe their children in day care.

(ix) *Self-evaluation.* The institution has established a procedure for periodic self-evaluation on the basis of CACFP child care standards.

* * * * *

(f) * * *

(1) * * *

(viii) Comply with the following requirements for tiering of day care homes:

(A) Coordinate with the State agency that administers the National School Lunch Program (the NSLP State agency) to ensure the receipt of a list of elementary schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced-price meals. The State agency must provide the list of elementary schools to sponsoring organizations of day care homes by February 15 each year unless the NSLP State agency has elected to base data for the list on a month other than October. In that case, the State agency must provide the list to sponsoring organizations of day care homes within 15 calendar days of its receipt from the NSLP State agency.

(B) For tiering determinations of day care homes that are based on school or census data, the State agency must ensure that sponsoring organizations of day care homes use the most recent available data, as described in § 226.15(f).

(C) For tiering determinations of day care homes that are based on the provider's household income, the State agency must ensure that sponsoring organizations annually determine the eligibility of each day care home, as described in § 226.15(f).

(D) The State agency must provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement.

(E) The State agency must require each sponsoring organization of family day care homes to submit to the State agency a list of family day care home providers receiving tier I benefits on the basis of their participation in the Food Stamp Program. Within 30 days of receiving this list, the State agency will provide this list to the State agency responsible for the administration of the Food Stamp Program.

(ix) Comply with the following requirements for determining the eligibility of at-risk afterschool care centers:

(A) Coordinate with the NSLP State agency to ensure the receipt of a list of elementary, middle, and high schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced-price meals. The State agency must provide the list of elementary, middle, and high schools to independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers upon request. The list must represent data from the preceding October, unless the NSLP State agency has elected to base data for the list on a month other than October. If the NSLP State agency chooses a month other than October, it must do so for the entire State.

(B) The State agency must determine the area eligibility for each independent at-risk afterschool care center. The State agency must use the most recent data available, as described in § 226.6(f)(1)(ix)(A). The State agency must use attendance area information that it has obtained, or verified with the appropriate school officials to be current, within the last school year.

(C) The State agency must determine the area eligibility of each sponsored at-risk afterschool care center based on the documentation submitted by the sponsoring organization in accordance with § 226.15(g).

(D) The State agency must determine whether the afterschool care programs of at-risk afterschool care centers meet the requirements of § 226.17a(b) before the centers begin participating in the Program.

(2) *Triennial Responsibilities*—(i) *General reapplication requirements.* At intervals not to exceed 36 months, each State agency must require participating institutions to reapply to continue their participation and must require sponsoring organizations to submit a management plan with the elements set forth in § 226.6(b)(1)(iv).

(ii) *Redeterminations of afterschool program eligibility.* The State agency must determine whether institutions reapplying as at-risk afterschool care centers continue to meet the eligibility requirements, as described in § 226.17a(b).

(3) *Responsibilities at other time intervals*—(i) *Day care home tiering redeterminations based on school data.* As described in § 226.15(f), tiering determinations are valid for five years if based on school data. The State agency must ensure that the most recent available data is used if the determination of a day care home's eligibility as a tier I day care home is made using school data. The State agency must not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a day care home is no longer in a qualified area.

(ii) *Area eligibility redeterminations for at-risk afterschool care centers.* Area eligibility determinations are valid for five years for at-risk afterschool care centers that are already participating in the Program. The State agency may determine the date in the fifth year when the next five-year cycle of area eligibility will begin. The State agency must redetermine the area eligibility for each independent at-risk afterschool care center in accordance with § 226.6(f)(1)(ix)(B). The State agency must redetermine the area eligibility of each sponsored at-risk afterschool care center based on the documentation submitted by the sponsoring organization in accordance with § 226.15(g). The State agency must not routinely require annual redeterminations of area eligibility based on updated school data during the five-year period, except in cases where the State agency has determined it is most efficient to incorporate area eligibility decisions into the three-year application cycle. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that an at-risk afterschool care center is no longer area eligible.

(iii) *State agency transmittal of census data.* Upon receipt of census data from FNS (on a decennial basis), the State agency must provide each sponsoring organization of day care homes with census data showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced-price meals.

(iv) *Additional institution requirements.* At intervals and in a manner specified by the State agency, but not more frequently than annually, the State agency may:

(A) Require independent centers to submit a budget with sufficiently detailed information and documentation to enable the State agency to make an assessment of the independent center's qualifications to manage Program funds. Such budget must demonstrate that the independent center will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), and parts 3015, 3016, and 3019 of this title and applicable Office of Management and Budget circulars;

(B) Request institutions to report their commodity preference;

(C) Require a private nonprofit institution to submit evidence of tax exempt status in accordance with § 226.16(a);

(D) Require for-profit institutions to submit documentation on behalf of their centers of:

(*1*) Eligibility of at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) for free or reduced-price meals; or

(*2*) Compensation received under title XX of the Social Security Act of nonresidential day care services and certification that at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) were title XX beneficiaries during the most recent calendar month.

(E) Require for-profit adult care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries;

(F) Request each institution to indicate its choice to receive all, part or none of advance payments, if the State agency chooses to make advance payments available; and

(G) Perform verification in accordance with § 226.23(h) and paragraph (m)(4) of this section. State agencies verifying the information on free and reduced-price applications must ensure that verification activities are conducted without regard to the participant's race, color, national origin, sex, age, or disability.

* * * * *

■ 6. In § 226.7, revise paragraph (f) to read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(f) *Rate assignment.* Each State agency must require institutions (other than emergency shelters, at-risk afterschool care centers, and sponsoring organizations of emergency shelters, at-risk afterschool care centers, or day care homes) to submit, not less frequently than annually, information necessary to assign rates of reimbursement as outlined in § 226.9.

* * * * *

§ 226.8 [Amended]

■ 7. In § 226.8, remove the reference ''§ 226.4(i)'' in the first sentence of paragraph (b), the first sentence of paragraph (c), and the first and second sentences of paragraph (d), and add in its place the reference ''§ 226.4(j)''.

■ 8. In § 226.9:

■ a. Revise the second sentence of paragraph (a);

■ b. Revise paragraph (b) introductory text; and

■ c. Revise paragraph (b)(2).

The revisions read as follows:

§ 226.9 Assignment of rates of reimbursement for centers.

(a) * * * However, no rates should be assigned for emergency shelters and at-risk afterschool care centers. * * *

(b) Except for emergency shelters and at-risk afterschool care centers, the State agency must either:

* * * * *

(2) Establish claiming percentages, not less frequently than annually, for each institution on the basis of the number of enrolled participants eligible for free, reduced-price, and paid meals, except that children who only participate in emergency shelters or the at-risk afterschool snack component of the Program must not be considered to be enrolled participants for the purpose of establishing claiming percentages; or

* * * * *

■ 9. In § 226.10:

■ a. In paragraph (a), remove the reference ''§ 226.6(f)(3)(vi)'' in the first sentence and add in its place the reference ''§ 226.6(f)(3)(iv)(F)''; and

■ b. Add a new sentence after the third sentence in the introductory text of paragraph (c).

The addition reads as follows:

§ 226.10 Program payment procedures.

* * * * *

(c) * * * However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. * * *

* * * * *

■ 10. In § 226.11:

■ a. Revise paragraphs (a), (b) and (c); and

■ b. Add a heading to paragraphs (d) and (e).

The revisions and additions read as follows:

§ 226.11 Program payments for centers.

(a) *Requirement for agreements.* Payments must be made only to institutions operating under an agreement with the State agency for the meal types specified in the agreement served at approved child care centers, at-risk afterschool care centers, adult day care centers, emergency shelters, and outside-school-hours care centers. A State agency may develop a policy under which centers are reimbursed for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed, or the State agency may develop a policy under which centers receive reimbursement only for meals served in approved centers on and after the effective date of the Program agreement. If the State agency's policy permits centers to earn reimbursement for meals served prior to the execution of a Program agreement, program reimbursement must not be received by the center until the agreement is executed.

(b) *Institutions*—(1) *Edit checks of sponsored centers.* Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization must conduct reasonable edit checks on the sponsored centers' meal claims, which at a minimum, must include those edit checks specified at § 226.10(c).

(2) *Child and adult care institutions.* Each child care institution and each adult day care institution must report each month to the State agency the total number of Program meals, by type (breakfasts, lunches, suppers, and snacks), served to children or adult participants, respectively, except as provided in paragraph (b)(3) of this section.

(3) *For-profit center exception.* For-profit child care centers, including for-profit at-risk afterschool care centers and outside-school-hours care centers, must provide the reports required in paragraph (b)(2) of this section only for calendar months during which at least 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries. However, children who only participate in an at-risk afterschool snack component of the Program must not be considered in determining this percentage. For-profit adult day care centers must provide the reports required in paragraph (b)(2) of this section only for calendar months during which at least 25 percent of enrolled adult participants were beneficiaries of title XIX, title XX, or a combination of titles XIX and XX.

(c) *Reimbursement*—(1) *Child and adult care institutions.* Each State agency must base reimbursement to each approved child care institution and adult day care institution on actual time of service meal counts of meals, by type, served to children or adult participants multiplied by the assigned rates of reimbursement, except as provided in paragraph (c)(4) of this section.

(2) *At-risk afterschool care centers.* Each State agency must base reimbursement to each at-risk afterschool care center on the number of snacks served to children multiplied by the free rate for snacks, except as provided in paragraph (c)(4) of this section.

(3) *Emergency shelters.* Each State agency must base reimbursement to each emergency shelter on the number of meals served to children multiplied by the free rates for meals and snacks.

(4) *For-profit center exception.* For-profit child care centers, including for-profit at-risk and outside-school-hours care centers, must be reimbursed only for the calendar months during which at least 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries. However, children who only participate in an at-risk afterschool snack component of the Program must not be considered in determining this percentage. For-profit adult day care centers must be reimbursed only for the calendar months during which at least 25 percent of enrolled adult participants were beneficiaries of title XIX, title XX, or a combination of titles XIX and XX.

(5) *Computation of reimbursement.* Except for at-risk afterschool care centers and emergency shelters, the State agency must compute reimbursement by either:

(i) *Actual counts.* Base reimbursement to institutions on actual time of service counts of meals served, and multiply the number of meals, by type, served to participants that are eligible to receive free meals, participants eligible to receive reduced-price meals, and participants not eligible for free or reduced-price meals by the applicable national average payment rate; or

(ii) *Claiming percentages.* Apply the applicable claiming percentage or percentages to the total number of

meals, by type, served to participants and multiply the product or products by the assigned rate of reimbursement for each meal type; or

(iii) *Blended rates.* Multiply the assigned blended per meal rate of reimbursement by the total number of meals, by type, served to participants.

(d) *Limits on reimbursement.* * * *

(e) *Institution recordkeeping.* * * *

■ 11. In § 226.15:

■ a. Amend the second sentence in paragraph (b) by removing the reference ''§ 226.6(b)(1)(xvii)'' and adding in its place the reference ''§ 226.6(b)(1)(xviii)'';

■ b. Revise the first two sentences of paragraph (e)(2); and

■ c. Redesignate paragraphs (g) through (n) as paragraphs (h) through (o), respectively, and add a new paragraph (g).

The revisions and addition read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) * * *

(2) Documentation of the enrollment of each participant at centers (except for outside-school-hours care centers, emergency shelters, and at-risk afterschool care centers). All types of centers, except for emergency shelters and at-risk afterschool care centers, must maintain information used to determine eligibility for free or reduced-price meals in accordance with § 226.23(e)(1). * * *

* * * * *

(g) *Area eligibility determinations for at-risk afterschool care centers.* Sponsoring organizations of at-risk afterschool care centers must provide information, as required by the State agency, which permits the State agency to determine whether the centers they sponsor are located in eligible areas. Such information may include the most recent free and reduced-price school data available pursuant to § 226.6(f)(1)(ix) and attendance area information that it has obtained, or verified with the appropriate school officials to be current, within the last school year.

* * * * *

■ 12. In § 226.16:

■ a. Amend the first sentence of paragraph (b)(1) by removing the references ''226.6(f)(2)(ii)'' and ''226.6(b)(1)(xvii)'' and adding in their place the references ''226.6(f)(2)(i)'' and ''226.6(b)(1)(xviii), respectively;

■ b. Revise paragraph (f); and

■ c. Amend the first sentence of paragraph (h) by adding the words ''at-risk afterschool care centers,'' after the words ''emergency shelters,''.

The revision reads as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of facilities (child care centers, day care homes, adult day care centers, emergency shelters, at-risk afterschool care centers, and outside-school-hours care centers). However, if a school food authority provides child care and is applying to participate in the Program, the State agency must enter into a single permanent agreement, as specified in § 226.6(b)(4)(ii)(A).

* * * * *

■ 13. In § 226.17:

■ a. Revise paragraphs (b)(1), (b)(3), and (b)(5);

■ b. Add a new sentence between the second and third sentence in paragraph (b)(4); and

■ c. Redesignate paragraphs (b)(6) through (b)(9) as paragraphs (b)(7) through (b)(10), respectively, and add a new paragraph (b)(6).

The revisions and additions read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(1) Child care centers must have Federal, State, or local licensing or approval to provide day care services to children. Child care centers, which are complying with applicable procedures to renew licensing or approval, may participate in the Program during the renewal process, unless the State agency has information that indicates that renewal will be denied. If licensing or approval is not available, a child care center may participate if it demonstrates compliance with the CACFP child care standards or any applicable State or local child care standards to the State agency.

* * * * *

(3) Each child care center participating in the Program must serve one or more of the following meal types—breakfast; lunch; supper; and snack. Reimbursement must not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child.

(4) * * * However, children who only receive snacks in an approved afterschool care program must not be included in this percentage. * * *

(5) A child care center with preschool children may also be approved to serve a breakfast, snack, and supper to school-age children participating in an outside-school-hours care program meeting the criteria of § 226.19(b) that is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such participating children who attend a school that does not offer a lunch program, provided that the limit of two meals and one snack, or one meal and two snacks, per child per day is not exceeded.

(6) A child care center with preschool children may also be approved to serve a snack to school age children participating in an afterschool care program meeting the requirements of § 226.17a that is distinct from its day care program for preschool children, provided that the limit of two meals, and one snack, or one meal and two snacks, per child per day is not exceeded.

* * * * *

■ 14. Add a new § 226.17a to read as follows:

§ 226.17a At-risk afterschool care center provisions.

(a) *Organizations eligible to receive reimbursement for afterschool snacks*—(1) *Eligible organizations.* In order to be eligible to receive reimbursement, organizations must meet the following criteria:

(i) Organizations must meet the definition of an *At-risk afterschool care center* in § 226.2. An organization may participate in the Program either as an independent center or as a child care facility under the auspices of a sponsoring organization. Public and private nonprofit centers may not participate under the auspices of a for-profit sponsoring organization.

(ii) Organizations must operate an eligible afterschool care program, as described in paragraph (b) of this section.

(iii) Organizations must meet the licensing/approval requirements in § 226.6(d)(1).

(iv) Except for for-profit centers, at-risk afterschool care centers must be public, or have tax-exempt status under the Internal Revenue Code of 1986 or be currently participating in another Federal program requiring nonprofit status.

(2) *Limitations.* At-risk afterschool care centers may only claim reimbursement for snacks served to children who are participating in an approved afterschool care program, as described in paragraph (b) of this section. In addition, centers may only claim reimbursement for snacks served at any one time to children within the at-risk afterschool care center's authorized capacity. For-profit centers

may only claim reimbursement for snacks served during a calendar month in which at least 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage.

(b) *Eligible at-risk afterschool care programs*—(1) *Eligible programs.* To be eligible for reimbursement, an afterschool care program must:

(i) Be organized primarily to provide care for children after school or on weekends, holidays, or school vacations during the regular school year (an at-risk afterschool care center may not claim snacks during summer vacation, unless it is located in the attendance area of a school operating on a year-round calendar);

(ii) Have organized, regularly scheduled activities (*i.e.*, in a structured and supervised environment);

(iii) Include education or enrichment activities; and

(iv) Except for *Emergency shelters* as defined in § 226.2, be located in an eligible area, as described in paragraph (i) of this section.

(2) *Eligibility limitation.* Organized athletic programs engaged in interscholastic or community level competitive sports are not eligible afterschool care programs.

(c) *Eligibility requirements for children.* At-risk afterschool care centers may claim reimbursement only for snacks served to children who participate in an approved afterschool care program and who are age 18 or under at the start of the school year.

(d) *Licensing requirements for at-risk afterschool care centers.* In accordance with § 226.6(d)(1), if Federal, State or local licensing or approval is not otherwise required, at-risk afterschool care centers must meet State or local health and safety standards. When State or local health and safety standards have not been established, State agencies are encouraged to work with appropriate State and local officials to create such standards. Meeting these standards will remain a precondition for any afterschool center's eligibility for CACFP nutrition benefits. In cases where Federal, State or local licensing or approval is required, at-risk afterschool care centers that are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information that indicates the renewal will be denied.

(e) *Application procedures*—(1) *Application.* An official of the organization must make written application to the State agency for any afterschool care program that it wants to operate as an at-risk afterschool care center.

(2) *Required information.* At a minimum, an organization must submit:

(i) An indication that the applicant organization meets the eligibility criteria for organizations as specified in paragraph (a) of this section;

(ii) A description of how the afterschool care program(s) meets the eligibility criteria in paragraph (b) of this section;

(iii) In the case of a sponsoring organization, a list of all applicant afterschool care centers;

(iv) Documentation that permits the State agency to confirm that all applicant afterschool care centers are located in an eligible area, as described in paragraph (i) of this section; and

(v) Other information required as a condition of eligibility in the CACFP must be submitted with an application for participation in accordance with § 226.6(b)(1).

(f) *State agency action on applications*—(1) *State agency approval.* The State agency must determine the eligibility of the afterschool care program for each sponsored afterschool care center based on the information submitted by the sponsoring organization in accordance with §§ 226.6(b)(1) and 226.15(g) and the requirements of this section. The State agency must determine the eligibility of the afterschool care programs of independent afterschool care centers based on the information submitted by the independent center in accordance with § 226.6(b)(1) and the requirements of this section. The State agency must determine the area eligibility of independent at-risk afterschool care centers in accordance with the requirements of § 226.6(f)(1)(ix)(B). An approved organization must enter into an agreement with the State agency as described in paragraph (f)(2) of this section.

(2) *Agreement.* The State agency must enter into an agreement or amend an existing agreement with an institution approved to operate one or more at-risk afterschool care centers pursuant to § 226.6(b)(4). The agreement must describe the approved afterschool care program(s) and list the approved center(s). The agreement must also require the institution to comply with the applicable requirements of this part. If the institution is a school food authority that is applying to participate as an at-risk afterschool care center, the State agency must enter into a single permanent agreement, as specified in § 226.6(b)(4)(ii)(A).

(g) *Application process in subsequent years.* To continue participating in the Program, independent at-risk afterschool care centers or sponsoring organizations of at-risk afterschool care centers must reapply at time intervals required by the State agency, as described in § 226.6(b)(3) and (f)(2). Sponsoring organizations of at-risk afterschool care centers must provide area eligibility data in compliance with the provisions of § 226.15(g). In accordance with § 226.6(f)(3)(ii), State agencies must determine the area eligibility of each independent at-risk afterschool care center that is reapplying to participate in the Program.

(h) *Changes to participating centers.* Independent at-risk afterschool care centers or sponsors of at-risk afterschool care centers must advise the State agency of any substantive changes to the afterschool care program. Sponsoring organizations that want to add new at-risk afterschool care centers must provide the State agency with the information sufficient to demonstrate that the new centers meet the requirements of this section.

(i) *Area eligibility.* Except for emergency shelters, at-risk afterschool care centers must be located in an area described in paragraph (a) of the *Eligible area* definition in § 226.2 and in paragraph (i)(1) of this section.

(1) *Definition.* An at-risk afterschool care center is in an eligible area if it is located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced-price school meals.

(2) *Data used.* Area eligibility determinations must be based on the total number of children approved for free and reduced-price school meals for the preceding October, or another month designated by the State agency that administers the National School Lunch Program (the NSLP State agency). If the NSLP State agency chooses a month other than October, it must do so for the entire State.

(3) *Frequency of area eligibility determinations.* Area eligibility determinations are valid for five years. The State agency may determine the date in the fifth year in which the next five-year cycle of area eligibility will begin. The State agency must not routinely require redeterminations of area eligibility based on updated school data during the five-year period, except in cases where the State agency has determined it is most efficient to incorporate area eligibility decisions

into the three-year application cycle. However, a sponsoring organization, the State agency, or FNS may change the determination of area eligibility if information becomes available indicating that an at-risk afterschool care center is no longer area eligible.

(j) *Cost of afterschool snacks.* All afterschool snacks served under this section must be made available to participating children at no charge.

(k) *Limit on daily reimbursements.* At-risk afterschool care programs may claim reimbursement only for one afterschool snack per child per day. A center that provides care to a child under another component of the Program during the same day may not claim reimbursement for more than two meals and one snack, or one meal and two snacks, per child per day, including the afterschool snack. All meals and any snacks in addition to one snack per child per day must be claimed in accordance with the requirements for the applicable component of the Program.

(l) *Meal pattern requirements for afterschool snacks.* Afterschool snacks must meet the meal pattern requirements for snacks described in § 226.20(b)(6) and (c)(4).

(m) *Time periods for snack service.* At-risk afterschool care centers may only claim snacks served in approved afterschool care programs after a child's school day or on weekends, holidays, or school vacations during the regular school year. Afterschool snacks may not be claimed during summer vacation, unless the at-risk afterschool care center is located in the attendance area of a school operating on a year-round calendar.

(n) *Reimbursement rate.* All snacks served in at-risk afterschool care centers will be reimbursed at the free snack rate.

(o) *Recordkeeping requirements.* In addition to the other records required by this part, at-risk afterschool care centers must maintain:

(1) Daily attendance rosters, sign-in sheets or, with State agency approval, other methods which result in accurate recording of daily attendance;

(2) The number of snacks prepared or delivered for each snack service;

(3) The number of snacks served to participating children for each snack service; and

(4) Menus for each snack service.

(p) *Reporting requirements.* In addition to other reporting requirements under this part, at-risk afterschool care centers must report the total number of snacks served to eligible children based on daily attendance rosters or sign-in sheets.

(q) *Monitoring requirements.* State agencies must monitor independent centers in accordance with § 226.6(m). Sponsoring organizations of at-risk afterschool care centers must monitor their centers in accordance with § 226.16(d)(4).

■ 15. In § 226.18, revise paragraph (c) to read as follows:

§ 226.18 Day care home provisions.

* * * * *

(c) Each day care home must serve one or more of the following meal types—breakfast, lunch, supper, and snack. Reimbursement may not be claimed for more than two meals and one snack, or one meal and two snacks, provided daily to each child.

* * * * *

■ 16. In § 226.19, revise paragraph (b)(1) to read as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(1) In accordance with § 226.6(d)(1), if Federal, State or local licensing or approval is not otherwise required, outside-school-hours care centers must meet State or local health and safety standards. When State or local health and safety standards have not been established, State agencies are encouraged to work with appropriate State and local officials to create such standards. Meeting these standards will remain a precondition for any outside-school-hours care center's eligibility for CACFP nutrition benefits. In cases where Federal, State or local licensing or approval is required, outside-school-hours care centers that are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information that indicates the renewal will be denied.

* * * * *

■ 17. In § 226.19a, revise paragraph (b)(5) to read as follows:

§ 226.19a Adult day care center provisions.

* * * * *

(b) * * *

(5) Each adult day care center participating in the Program must serve one or more of the following meal types—breakfast, lunch, supper, and snack. Reimbursement may not be claimed for more than two meals and one snack, or one snack and two meals, provided daily to each adult participant.

* * * * *

■ 18. In § 226.20:

■ a. Amend the introductory text of paragraph (a)(4) by removing the words ''Supplemental food'' and adding in their place the word ''Snacks'';

■ b. Revise footnote 1 in the tables of paragraphs (c)(1), (c)(2), (c)(3), and (c)(4); and

■ c. Amend paragraph (d)(2) by removing the words ''supplemental food'' and adding in their place the word ''snacks''.

The revisions read as follows:

§ 226.20 Requirements for meals.

* * * * *

(c) * * *

(1) * * *

[1] Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

* * * * *

(2) * * *

[1] Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

* * * * *

(3) * * *

[1] Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

* * * * *

(4) * * *

[1] Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

* * * * *

■ 19. In § 226.23:

■ a. Revise the first sentence in paragraph (b);

■ b. Revise the second and third sentences of paragraph (d); and

■ c. Add in the first sentence of paragraph (e)(1)(i), the words '' and at-risk afterschool care centers'' after the word ''emergency shelters''.

The revisions read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(b) Institutions that may not serve meals at a separate charge to children (including emergency shelters, at-risk afterschool care centers, and sponsoring organizations of emergency shelters, at-risk afterschool care centers, and day care homes) and other institutions that elect to serve meals at no separate charge must develop a policy statement consisting of an assurance to the State agency that all participants are served the same meals at no separate charge, regardless of race, color, national origin, sex, age, or disability and that there is

no discrimination in the course of the food service. * * *

* * * * *

(d) * * * All media releases issued by institutions other than emergency shelters, at-risk afterschool care centers, and sponsoring organizations of emergency shelters, at-risk afterschool care centers, or day care homes must include the Secretary's Income Eligibility Guidelines for Free and Reduced-Price Meals. The release issued by all emergency shelters, at-risk afterschool care centers, and sponsoring organizations of emergency shelters, at-risk afterschool care centers, or day care homes, and by other institutions which elect not to charge separately for meals, must announce the availability of meals at no separate charge. * * *

* * * * *

Dated: July 16, 2007.

Kate J. Houston,

Deputy Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. E7–14642 Filed 7–30–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0072]

Black Stem Rust; Addition of Rust-Resistant Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On June 12, 2007, the Animal and Plant Health Inspection Service published a direct final rule. (See 72 FR 32165–32167.) The direct final rule notified the public of our intention to amend the black stem rust quarantine and regulations by adding four varieties to the list of rust-resistant *Berberis* species or cultivars in the regulations. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

DATES: *Effective Date:* The effective date of the direct final rule is confirmed as August 13, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

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

Done in Washington, DC, this 25th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–14722 Filed 7–30–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2005–0106]

RIN 0579–AB80

Revision of Fruits and Vegetables Import Regulations; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting an error in the amendatory instructions in our final rule that revised and reorganized the regulations pertaining to the importation of fruits and vegetables. The final rule was published in the **Federal Register** on July 18, 2007 (72 FR 39482–39528, Docket No. APHIS 2005–0106).

EFFECTIVE DATE: August 17, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Janel Barsi, Regulatory Analyst, Regulatory Analysis and Development, PPD, APHIS, 4700 River Road Unit 118, Riverdale, MD 20737; (301) 734–8682.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** on July 18, 2007 (72 FR 39482–39528, Docket No. APHIS–2005–0106) and effective on August 17, 2007, we revised and reorganized our regulations pertaining to the importation of fruits and vegetables.

In an amendatory instruction in the final rule, we directed the revision of ''Subpart—Fruits and Vegetables, §§ 319.56 through 319.56–8.'' This was incorrect. We should have simply referred to ''Subpart—Fruits and Vegetables.'' This document corrects that error.

Correction

PART 319—[CORRECTED]

■ In FR Doc. E7–13708, published on July 18, 2007 (72 FR 39482–39528), make the following correction: On page 39501, second column, instruction 13, remove the words '',§§ 319.56 through 319.56–8,''.

Done in Washington, DC, this 25th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–14723 Filed 7–30–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket Nos. AMS–FV–07–0039; FV07–985–2 FIR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) and Class 3 (Native) Spearmint Oil for the 2006–2007 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that revised the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may have purchased from, or handled for, producers during the 2006–2007 marketing year. This rule continues in effect the action that increased the Scotch spearmint oil salable quantity from 878,205 pounds to 2,984,817 pounds, and the allotment percentage from 45 percent to 153 percent. In addition, this rule continues in effect the action that increased the Native spearmint oil salable quantity from 1,161,260 pounds to 1,205,208 pounds, and the allotment percentage from 53 percent to 55 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

EFFECTIVE DATE: August 30, 2007.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail:

Susan.Hiller@usda.gov or *GaryD.Olson@usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule continues in effect the action that increased the quantity of Scotch and Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 2006–2007 marketing year, which ended on May 31, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The original salable quantity and allotment percentages for Scotch and Native spearmint oil for the 2006–2007 marketing year were recommended by the Committee at its October 5, 2005, meeting. The Committee recommended salable quantities of 878,205 pounds and 1,007,886 pounds, and allotment percentages of 45 percent and 46 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on February 1, 2006 (71 FR 5183). Comments on the proposed rule were solicited from interested persons until March 3, 2006. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2006–2007 marketing year was published in the **Federal Register** on April 5, 2006 (71 FR 16986).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee has made recommendations to increase the quantity of Scotch and Native spearmint oil that handlers may have purchased from, or handled for, producers during the 2006–2007 marketing year, which ended on May 31, 2007. An interim final rule was published in the **Federal Register** on May 26, 2006 (71 FR 30266), which increased the 2006–2007 salable quantity and allotment percentage for Native spearmint oil to 1,161,260 pounds and 53 percent, respectively. Comments on the interim final rule were solicited from interested persons until July 25, 2006. No comments were received. Subsequently, a final rule establishing the salable quantity and allotment percentage for Native spearmint oil was published in the **Federal Register** on September 7, 2006 (71 FR 52735).

This rule continues in effect the action that further revised the quantity of Scotch and Native spearmint oil that handlers may have purchased from, or handled for, producers during the 2006–2007 marketing year, which ended on May 31, 2007. The Committee, with all eight members present, met on February 21, 2007, and in two separate motions, recommended that the 2006–2007 Scotch and Native spearmint oil allotment percentages be increased by 108 percent and 2 percent, respectively. The motion to increase the allotment percentage for Scotch was unanimous and the motion to increase the allotment percentage for Native passed with seven members in favor and one member opposed. The member opposing was concerned that there was not enough demand to warrant the 2 percent increase.

Thus, taking into consideration the following discussion on adjustments to the Scotch and Native spearmint oil salable quantities, this rule continues in effect the action that increased the 2006–2007 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 2,984,817 pounds and 153 percent, and 1,205,208 pounds and 55 percent, respectively.

The total industry allotment base for Scotch spearmint oil for the 2006–2007 marketing year was estimated by the Committee at the October 5, 2005 meeting at 1,951,567 pounds. This was later revised at the beginning of the 2006–2007 marketing year to 1,950,861 pounds to reflect a 2005–2006 marketing year loss of 706 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 1,950,861 pounds is applied to the originally established allotment percentage of 45 percent, the initially established 2006–2007 marketing year salable quantity of 878,205 pounds is effectively modified to 877,887 pounds.

The same situation applies to Native spearmint oil where the Committee estimated that the total industry allotment base for the 2006–2007 marketing year was established at 2,191,056 pounds and was revised at the beginning of the 2006–2007 marketing year to 2,191,287 pounds to reflect a 2005–2006 marketing year gain of 231 pounds of base for new and existing producers. When the revised total allotment base of 2,191,287 pounds is applied to the originally established allotment percentage of 46 percent, the initially established 2006–2007 marketing year salable quantity of 1,007,886 pounds is effectively modified to 1,007,992 pounds.

Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil. By increasing the salable quantities and allotment percentages, this final rule made an additional amount of Scotch and Native spearmint oil available by releasing oil from the reserve pool. When applied to each individual producer, the allotment percentage increase allows each producer to take up to an amount equal to their allotment base from their reserve for this respective class of oil. In addition, pursuant to §§ 985.56 and 985.156, producers with excess oil are not able to transfer such excess oil to other producers to fill deficiencies in annual allotments after October 31 of each marketing year.

The following table summarizes the Committee recommendations:

Scotch Spearmint Oil Recommendation

(A) Estimated 2006–2007 Allotment Base—1,951,567 pounds. This is the estimate on which the original 2006–2007 Scotch spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2006–2007 Allotment Base—1,950,861 pounds. This is 706 pounds less than the estimated allotment base of 1,951,567 pounds. This is less because some producers failed to produce all of their 2005–2006 allotment.

(C) Original 2006–2007 Allotment Percentage—45 percent. This was unanimously recommended by the Committee on October 5, 2005.

(D) Original 2006–2007 Salable Quantity—878,205 pounds. This figure is 45 percent of the estimated 2006–2007 allotment base of 1,951,567 pounds.

(E) Adjustment to the Original 2006–2007 Salable Quantity—877,887 pounds. This figure reflects the salable quantity initially available after the beginning of the 2005–2006 marketing year due to the 706 pound reduction in the industry allotment base to 1,950,861 pounds.

(F) First Revision to the 2006–2007 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage—108 percent. The Committee recommended a 108 percent increase at its February 21, 2007, meeting.

(2) 2006–2007 Allotment Percentage—153 percent. This figure is derived by adding the increase of 108 percent to the original 2006–2007 allotment percentage of 45 percent.

(3) Calculated Revised 2006–2007 Salable Quantity—2,984,817 pounds. This figure is 153 percent of the adjusted 2006–2007 allotment base of 1,950,861 pounds.

(4) Computed Increase in the 2006–2007 Salable Quantity—2,106,930 pounds. This figure is 108 percent of the adjusted 2006–2007 allotment base of 1,950,861 pounds.

(G) No Second Revision to the 2006–2007 Salable Quantity and Allotment Percentage.

The 2006–2007 marketing year began on June 1, 2006, with an estimated carry-in of 43,057 pounds of salable oil. Of the original 2006–2007 salable quantity of 877,887 pounds, only 708,768 pounds was actually produced. This resulted in an available supply of 751,825 pounds for the 2006–2007 marketing year. Of this amount, 736,904 pounds of Scotch spearmint oil has already been sold or committed for the 2006–2007 marketing year, which left 14,921 pounds available for sale. As of February 15, 2007, the reserve pool was estimated at 13,529 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee Manager from handlers who were not in attendance. Handlers expressed concern about the limited supply of Scotch spearmint oil remaining and that a significant quantity of this oil is of less than desirable quality. An additional concern was that the remaining spearmint oil was in the possession of only a few producers with minimal allotment base. An example of this would be a producer who has 4,000 pounds of reserve pool oil and only 3,700 pounds of allotment base. The only way a handler could purchase all of this producer's oil was if the allotment percentage was increased to at least 108 percent. Without this increase, the industry may not have been able to meet market demand based on past history and current conditions. Additionally, when the Committee made its original recommendation for the establishment of the Scotch spearmint oil salable quantity and allotment percentage for the 2006–2007 marketing year, it had anticipated that the year would end with an ample available supply.

Native Spearmint Oil Recommendation

(A) Estimated 2006–2007 Allotment Base—2,191,056 pounds. This is the estimate on which the original 2006–2007 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2006–2007 Allotment Base—2,191,287 pounds. This is 231 pounds more than the estimated allotment base of 2,191,056 pounds. This is more because some producers over-produced their 2005–2006 allotment.

(C) Original 2006–2007 Allotment Percentage—46 percent. This was unanimously recommended by the Committee on October 5, 2005.

(D) Original 2006–2007 Salable Quantity—1,007,886 pounds. This figure is 46 percent of the estimated 2006–2007 allotment base of 2,191,056 pounds.

(E) Adjustment to the Original 2006–2007 Salable Quantity—1,007,992 pounds. This figure reflects the salable quantity initially available after the beginning of the 2006–2007 marketing year due to the 231 pound gain in the industry allotment base to 2,191,287 pounds.

(F) First Revision to the 2006–2007 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage—7 percent. The Committee recommended a 7 percent increase at its April 18, 2006, meeting.

(2) 2006–2007 Allotment Percentage—53 percent. This figure is derived by adding the increase of 7 percent to the original 2006–2007 allotment percentage of 46 percent.

(3) Calculated Revised 2006–2007 Salable Quantity—1,161,382 pounds. This figure is 53 percent of the adjusted 2006–2007 allotment base of 2,191,287 pounds.

(4) Computed Increase in the 2006–2007 Salable Quantity—153,390 pounds. This figure is 7 percent of the adjusted 2006–2007 allotment base of 2,191,287 pounds.

(G) Second Revision to the 2006–2007 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage—2 percent. The Committee recommended a 2 percent increase at its February 21, 2007 meeting.

(2) 2006–2007 Allotment Percentage—55 percent. This figure is derived by adding the increase of 2 percent to the first revised 2006–2007 allotment percentage of 53 percent.

(3) Calculated Revised 2006–2007 Salable Quantity—1,205,208 pounds. This figure is 55 percent of the adjusted 2006–2007 allotment base of 2,191,287 pounds.

(4) Computed Increase in the 2006–2007 Salable Quantity—43,826 pounds. This figure is 2 percent of the adjusted 2006–2007 allotment base of 2,191,287 pounds.

The 2006–2007 marketing year began on June 1, 2006, with an estimated carry-in of 82,675 pounds of salable oil. When the estimated carry-in was added to the revised 2006–2007 salable quantity of 1,161,382 pounds, a total estimated available supply for the 2006–2007 marketing year of 1,244,057 pounds resulted. Of this amount, 1,130,872 pounds of oil has already been sold or committed for the 2006–2007 marketing year, which left 113,185 pounds available for sale. As of February 15, 2007, the reserve pool was estimated at 223,880 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and

producers in attendance at the meeting and reports given by the Committee Manager from handlers and producers who were not in attendance. On average, handlers estimated that there was a demand for an additional 30,000 pounds to 50,000 pounds of Native spearmint oil for the 2006–2007 marketing year. The Committee was reluctant to increase the salable quantity any more due to the relatively low demand; however the Committee believed that an increase was necessary since handlers expressed their difficulty in finding spearmint oil available for sale. It was also reported that approximately 30,000 pounds to 80,000 pounds of Native spearmint oil was poor quality or re-distilled to improve its chemical composition. Therefore, the industry may not have been able to meet market demand without this increase. In addition, when the Committee made its original recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2006–2007 marketing year, it had anticipated that the year would end with an ample available supply.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Scotch spearmint oil for the 2006–2007 marketing year should be increased to 2,984,817 pounds and 153 percent, respectively. In addition, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2006–2007 marketing year should be increased to 1,205,208 pounds and 55 percent, respectively.

This rule finalizes an interim final rule that relaxed the regulation of Scotch and Native spearmint oil and allowed producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2006–2007 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2006–2007 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increases in the Scotch and Native spearmint oil salable quantity and allotment percentage allowed for anticipated market needs for both classes of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Final Regulatory Flexibility Analysis

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

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

There are eight spearmint oil handlers subject to regulation under the order, and approximately 58 producers of Scotch spearmint oil and approximately 90 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 58 Scotch spearmint oil producers and 21 of the 90 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire salable quantity of spearmint oil and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from other crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule continues in effect the action that further increased the quantity of Scotch and Native spearmint oil that handlers may have purchased from, or handled for, producers during the 2006–2007 marketing year, which ended on May 31, 2007. This rule continues in effect the action that increased the 2006–2007 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 2,984,817 and 153 percent, and 1,205,208 pounds and 55 percent, respectively.

An econometric model was used to assess the impact that volume control

has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The recommended allotment percentages, upon which 2006–2007 producer allotments were based, are 153 percent for Scotch (a 108-percentage point increase from the original allotment percentage of 45 percent) and 55 percent for Native (a 9 percentage point increase from the original allotment percentage of 46 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint oil. The econometric model estimated a $1.37 decline in the season average producer price per pound of Far West spearmint oil (combining the two classes of spearmint oil) resulting from the higher quantities that would be produced and marketed if volume controls were not used.

A previous price decline estimate of $1.49 per pound was based on the original 2006–2007 allotment percentages (45 percent for Scotch and 46 percent for Native) published in the **Federal Register** on April 5, 2006 (71 FR 16986). The revised estimate reflects the impact of the additional quantities that have been made available by this rule compared to the original allotment percentages. In actuality, this rule made available 13,026 additional pounds of Scotch and 21,624 additional pounds of Native spearmint oil, since not all producers have reserve pool oil. Loosening the volume control restriction resulted in the smaller price decline estimate of $1.37 per pound.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meeting, the Committee considered alternatives to each of the increases. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases. The Committee reached each of its recommendations to increase the salable quantity and allotment percentage for Scotch and Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increases, the Committee believes the industry would not have been able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 21, 2007, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on April 12, 2007. A notice of the rule was mailed by the Committee's staff to all committee members, producers, handlers, and other interested persons. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended June 11, 2007. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (72 FR 18345, April 12, 2007) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ Accordingly, the interim final rule amending 7 CFR part 985, which was published at 71 FR 18345 on April, 12, 2007, is adopted as a final rule without change.

Dated: July 24, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–14622 Filed 7–30–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28813; Directorate Identifier 2007–SW–09–AD; Amendment 39–15140; AD 2007–16–01]

RIN 2120–AA64

Airworthiness Directives; Enstrom Helicopter Corporation Model F–28, F–28A, F–28C, F–28C–2, F–28C–2R, F–28F, F–28F–R, 280, 280C, 280F, 280FX, TH–28, 480, and 480B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Enstrom Helicopter Corporation (Enstrom) Model F–28, F–28A, F–28C, F–28C–2, F–28C–2R, F–28F, F–28F–R, 280, 280C, 280F, 280FX, TH–28, 480, and 480B helicopters. This action requires a visual check to determine if a certain serial-numbered main rotor blade retention pin (retention pin) is installed, and removing and replacing any affected retention pin with an airworthy retention pin. This amendment is prompted by a report from the manufacturer that some retention pins were not manufactured in accordance with specifications cited on the engineering drawing. The actions specified in this AD are intended to prevent failure of a retention pin, separation of a main rotor blade from the helicopter, and subsequent loss of control of the helicopter.

DATES: Effective August 15, 2007.

Comments for inclusion in the Rules Docket must be received on or before October 1, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- *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:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- *Fax:* 202–493–2251.

You may get the service information identified in this AD from Enstrom Helicopter Corporation, 2209 22nd Street, P.O. Box 490, Menominee, Michigan 49858–0490.

EXAMINING THE DOCKET: You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Gregory J. Michalik, Senior Aerospace Engineer, FAA, Small Airplane Directorate, Chicago Aircraft Certification Office, 2300 E. Devon Ave., Room 107, Des Plaines, Illinois 60018, telephone (847) 298–7135, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Enstrom Model F–28, F–28A, F–28C, F–28C–2, F–28C–2R, F–28F, F–28F–R, 280, 280C, 280F, 280FX, TH–28, 480, and 480B helicopters with a retention pin, part number (P/N) 28–14007–3, installed, with a serial number (S/N) that is listed in the following table:

RETENTION PIN S/N
04098–01 through 04098–56.
05018–01 through 05018–36.
05143–01 through 05143–56.
05341–1 through 05341–8.
05341–10 through 05341–17.
05341–19.
05341–21 through 05341–33.
05341–35 through 05341–42.
05341–44 through 05341–59.
05341–61.
05341–62.
05341–64 through 05341–71.
06214–3 through 06214–14.
06214–16 through 06214–23.
06214–25 through 06214–29.
06214–31.
06214–33 through 06214–35.
06214–37 through 06214–57.
06214–59 through 06214–68.

This action requires, before further flight, visually checking each retention pin to determine if the S/N, which is marked on the head of the retention pin, is listed in the Applicability section of this AD. If there is no serial number marked on the head of the retention pin (*i.e.*, the retention pin head is blank), the retention pin does not need to be replaced and this visual check constitutes a terminating action for the requirements of this AD for that retention pin. If an affected retention pin is installed, determining the retention pin's number of hours time-in-service (TIS) and removing and replacing it with an airworthy retention pin that has a S/N that is not listed in the Applicability section of this AD is required:

- Within the next 5 hours TIS or within 30 days, whichever occurs first, if the retention pin has 545 or more hours TIS, or
- On or before reaching 550 hours TIS or within 30 days, whichever occurs first, if the retention pin has less than 545 hours TIS.

This amendment is prompted by a report from the manufacturer that some retention pins were manufactured from steel that did not meet the specifications cited on the engineering drawing. The actions specified in this AD are intended to prevent failure of a retention pin, separation of a main rotor blade from the helicopter, and subsequent loss of control of the helicopter.

We have reviewed Enstrom Helicopter Corporation Service Directive Bulletin (SDB) No. 0102 and Enstrom Helicopter Corporation SDB No. T–029, both dated March 20, 2007, which specify visual and magnetic particle inspections for cracks in certain serial-numbered retention pins, and repairing or replacing retention pins in accordance with certain inspection criteria. This AD does not require inspections for cracks but requires that each affected retention pin be replaced.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent failure of a retention pin, separation of a main rotor blade from the helicopter, and subsequent loss of control of the helicopter. This AD requires removing and replacing certain serial-numbered retention pins. The visual check required by this AD may be performed by an owner/operator (pilot), but must be entered into the aircraft records showing compliance with paragraph (a) of this AD in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). This AD allows a pilot to perform this check because it involves only a visual check of the head of each retention pin to determine the S/N.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, removing and replacing each affected retention pin is required within 5 hours TIS or within 30 days, depending on the retention pin's hours TIS, which constitutes a very short time period, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 39 helicopters, and

- Determining the S/N of all retention pins (3 on each helicopter) will take approximately 0.5 work hour;
- Determining the hours TIS of three affected retention pins will take approximately 1 work hour; and
- Removing and replacing three retention pins will take approximately 3 work hours at an average labor rate of $80 per work hour. Required parts will cost approximately $680 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $1,040 per helicopter or $40,560 if all retention pins get replaced on the entire fleet.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2007–28813; Directorate Identifier 2007–SW–09–AD''

at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2007–16–01 Enstrom Helicopter Corporation: Amendment 39–15140. Docket No. FAA–2007–28813; Directorate Identifier 2007–SW–09–AD.

Applicability: Model F–28, F–28A, F–28C, F–28C–2, F–28C–2R, F–28F, F–28F–R, 280, 280C, 280F, 280FX, TH–28, 480, and 480B helicopters, with a main rotor blade retention pin (retention pin) having a serial number (S/N) that is listed in the following table, installed, certificated in any category:

RETENTION PIN S/N
04098–01 through 04098–56.
05018–01 through 05018–36.
05143–01 through 05143–56.
05341–1 through 05341–8.
05341–10 through 05341–17.
05341–19.
05341–21 through 05341–33.
05341–35 through 05341–42.
05341–44 through 05341–59.
05341–61.
05341–62.
05341–64 through 05341–71.
06214–3 through 06214–14.
06214–16 through 06214–23.
06214–25 through 06214–29.
06214–31.
06214–33 through 06214–35.
06214–37 through 06214–57.
06214–59 through 06214–68.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a retention pin, separation of a main rotor blade from the helicopter, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, check the S/N that is marked on the head of each retention pin to see if it is a S/N that is listed in the Applicability section of this AD. See Figure 1 for the location of the S/N. If there is no serial number marked on the head of the retention pin (*i.e.*, the retention pin head is blank), the retention pin does not need to be replaced and this determination constitutes a terminating action for the requirements of this AD for that retention pin.

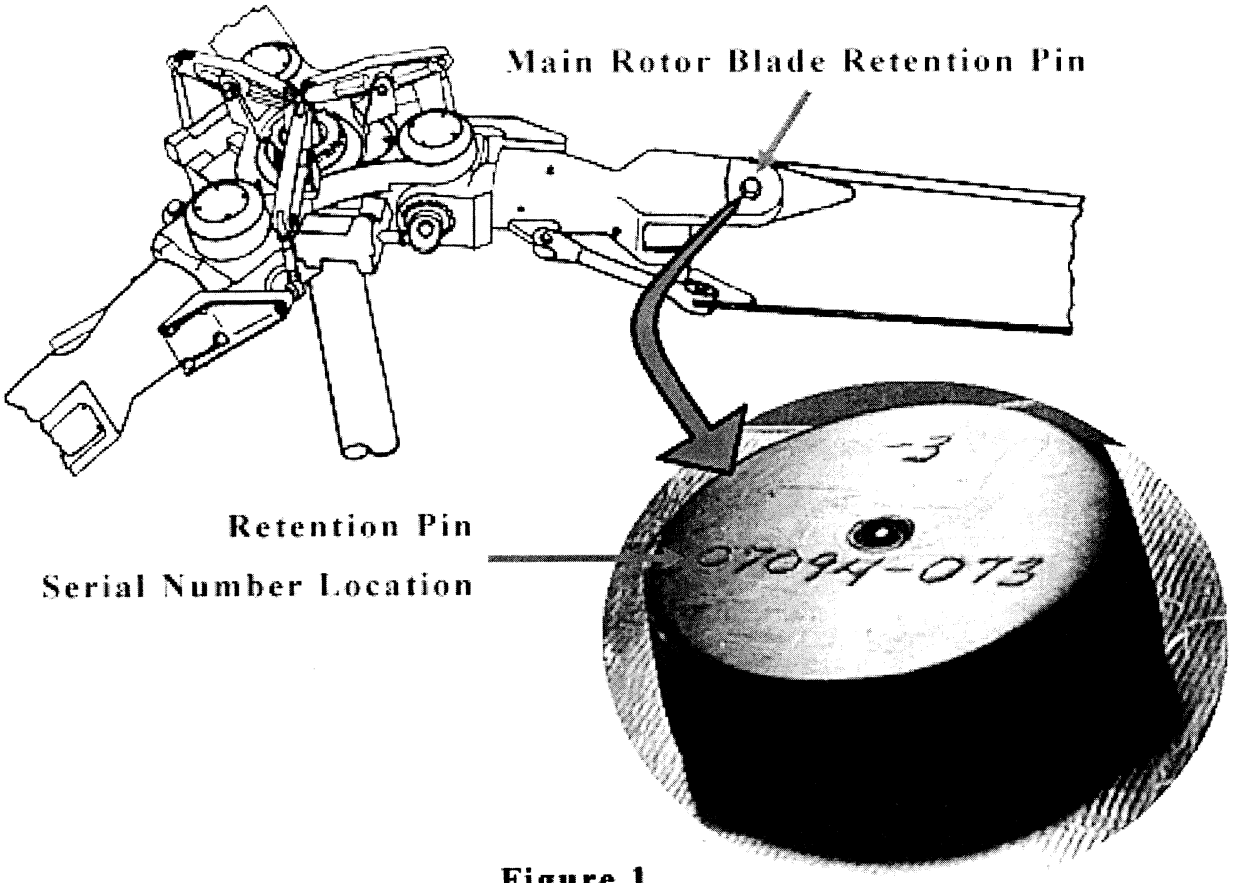

Figure 1

(b) The visual check required by paragraph (a) of this AD may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with paragraph (a) of this AD in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v).

(c) Determine the number of hours TIS for any affected retention pin and replace the retention pin with an airworthy retention pin as follows:

(1) For a retention pin with 545 or more hours TIS, remove the retention pin and replace it with an airworthy retention pin with a S/N that is not listed in the Applicability section of this AD within the next 5 hours TIS or within 30 days, whichever occurs first.

(2) For a retention pin with less than 545 hours TIS, remove the retention pin and replace it with an airworthy retention pin with a S/N that is not listed in the Applicability section of this AD on or before reaching 550 hours TIS or within 30 days, whichever occurs first.

Note: Enstrom Service Directive Bulletin No. T–029 and Enstrom Service Directive Bulletin 0102, both dated March 20, 2007, pertain to the subject of this AD.

(d) Removing any affected retention pin and replacing it with an airworthy retention pin that is not included in the Applicability section of this AD is considered a terminating action for the requirements of this AD for that retention pin.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Chicago Aircraft Certification Office, FAA, ATTN: Gregory J. Michalik, Senior Aerospace Engineer, 2300 E. Devon Ave., Room 107, Des Plaines, Illinois, 60018, telephone (847) 298–7135, fax (847) 294–7834, for information about previously approved alternative methods of compliance.

(f) This amendment becomes effective on August 15, 2007.

Issued in Fort Worth, Texas, on July 24, 2007.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 07–3711 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Ractopamine and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA revises the indications for use of two-way combination Type B and Type C medicated swine feeds formulated with ractopamine hydrochloride and tylosin phosphate.

DATES: This rule is effective July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Harlan J. Howard, Center for Veterinary Medicine (HFV–120), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0231, e-mail: *harlan.howard@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, a Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 141–172 that provides for use of two-way combination Type B and Type C medicated swine feeds formulated with PAYLEAN (ractopamine hydrochloride) and TYLAN (tylosin phosphate) single-

ingredient Type A medicated articles. The supplement provides for revised indications for use of Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; and for control of swine dysentery associated with *Brachyspira hyodysenteriae* and porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis* in finishing swine, weighing not less than 150 pounds (lbs), fed a complete ration containing at least 16 percent crude protein for the last 45 to 90 lbs of gain prior to slaughter. The supplemental NADA is approved as of June 20, 2007, and the regulations in 21 CFR 558.500 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.500, revise the table in paragraphs (e)(1)(ii) and (e)(1)(iii) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(e) * * *

(1) * * *

Ractopamine grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
*	*	* * *	*	*
(ii) 4.5 to 9	Tylosin 40	Finishing swine: As in paragraph (e)(1)(i) of this section; and for control of swine dysentery associated with *Brachyspira hyodysenteriae* and porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.	Feed continuously as sole ration until market weight following the use of tylosin at 100 grams per ton (g/ton) for at least 3 weeks.	000986
(iii) 4.5 to 9	Tylosin 100	1. Finishing swine: As in paragraph (e)(1)(i) of this section; and for control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*. 2. Finishing swine: As in paragraph (e)(1)(i) of this section; and for control of swine dysentery associated with *Brachyspira hyodysenteriae*.	Feed continuously as sole ration for 21 days. Feed continuously as sole ration for at least 3 weeks followed by tylosin at 40 g/ton until market weight.	000986
*	*	* * *	*	*

* * * * *

Dated: July 12, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–14699 Filed 7–30–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 584

Food Substances Affirmed as Generally Recognized as Safe in Feed and Drinking Water of Animals; Ethyl Alcohol Containing Ethyl Acetate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations for food substances affirmed as generally recognized as safe (GRAS) in feed and drinking water of animals to correct a cross-reference. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Michaela G. Alewynse, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6866, e-mail: *mika.alewynse@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA has found that the regulation affirming as GRAS the use of ethyl alcohol containing ethyl acetate as a source of added energy in ruminant feed does not reflect the correct cross-reference to the regulations of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). This error was introduced when sections containing formulas for denatured alcohol and rum were removed and added by ATF in 1983 (48 FR 24672, June 2, 1983). At this time, the regulation is being amended in 21 CFR 584.200 to add the correct cross-reference. This action is being taken to improve the accuracy of the regulations.

Publication of this document constitutes final action on this change under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting a nonsubstantive error.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because

it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 584

Animal feeds, Food additives.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 584 is amended as follows:

PART 584—FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for 21 CFR part 584 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

§ 584.200 [Amended]

■ 2. In § 584.200, remove ''27 CFR 212.45'' and add in its place ''27 CFR 21.62''.

Dated: July 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–14700 Filed 7–30–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9321]

RIN 1545–BE79

Application of Section 409A to Nonqualified Deferred Compensation Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, April 17, 2007 (73 FR 19234), relating to section 409A.

DATES: This correction is effective July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen Tackney, (202) 622–9639 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 409A of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9321) contain errors that may prove misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.409A–1 [Corrected]

■ **Par. 2.** Section 1.409A–1 is amended as follows:

■ 1. Paragraph (a)(3)(i) is revised.

■ 2. The first and second sentences of paragraph (a)(5) are revised.

■ 3. The first sentences of paragraphs (b)(4)(i) and (b)(4)(i)(D) are revised.

■ 4. *Examples 3* and *5* in paragraph (b)(4)(iii) are amended by revising the last sentences of the paragraphs.

■ 5. Paragraph (b)(5)(iv)(B)(*2*)(*ii*) is revised.

■ 6. In paragraph (b)(8)(iii) the first sentence is revised.

■ 7. The first sentence of paragraph (b)(9)(v)(A) is revised.

■ 8. Paragraph (c)(2)(i)(H) is revised.

■ 9. Paragraph (c)(3)(viii) is revised.

■ 10. The last sentence of paragraph (f)(1) is revised.

■ 11. The ninth sentence of paragraph (h)(1)(ii) is revised.

■ 12. The first sentence of paragraph (i)(2) is revised.

§ 1.409A–1 Definitions and covered plans.

(a) * * *

(3) * * *

(i) * * * With respect to an individual for a taxable year, the term *nonqualified deferred compensation plan* does not include any scheme, trust, arrangement, or plan maintained with respect to such individual, to the extent contributions made by or on behalf of such individual to such scheme, trust, arrangement, or plan, or credited allocations, accrued benefits, earnings, or other amounts constituting income, of such individual under such scheme, trust, arrangement, or plan, are excludable by such individual for Federal income tax purposes pursuant to any bilateral income tax convention, or other bilateral or multilateral agreement, to which the United States is a party.

* * * * *

(5) * * * The term *nonqualified deferred compensation plan* does not include a plan, or a portion of a plan, to the extent that the plan provides bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefits. For these purposes, the terms ''disability pay'' and ''death benefits'' have the same meanings as provided in § 31.3121(v)(2)–1(b)(4)(iv)(C) of this chapter, provided that for purposes of this paragraph, such disability pay and death benefits may be provided through insurance and the lifetime benefits payable under the plan are not treated as including the value of any taxable term life insurance coverage or taxable disability insurance coverage provided under the plan. * * *

(b) * * *

(4) * * * (i) *In general.* A deferral of compensation does not occur under a plan with respect to any payment (as defined in § 1.409A–2(b)(2)) that is not a deferred payment, provided that the service provider actually or constructively receives such payment on or before the last day of the applicable 2½ month period. * * *

* * * * *

(D) A payment is a deferred payment if it is made pursuant to a provision of a plan that provides for the payment to be made or completed on or after any date, or upon or after the occurrence of any event, that will or may occur later than the end of the applicable 2½ month period, such as a separation from service, death, disability, change in control event, specified time or schedule of payment, or unforeseeable emergency, regardless of whether an amount is actually paid as a result of the occurrence of such a payment date or event during the applicable 2½ month period. * * *

* * * * *

(iii) * * *

Example 3. * * * The bonus plan will not be considered to have provided for a deferral of compensation if the bonus is paid or made available to Employee C on or before March 15, 2011.

* * * * *

Example 5. * * * The bonus plan provides for a deferral of compensation, and will not qualify as a short-term deferral regardless of whether the bonus is paid or made available on or before March 15, 2011 (and generally any payment before June 1, 2011 would constitute an impermissible acceleration of a payment).

* * * * *

(5) * * *

(iv) * * *

(B) * * *

(*2*) * * *

(*ii*) A valuation based upon a formula that, if used as part of a nonlapse restriction (as defined in § 1.83–3(h)) with respect to the stock, would be considered to be the fair market value of the stock pursuant to § 1.83–5, provided that such stock is valued in the same manner for purposes of any transfer of any shares of such class of stock (or any substantially similar class of stock) to the issuer or any person that owns stock possessing more than 10 percent of the total combined voting power of all classes of stock of the issuer (applying the stock attribution rules of § 1.424–1(d)), other than an arm's length transaction involving the sale of all or substantially all of the outstanding stock of the issuer, and such valuation method is used consistently for all such purposes, and provided further that this paragraph (b)(5)(iv)(B)(*2*)(*ii*) does not apply with respect to stock subject to a stock right payable in stock, where the stock acquired pursuant to the exercise of the stock right is transferable other than through the operation of a nonlapse restriction.

* * * * *

(8) * * *

(iii) * * * A tax equalization agreement does not provide for a deferral of compensation if payments made under such tax equalization agreement are made no later than the end of the second taxable year of the service provider beginning after the taxable year of the service provider in which the service provider's U.S. Federal income tax return is required to be filed (including any extensions) for the year to which the compensation subject to the tax equalization payment relates, or, if later, the second taxable year of the service provider beginning after the latest such taxable year in which the service provider's foreign tax return or payment is required to be filed or made for the year to which the compensation subject to the tax equalization payment relates. * * *

* * * * *

(9) * * *

(v) * * *

(A) * * * To the extent a separation pay plan (including a plan providing payments upon a voluntary separation from service) entitles a service provider to payment by the service recipient of reimbursements that are not otherwise excludible from gross income for expenses that the service provider could otherwise deduct under section 162 or section 167 as business expenses incurred in connection with the performance of services (ignoring any applicable limitation based on adjusted gross income), or of reasonable outplacement expenses and reasonable moving expenses actually incurred by the service provider and directly related to the termination of services for the service recipient, such plan does not provide for a deferral of compensation to the extent such rights apply during a limited period of time (regardless of whether such rights extend beyond the limited period of time). * * *

* * * * *

(c) * * *

(2) * * *

(i) * * *

(H) All deferrals of compensation with respect to that service provider under all plans of the service recipient to the extent such plans are stock rights (as defined in paragraph (l) of this section) subject to section 409A, are treated as deferred under a single plan.

* * * * *

(3) * * *

(viii) * * * The plan aggregation rules of paragraph (c)(2)(i) of this section do not apply to the written plan requirements of this paragraph (c)(3). Accordingly, deferrals of compensation under an agreement, method, program, or other arrangement that fails to meet the requirements of section 409A solely due to a failure to meet the written plan requirements of this paragraph (c)(3) are not aggregated with deferrals of compensation under other agreements, methods, programs, or other arrangements that meet such requirements.

* * * * *

(f) * * *

(1) *In general.* * * * The term *service provider* generally includes a person who has separated from service (a former service provider).

* * * * *

(h) * * *

(1) * * *

(ii) *Termination of employment.* * * * Notwithstanding the foregoing provisions of this paragraph (h)(1)(ii), a plan may treat another level of reasonably anticipated permanent reduction in the level of bona fide services as a separation from service, provided that the level of reduction required must be designated in writing as a specific percentage, and the reasonably anticipated reduced level of bona fide services must be greater than 20 percent but less that 50 percent of the average level of bona fide services provided in the immediately preceding 36 months. * * *

* * * * *

(i) * * *

(2) * * * For purposes of identifying a specified employee by applying the requirements of section 416(i)(1)(A)(i), (ii), and (iii), the definition of compensation under § 1.415(c)–2(a) is used, applied as if the service recipient were not using any safe harbor provided in § 1.415(c)–2(d), were not using any of the elective special timing rules provided in § 1.415(c)–2(e), and were not using any of the elective special rules provided in § 1.415(c)–2(g). * * *

* * * * *

§ 1.409A–2 [Corrected]

■ **Par. 3.** Section 1.409A–2 is amended as follows:

■ 1. The first sentences of paragraphs (a)(6) and (a)(9) are revised.

■ 2. The third sentence of paragraph (b)(2)(ii)(A) is revised.

■ 3. A new sentence is added after the third sentence of paragraph (b)(2)(ii)(A).

§ 1.409A–2 Deferral elections.

(a) * * *

(6) * * * In the case of a service recipient with a taxable year that is not the same as the taxable year of the service provider, a plan may provide that fiscal year compensation may be deferred at the service provider's election if the election to defer such compensation is made not later than the close of the service recipient's taxable year immediately preceding the first taxable year of the service recipient in which any services are performed for which such compensation is payable.

* * *

* * * * *

(9) * * * If a nonqualified deferred compensation plan provides that the amount deferred under the plan is determined under the formula for determining benefits under a qualified employer plan (as defined in § 1.409A–1(a)(2)) or a broad-based foreign retirement plan (as defined in § 1.409A–1(a)(3)(v)) maintained by the service recipient but applied without regard to one or more limitations applicable to the qualified employer plan under the Internal Revenue Code or to the broad-based foreign retirement plan under other applicable law, or that the amount deferred under the nonqualified deferred compensation plan is determined as an amount offset by some or all of the benefits provided under the qualified employer plan or the broad-based foreign retirement plan, an increase in amounts deferred under the nonqualified deferred compensation plan that results directly from the operation of the qualified employer plan or broad-based foreign retirement plan (other than service provider actions described in paragraphs (a)(9)(iii) and (iv) of this section) including changes in

benefit limitations applicable to the qualified employer plan or the broad-based foreign retirement plan under the Internal Revenue Code or other applicable law does not constitute a deferral election under the nonqualified deferred compensation plan, provided that such operation does not otherwise result in a change in the time or form of a payment under the nonqualified deferred compensation plan, and provided further that such change in the amounts deferred under the nonqualified deferred compensation plan does not exceed that change in the amounts deferred under the qualified employer plan or the broad-based foreign retirement plan, as applicable. * * *

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) * * * For purposes of § 1.409A–1, this section, and §§ 1.409A–3 through 1.409A–6, the term *life annuity* means a series of substantially equal periodic payments, payable not less frequently than annually, for the life (or life expectancy) of the service provider, or a series of substantially equal periodic payments, payable not less frequently than annually, for the life (or life expectancy) of the service provider, followed upon the death or end of the life expectancy of the service provider by a series of substantially equal periodic payments, payable not less frequently than annually, for the life (or life expectancy) of the service provider's designated beneficiary (if any). Notwithstanding the foregoing, a schedule of payments does not fail to be an annuity solely because such plan provides for an immediate payment of the actuarial present value of all remaining annuity payments if the actuarial present value of the remaining annuity payments falls below a predetermined amount, and the immediate payment of such amount does not constitute an accelerated payment for purposes of § 1.409A–3(j), provided that such feature, including the predetermined amount, is established by no later than the time and form of payment is otherwise required to be established, and provided further that any change in such feature, including the predetermined amount, is a change in the time and form of payment. * * *

* * * * *

§ 1.409A–3 [Corrected]

■ **Par. 4.** Section 1.409A–3 is amended as follows:

■ 1. The first sentence of paragraph (c) is revised.

■ 2. The last sentence of paragraph (i)(1)(ii)(B) is revised.

■ 3. The fourth sentence of paragraph (i)(3)(ii) is revised.

■ 4. The last sentence of paragraph (j)(4)(vi) is revised.

■ 5. The last sentence of paragraph (j)(4)(ix)(B) is revised.

■ 6. The first sentence of paragraph (j)(5) is revised.

■ 7. Paragraph (j)(5)(iv) is revised.

§ 1.409A–3 Permissible payments.

* * * * *

(c) * * * Except as otherwise provided in this paragraph (c), for an amount of deferred compensation under a plan, the plan may designate only one time and form of payment upon the occurrence of each event described in paragraph (a)(1), (2), (3), (5), or (6) of this section. * * *

* * * * *

(i) * * *

(1) * * *

(ii) * * *

(B) * * * A change in the limitation or a change in the time and form of payment of any payment that is not otherwise made at the scheduled payment date due to application of the formula limitation is subject to the requirements of § 1.409A–2(b) (subsequent deferral elections) and paragraph (j) of this section (accelerated payments).

* * * * *

(3) * * *

(ii) * * * However, the determination of amounts reasonably necessary to satisfy the emergency need is not required to take into account any additional compensation that is available from a qualified employer plan as defined in § 1.409A–1(a)(2) (including any amount available by obtaining a loan under the plan), or that due to the unforeseeable emergency is available under another nonqualified deferred compensation plan (including a plan that would provide for deferred compensation except due to the application of the effective date provisions under § 1.409A–6). * * *

* * * * *

(j) * * *

(4) * * *

(vi) * * * However, the total payment under this acceleration provision must not exceed the aggregate of the FICA or RRTA amount, and the income tax withholding related to such FICA or RRTA amount.

* * * * *

(ix) * * *

(B) * * * Solely for purposes of this paragraph (j)(4)(ix)(B), the applicable service recipient with the discretion to liquidate and terminate the agreements, methods, programs, and other arrangements is the service recipient that is primarily liable immediately after the transaction for the payment of the deferred compensation.

* * * * *

(5) * * * If a nonqualified deferred compensation plan provides that the amount deferred under the plan is the amount determined under the formula determining benefits under a qualified employer plan (as defined in § 1.409A–1(a)(2)), or a broad-based foreign retirement plan (as defined in § 1.409A–1(a)(3)(v)) maintained by the service recipient but applied without regard to one or more limitations applicable to the qualified employer plan under the Internal Revenue Code or to the broad-based foreign retirement plan under other applicable law, or that the amount deferred under the nonqualified deferred compensation plan is determined as an amount offset by some or all of the benefits provided under the qualified employer plan or broad-based foreign retirement plan, a decrease in amounts deferred under the nonqualified deferred compensation plan that results directly from the operation of the qualified employer plan or broad-based foreign retirement plan (other than service provider actions described in paragraphs (j)(5)(iii) and (iv) of this section) including changes in benefit limitations applicable to the qualified employer plan or the broad-based foreign retirement plan under the Internal Revenue Code or other applicable law does not constitute an acceleration of a payment under the nonqualified deferred compensation plan, provided that such operation does not otherwise result in a change in the time or form of a payment under the nonqualified deferred compensation plan, and provided further that the change in the amounts deferred under the nonqualified deferred compensation plan does not exceed such change in the amounts deferred under the qualified employer plan or the broad-based foreign retirement plan, as applicable. * * *

* * * * *

(iv) A service provider's action or inaction under a qualified employer plan with respect to elective deferrals and other employee pre-tax contributions subject to the contributions restrictions under section 401(a)(30) or section 402(g), and after-tax contributions by the service provider to a qualified employer plan that provides for such contributions, that affects the amounts that are credited

under one or more nonqualified deferred compensation plans as matching amounts or other similar amounts contingent on such elective deferrals, pre-tax contributions, or after-tax contributions, provided that the total of such matching or contingent amounts, as applicable, never exceeds 100 percent of the matching or contingent amounts that would be provided under the qualified employer plan absent any plan-based restrictions that reflect limits on qualified plan contributions under the Internal Revenue Code.

* * * * *

§ 1.409A–6 [Corrected]

■ **Par. 5.** Section 1.409A–6 is amended by revising paragraphs (a)(3)(i) and (ii) and (a)(4)(iv) to read as follows:

§ 1.409A–6 Application of section 409A and effective dates.

* * * * *

(a) * * *

(3) * * *

(i) * * * The amount of compensation deferred before January 1, 2005, under a nonqualified deferred compensation plan that is a nonaccount balance plan (as defined in § 1.409A–1(c)(2)(i)(C)), equals the present value of the amount to which the service provider would have been entitled under the plan if the service provider voluntarily terminated services without cause on December 31, 2004, and received a payment of the benefits available from the plan on the earliest possible date allowed under the plan to receive a payment of benefits following the termination of services, and received the benefits in the form with the maximum value. * * *

(ii) * * * The amount of compensation deferred before January 1, 2005, under a nonqualified deferred compensation plan that is an account balance plan (as defined in § 1.409A–1(c)(2)(i)(A)), equals the portion of the service provider's account balance as of December 31, 2004, the right to which was earned and vested (as defined in paragraph (a)(2) of this section) as of December 31, 2004, plus any future contributions to the account, the right to which was earned and vested (as defined in paragraph (a)(2) of this section) as of December 31, 2004, to the extent such contributions are actually made.

* * * * *

(4) * * *

(iv) * * * With respect to an account balance plan (as defined in § 1.409A–1(c)(2)(i)(A)), it is not a material modification to change a notional investment measure to, or to add to an existing investment measure, an investment measure that qualifies as a predetermined actual investment within the meaning of § 31.3121(v)(2)–1(d)(2) of this chapter or, for any given taxable year, reflects a reasonable rate of interest (determined in accordance with § 31.3121(v)(2)–1(d)(2)(i)(C) of this chapter). * * *

* * * * *

Guy R. Traynor,

Federal Register Liaison, Legal Processing Division, Publication & Regulations Branch, Associate Chief Counsel (Procedure & Administration).

[FR Doc. E7–14624 Filed 7–30–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[A.G. Order No. 2897–2007]

Organization; Office of the Deputy Attorney General, Office of the Associate Attorney General

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations that describe the structure, functions, and responsibilities of the Offices of the Deputy Attorney General and Associate Attorney General, United States Department of Justice.

EFFECTIVE DATE: July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Stuart Frisch, General Counsel, Justice Management Division, U.S. Department of Justice, Washington, DC 20530, (202) 514–3452.

SUPPLEMENTARY INFORMATION: This rule removes paragraph (h) of 28 CFR 0.15 and paragraph (d) of 28 CFR 0.19, which reserve certain personnel administration authorities within the Department of Justice to the Attorney General. These paragraphs are reserved for future use. This rule only makes changes to the Department's internal organization and structure and does not affect the rights or obligations of the general public.

Administrative Procedure Act

This rule relates to matters of agency management and personnel, and is therefore exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. See 5 U.S.C. 553(a)(2), (b)(3)(A), (d)(3).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, § 1(b), Principles of Regulation. This rule is limited to agency organization, management, and personnel as described by Executive Order 12866 § 3(d)(3) and, therefore, is not a ''regulation'' or ''rule'' as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or

more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Congressional Review Act

The Department has determined that this action pertains to agency management, personnel, and organizations and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies).

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 0.15 Deputy Attorney General.

■ 2. Remove and reserve paragraph (h) of § 0.15.

§ 0.19 Associate Attorney General.

■ 3. Remove and reserve paragraph (d) of § 0.19.

Dated: July 25, 2007.

Alberto R. Gonzales,

Attorney General.

[FR Doc. E7–14707 Filed 7–30–07; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF HOMELAND SECURITY

COAST GUARD

33 CFR Part 165

[CGD08–07–007]

RIN 1625–AA11

Regulated Navigation Area; Mississippi River, Eighty-One Mile Point

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has amended the regulated navigation area (RNA) for the Lower Mississippi River (LMR) mile marker (MM) 233.9 through South and South West Passes by establishing mandatory check-in procedures for vessels transiting on the waters of the Mississippi River between (MM) 167.5 LMR and 187.9 LMR. This rule is needed to minimize the risk of collisions, allisions, and groundings occurring as a result of vessels meeting unanticipated traffic in the vicinity of Eighty-One Mile Point, MM 178 LMR. This rule requires vessels, subject to the Bridge to Bridge Radiotelephone Act (33 U.S.C. 26), to notify Vessel Traffic Center Lower Mississippi River, New Orleans (VTC New Orleans) prior to entering or getting underway in this section of the RNA.

DATES: This rule is effective August 30, 2007.

ADDRESSES: Documents indicated in this preamble as being in the docket, are part of docket [CGD08–07–007] and are available for inspection or copying at U.S. Coast Guard Marine Safety Unit Baton Rouge, 6041 Crestmount Drive, Baton Rouge, LA 70809 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Todd Peterson, Marine Safety Unit Baton Rouge, at (225) 298–5400.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 5, 2007 we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area; Mississippi River, Eighty-One Mile Point in the **Federal Register** (72 FR 65). We received no comments on the proposed rule. No public meetings were requested and none were held.

Background and Purpose

From 1999 to 2006 there have been 64 reported collisions, allisions, or groundings on the Lower Mississippi River between MM 167.5 and 187.9. There have been 21 allisions, 2 barge breakaways, 13 collisions and 28 groundings. Of these 64 casualties, 3 were categorized by 46 CFR part 4 as serious marine incidents and 5 as major marine casualties. These casualties have involved all sectors of the maritime industry including deep draft shipping, towing vessels, and barge fleets and have occurred at high, normal and low water conditions.

A waterways user group subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) examined marine casualties on the LMR in the vicinity of 81 Mile Point. This subcommittee consisted of members of the pilots association, towing vessel industry, barge fleets and the Coast Guard. This subcommittee reviewed the location and marine investigation associated with each casualty and subjectively examined river conditions within this RNA. This committee determined that existing waterways management tools may not be sufficient to safely navigate in the vicinity of 81 Mile Point. Providing position reports to VTC New Orleans would allow the Coast Guard to track vessels in this RNA and provide advice to mariners about upcoming traffic in an effort to eliminate meeting and overtaking scenarios at Eighty-One Mile Point.

Discussion of Comments and Changes

There were no comments received on this rule change. No public meetings were requested and none were held.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule does not prohibit vessel transits, barge fleeting, or towboat operations within the RNA, but merely requires checking in with VTS New Orleans using existing equipment. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities. This RNA will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of commercial vessel traffic conducting business within the RNA. It does not require the purchase of additional equipment and instead uses

existing VHF capabilities already required by other laws or regulations.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to Marine Safety Unit Baton Rouge explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Todd Peterson, Marine Safety Unit Baton Rouge at (225) 298–5400.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule does not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits in paragraph (34)(g) because it is a regulated navigation area. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 165.810 by adding paragraph (g) to read as follows:

§ 165.810 Mississippi River, LA-regulated navigation area.

* * * * *

(g) *Movement of vessels in the vicinity of Eighty-One Mile Point, Geary LA mm 167.5–187.9 LMR.* (1) Prior to proceeding upriver past MM 167.5, LMR, Sunshine Bridge, vessels shall contact Vessel Traffic Center (VTC) New Orleans on VHF Channel 63A to check-in. Vessels must provide name, destination, confirm proper operation of their automated identification system (AIS) if required under 33 CFR 164.46 and, if applicable, size of tow and number of loaded and empty barges. At MM 173.7, LMR, Bringier Point Light, ascending vessels shall contact VTC New Orleans and provide a follow-on

position check. At both check-in and follow-on position check, VTC New Orleans will advise the vessel on traffic approaching Eighty-One Mile Point.

(2) Prior to proceeding downriver past MM 187.9, LMR, COS-MAR Lights, vessels shall contact Vessel Traffic Center (VTC) New Orleans on VHF Channel 63A to check-in. Vessels must provide name, destination, confirm proper operation of their automated identification system (AIS) if required under 33 CFR 164.46 and, if applicable, size of tow and number of loaded and empty barges. At MM 183.9 LMR, Wyandotte Chemical Dock Lights, descending vessels shall contact VTC New Orleans and provide a follow-on position check. At both check-in and follow-on position check VTC New Orleans will advise the vessel on traffic approaching Eighty-One Mile Point.

(3) All vessels getting underway between miles 167.5 and 187.9 must check-in with VTC New Orleans on VHF Channel 63A immediately prior to getting underway and must comply with the respective ascending and descending check-in and follow-on points listed in paragraphs (g)(1) and (g)(2) above.

(4) Fleet vessels must check-in with VTC New Orleans if they leave their respective fleet or if they move into the main channel. Fleet vessels are not required to check-in if they are operating exclusively within their fleet.

Dated: July 16, 2007.

J.R. Whitehead,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. E7–14697 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2006–0162, FRL–8444–9]

Approval and Promulgation of Implementation Plans; Implementation Plan Revision; State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving a request from the State of New Jersey to revise its State Implementation Plan (SIP) for ozone to incorporate state-adopted amendments to Subchapter 19 ''Control and Prohibition of Air Pollution from Oxides of Nitrogen'' and related amendments to Subchapter 16 ''Control and Prohibition of Air Pollution by Volatile Organic Compounds.'' The amendments relate to the control of oxides of nitrogen (NO_X) emissions from stationary industrial sources. This SIP revision consists of control measures needed to meet the shortfall in emission reductions in New Jersey's 1-hour ozone attainment demonstration SIP as identified by EPA.

The intended effect of this action is to approve the state control strategy, which will result in emission reductions that will help achieve attainment of the national ambient air quality standards for ozone required by the Clean Air Act (the Act).

DATES: *Effective Date:* This rule will be effective August 30, 2007.

ADDRESSES: EPA has established a docket for this action under the Federal Docket Management System (FDMS) which replaces the Regional Materials in EDOCKET (RME) docket system. The new FDMS is located at *http://www.regulations.gov* and the docket ID for this action is EPA–R02–OAR–2006–0162. All documents in the docket are listed in the FDMS index. Publicly available docket materials are available either electronically in FDMS or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW., Washington, DC; and the New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, *Gardella.anthony@epa.gov,* Air Programs Branch, U.S. Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892.

SUPPLEMENTARY INFORMATION: For detailed information and EPA's analysis of New Jersey's revision to its State Implementation Plan (SIP) for ozone see EPA's proposed rulemaking action (72 FR 11812, March 14, 2007) which can be viewed at *http://www.regulations.gov.*

The following table of contents describes the format for this notice.

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V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking Today?

New Jersey submitted a revision to the State Implementation Plan (SIP) for ozone dated December 16, 2005, for EPA approval, that includes a new rule and amendments to Subchapter 19 ''Control and Prohibition of Air Pollution from Oxides of Nitrogen''; Subchapter 16 ''Control and Prohibition of Air Pollution by Volatile Organic Compounds''; Subchapter 8 ''Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit)''; and Subchapter 22 ''Operating Permits.''

Except for certain Open Market Emissions Trading (OMET) Program provisions in Subchapters 8, 16, and 19, and compliance dates beyond November 15, 2007 for repowering and innovative control technology, EPA is approving, as revisions to the New Jersey ozone SIP, the state-adopted amendments to Subchapter 19 and Subchapter 16, each adopted by New Jersey on September 8, 2005, and submitted to EPA on December 16, 2005. EPA is currently reviewing past amendments to Subchapter 8 and will address the approvability of all Subchapter 8 amendments at the same time in a future action. Subchapter 22 is New Jersey's operating permit rule that was separately approved under title V of the Clean Air Act and therefore Subchapter 22 should not have been submitted as a SIP revision. EPA has reviewed the new amendments to Subchapter 22 and will formally respond to New Jersey with a letter.

New Jersey amended Subchapter 19 to reduce emissions of NO_X in response to emission reduction shortfalls, identified by EPA (64 FR 70380, December 16, 1999), for attainment of New Jersey's 1-hour ozone standard. New Jersey amended Subchapter 16 to be consistent with amendments to Subchapter 19. Except for certain OMET provisions in Subchapters 8, 16, and 19, and compliance dates beyond November 15, 2007 for repowering and innovative control technology, New Jersey's state-adopted Subchapters 16 and 19 are fully approvable as a SIP-strengthening measure for New Jersey's ground level ozone SIP. The amendments to Subchapters 16 and 19 in New Jersey's submittal to EPA meet New Jersey's commitment by adopting control measures for additional emission reductions to attain the 1-hour ozone

standard and close the shortfall. Because EPA is determining that the State has now adopted measures to fulfill its SIP commitment to address the NO_X shortfall, EPA will not proceed with the May 27, 2004 (69 FR 30249) proposed Finding of Failure to Implement. For a detailed discussion on the content and EPA's analysis of New Jersey's SIP submittal, the reader is referred to EPA's proposed rulemaking action (72 FR 11812, March 14, 2007).

II. What Comments Were Received and How Has EPA Responded to Them?

The public comment period on EPA's proposed approval of New Jersey's December 16, 2005 SIP submittal ended on April 13, 2007. EPA received one comment on the proposed approval action. The comment addressed EPA's proposed approval of the rule regarding emergency generators. Although EPA proposed to approve the rule, EPA (1) noted that in February 2006 the Agency sent a letter to the State indicating that NSR and title V permits should continue to include an hours of operation limit in permits; and (2) recommended that New Jersey revise its regulations to include emergency generator restrictions that were in the previous SIP-approved version of the rule. The comment and EPA's response follows.

Comments: The Division of Air Quality, New Jersey Department of Environmental Protection (NJDEP) commented that it ''disagrees with the USEPA suggestion that all NJDEP issued permits for emergency units include an operating hour limitation to cover emergencies (*i.e.*, 500 hours per year). Rather, the only operating time limitation in permits for emergency units should be that time needed for testing or maintenance, as per manufacturer's specifications and government safety ordinances.'' NJDEP continued, ''It is unreasonable to base maximum potential emissions on emergency scenarios which may or may not materialize.'' Additionally, NJDEP noted that the Subchapter 19 definition of ''Emergency Generator'' and ''Emergency'' make the 500 hour limitation superfluous and that if operation of an emergency generator is consistent with those definitions an hourly restriction in unnecessary. NJDEP also noted that it currently utilizes a total operating hour limit in title V permits as requested by EPA, but objects to its use there also.

Response: EPA notes that it did not propose to condition approval of the SIP rule on the recommendations it made in the February 2006 letter or in the proposed rule. Thus, these recommendations were not intended to have binding effect. Because it is not necessary for the rules to reflect these recommendations in order to be fully approvable, EPA is moving forward with its approval. EPA will continue to discuss with New Jersey the concerns noted in their comment, which concerns were raised by EPA with respect to New Jersey's permitting programs. Specifically, as noted in EPA's proposed rule, potential to emit (PTE) requirements for emergency generators should be included in the provisions of New Jersey's permitting regulations that identify which sources must obtain a permit, i.e. Subchapters 8 and 22. For rule consistency, EPA believes it appropriate, although not required, that New Jersey revise the current state-adopted Subchapter 19 to include the emergency generator restrictions (e.g., (1) the 500 hour annual operating restriction, and (2) the 25 tons per year (tpy) PTE source exemption).

III. What Role Does This Rule Play in the Ozone SIP?

When EPA evaluated New Jersey's 1-hour ozone attainment demonstrations, EPA determined that additional emission reductions were needed for the State's severe nonattainment areas in order for the State to attain the 1-hour ozone standard (64 FR 70380; December 16, 1999). EPA provided that states in the Ozone Transport Region could achieve these emission reductions through regional control programs. New Jersey decided to participate with the other states in the Northeast in an Ozone Transport Commission (OTC) regulatory development effort which lead to six model control measures. These amendments to Subchapter 19 incorporate a portion of the OTC model rule for additional NO_X control measures. The emission reductions from this control measure fully meet the commitment in the New Jersey SIP to achieve an additional 0.88 tpy NO_X reduction in the New Jersey portion of the Philadelphia, Wilmington, Trenton nonattainment area and 3.45 tpy NO_X reduction in the New Jersey portion of the New York, Northern New Jersey, Long Island nonattainment area. The emission reductions will help ensure attainment of the 1-hour ozone standard.

IV. What Are EPA's Conclusions?

EPA evaluated New Jersey's submittal for consistency with the Act, EPA regulations and EPA policy. The adopted new control measures will strengthen the SIP by achieving the additional NO_X emission reductions that the State committed to achieve. Accordingly, EPA is approving the revisions to Subchapter 19, and related revisions to Subchapter 16, as adopted on September 8, 2005, except that EPA is not acting, at this time, on OMET Program provisions in Subchapters 16 and 19 or the new amendments to phased compliance plans by repowering and innovative control technology in sections 19.21 and 19.23, respectively. Additionally, EPA is not approving any dates that allow for NO_X RACT compliance beyond May 31, 1995, in general, and beyond May 1, 1999 for completion of repowering, for sources that should have complied by those dates as required in the EPA-approved SIP. At a later date, EPA will act on Subchapter 8, as adopted by New Jersey on September 8, 2005.

With the adoption of Subchapter 19, New Jersey has fulfilled its obligation to adopt all six control measures that New Jersey identified as necessary to attain the 1-hour ozone standard. These six control measures are applicable statewide and the emission reductions projected from their implementation meets the additional emission reductions that EPA identified as necessary to attain the 1-hour ozone standard. Because New Jersey has now implemented the elements of its SIP that were the subject of EPA's May 27, 2004 (69 FR 30249) proposed Finding of Failure to Implement, EPA will not move forward to finalize that finding.

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 state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the 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 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 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2007. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 13, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ 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 FF—New Jersey

■ 2. Section 52.1570 is amended by adding new paragraph (c)(81) to read as follows:

52.1570 Identification of plans.

* * * * *

(c) * * *

* * * * * *

(81) Revisions to the State Implementation Plan for ozone dated December 16, 2005 by the State of New Jersey Department of Environmental Protection (NJDEP) that establishes revised control measures for achieving additional reductions of NO_X emissions from stationary combustion sources.

(i) Incorporation by reference:

(A) Title 7, Chapter 27, Subchapter 19, of the New Jersey Administrative Code entitled ''Control and Prohibition of Air Pollution from Oxides of Nitrogen,'' effective October 17, 2005 and Title 7, Chapter 27, Subchapter 16 of the New Jersey Administrative Code entitled ''Control and Prohibition of Air Pollution by Volatile Organic Compounds,'' effective October 17, 2005.

(ii) Additional information:

(A) December 16, 2005 letter from Commissioner Bradley M. Campbell, NJDEP, to Alan J. Steinberg, EPA, requesting EPA approval of revisions to Subchapters 8, 16, 19, and 22.

■ 3. In 52.1605, the table is amended by revising the entries for Subchapters 16 and 19 under the headings ''Title 7, Chapter 27'' to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * *	*	*	* *
Title 7, Chapter 27			
* * *	*	*	* *
Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds.''	October 17, 2005	July 31, 2007 [Insert FR page citation].	Subchapter 16 is approved into the SIP except for Open Market Emissions Trading (OMET) provisions at 16.1A(g) and 16.1A(h).

State regulation	State effective date	EPA approved date	Comments
* *	* *	*	* *
Subchapter 19, ''Control and Prohibition of Air Pollution from Oxides of Nitrogen.''	October 17, 2005	July 31, 2007 [Insert FR page citation].	Subchapter 19 is approved into the SIP except for the following provisions: (1) Open Market Emissions Trading (OMET) provisions at 19.3(g), 19.3(h), 19.27 and 19.27 Appendix; and (2) New amendments to phased compliance plan through repowering in § 19.21 that allow for implementation beyond May 1, 1999; and (3) New amendments to phased compliance plan through the use of innovative control technology in § 19.23 that allow for implementation beyond May 1, 1999.
* *	* *	*	* *

[FR Doc. E7–14480 Filed 7–30–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0295, FRL–8443–5]

Approval and Promulgation of Implementation Plans; States of Arizona and Nevada; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve state implementation plans submitted by the States of Arizona and Nevada that address interstate transport with respect to the 8-hour ozone and fine particulate matter national ambient air quality standards. In so doing, EPA has determined that the plans submitted by Arizona and Nevada and approved herein satisfy requirements under Clean Air Act section 110(a)(2)(D)(i) for each State to submit a plan containing adequate provisions to prohibit interstate transport with respect to the standards for 8-hour ozone and fine particulate matter. EPA is taking this action pursuant to those provisions of the Clean Air Act that obligate the Agency to take action on submittals of state implementation plans. The effect of this action is to approve the Arizona and Nevada state implementation plans addressing interstate transport with respect to the 8-hour ozone and fine particulate standards and to eliminate obligations on the Agency to promulgate Federal implementation plans for these States addressing this same requirement.

DATES: This rule is effective on October 1, 2007, without further notice, unless EPA receives adverse comments by August 30, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2007–0295 by one of the following methods:

- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: tax.wienke@epa.gov.*
- *Fax:* (415) 947–3579 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region IX, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.
- *Hand Delivery:* Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region IX, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2007–0295. 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 form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Air Planning, Environmental Protection Agency (EPA), Region IX, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket

Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For Arizona issues, contact Wienke Tax, EPA Region IX, (520) 622–1622, *tax.wienke@epa.gov;* for Nevada issues, contact Karina O'Connor, EPA Region IX, (775) 833–1276, *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Background

On July 18, 1997, EPA issued new standards for the 8-hour ozone and particulate matter (PM) national ambient air quality standards (NAAQS). For ozone, EPA revised the NAAQS by adding an 8-hour averaging period (versus 1 hour for the previous NAAQS), and the level of the standard was changed from 0.12 ppm to 0.08 ppm (62 FR 38856). For the PM NAAQS, EPA added a new 24-hour standard and a new annual standard for fine particles (generally referring to particles less than or equal to 2.5 micrometers (μm) in diameter, $PM_{2.5}$). Section 110(a)(1) of the Clean Air Act (CAA or ''Act'') requires States to submit new state implementation plans (SIPs) that provide for the implementation, maintenance, and enforcement of a new or revised standard within three years after promulgation of such standard, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, including section 110(a)(2)(D)(i), which applies to interstate transport of certain emissions. Section 110(a)(1) imposes the obligation upon States to make a SIP submission for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances of each State.

On April 25, 2005, EPA made a finding that States had failed to submit SIPs to satisfy the requirements of section 110(a)(2)(D)(i) of the Act for the 8-hour ozone and $PM_{2.5}$ NAAQS. See 70 FR 21147. This finding started a 2-year clock for promulgation by EPA of a Federal Implementation Plan (FIP), in accordance with section 110(c)(1), for any State that did not submit a SIP meeting the requirements of section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ NAAQS, unless prior to that time, each State makes a submission to meet the requirements of section 110(a)(2)(D)(i) and EPA approves such submission. On August 15, 2006, EPA issued a guidance memorandum (''Interstate Transport Guidance'') concerning the SIP submissions under CAA section 110(a)(2)(D)(i).[1]

On February 7, 2007, the Nevada Division of Environmental Protection (NDEP) submitted a SIP entitled Nevada State Implementation Plan for Interstate Transport to Satisfy the Requirements of Clean Air Act 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ NAAQS Promulgated in July 1997 (January 31, 2007) (''Nevada Interstate Transport SIP''). On May 24, 2007, the Arizona Department of Environmental Quality (ADEQ) submitted a SIP entitled Revision to the Arizona State Implementation Plan Under Clean Air Act Section 110(a)(2)(D)(i)—Regional Transport (May 2007) (''Arizona Interstate Transport SIP''). For the reasons provided in sections III and IV of this rule, we are approving Arizona's and Nevada's interstate transport SIPs in this action thereby eliminating the requirement under CAA Section 110(c)(1) for EPA to promulgate interstate transport FIPs for these States.

II. Applicable Clean Air Act Requirements

As noted above, EPA promulgated new NAAQS for 8-hour ozone and $PM_{2.5}$ in 1997, and under section 110(a)(1), within three years thereafter, States were to submit SIPs to address the various SIP elements listed under section 110(a)(2) for the new NAAQS, including the ''good neighbor'' provisions of section 110(a)(2)(D)(i) of the Act. Under the ''good neighbor'' provisions of section 110(a)(2)(D)(i), each State must submit a SIP that contains adequate provisions:

> (i) Prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will—
>
> (I) Contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or
>
> (II) Interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility.

Under section 110 of the Act and EPA regulations (at 40 CFR part 51, subpart F), each State must provide reasonable notice and public hearing prior to adoption of SIPs and SIP revisions for subsequent submittal to EPA.

III. Arizona's Interstate Transport SIP

A. CAA Procedural Provisions

On March 29 and 30, 2007, ADEQ published a notice in the *Arizona Republic,* a newspaper of general circulation in the Phoenix area, of a public hearing on proposed revisions to the Arizona SIP to address the requirements of section 110(a)(2)(D)(i). A public hearing was held on April 30, 2007 in Phoenix. On May 24, 2007, in accordance with Arizona law, the Director of ADEQ adopted the Arizona Interstate Transport SIP and submitted the SIP to EPA for approval. ADEQ's section 110(a)(2)(D)(i) SIP submittal package includes evidence of public notice, public hearing, and ADEQ adoption as described above. No public comments were received on the draft SIP. Based on review of these materials, we find that ADEQ has met the procedural requirements of CAA section 110 and 40 CFR part 51, subpart F.

B. ''Significant Contribution'' and ''Interference With Maintenance'' Requirements

As noted above, CAA section 110(a)(2)(D)(i)(I) requires States to prohibit emissions that contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the NAAQS. ADEQ's Arizona Interstate Transport SIP concludes that emissions from air pollution sources in Arizona do not significantly contribute to nonattainment of the 8-hour ozone or

[1] See memorandum from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, U.S. EPA, entitled ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' dated August 15, 2006.

$PM_{2.5}$ NAAQS or interfere with maintenance of those standards in another state. In support of this negative declaration, the Arizona Interstate Transport SIP identifies the following factors and provides the following analysis:

• *Boundary designations and locations.* Nonattainment boundaries are intended to include areas where NAAQS violations are occurring as well as areas that contribute to those violations and in the case of Arizona and the 8-hour ozone NAAQS, the only 8-hour ozone nonattainment area (the Phoenix-Mesa Nonattainment Area) is located within the central portion of the State. The Phoenix-Mesa Nonattainment Area includes much of eastern Maricopa County as well as Apache Junction in Pinal County. There are no nonattainment areas in Arizona for the $PM_{2.5}$ NAAQS. The Maricopa Association of Governments (MAG) is currently developing a SIP revision for the area which will demonstrate attainment of the 8-hour ozone standard by its statutory attainment date of 2009.

• *Spatial distribution of emissions.* Emissions of pollutants contributing to 8-hour ozone and $PM_{2.5}$ formation are highest in the Phoenix metropolitan area, which as noted above, is located in the central portion of the State. The most recently available emissions inventories from EPA's AirData for Arizona counties show that Maricopa County sources emit approximately 50 percent of the state's volatile organic compounds (VOC) and 36 percent of the nitrogen oxides (NO_X), known precursors to ozone, and approximately 30 percent of the state's total $PM_{2.5}$ emissions. No other county emits the level of emissions generated by Maricopa County.

• *Monitoring data.* An examination of historic monitored ambient air quality data demonstrates that Maricopa County is the only county in the state where monitors have recorded violations of the 8-hour ozone standard. Data collected from 2004–2006 show that all monitored areas are currently meeting the 8-hour ozone and $PM_{2.5}$ standards. The highest recorded ambient concentrations from this period are from Maricopa County monitoring sites or from those of nearby sites in Gila and Pinal Counties.

• *Topography.* The Phoenix-Mesa 8-hour Ozone Nonattainment Area is located primarily in the broad and mostly flat Salt River Valley and is separated from other areas of the State by mountainous, complex terrain on the north, northeast, east, and southwest.

• *Meteorology/Climatology.* Wind patterns in the Phoenix-Mesa Nonattainment Area are greatly influenced by local topography. Because of its valley location, backed by high terrain to the north and east, the Phoenix-Mesa Nonattainment Area is subject to distinct up-valley/down-valley wind patterns. The prevailing winds and high elevation blocking terrain to the east of the area were two of the factors that helped determine the impacts of transported emissions and the eastern extent of the Phoenix-Mesa Nonattainment Area. Similar patterns are repeated across Arizona's many airsheds and areas of complex terrain.

• *Location of Nonattainment Areas in Neighboring States.* Nonattainment areas for 8-hour ozone in states neighboring Arizona are located in southern Nevada (40 CFR 81.329), southern California (40 CFR 81.305), and north-central Colorado (40 CFR 81.306). First, in designating the 8-hour ozone nonattainment area in southern Nevada (*i.e.*, a portion of Clark County), EPA concurred in Arizona's conclusion that sources in neighboring Mojave County did not contribute to nonattainment in the Las Vegas area. Second, the closest 8-hour ozone nonattainment area in California is located in Imperial County, more than 80 miles west of the Phoenix-Mesa Nonattainment Area and more than 200 miles from large point sources in Apache, Coconino, and Navajo Counties. Based on regional and local air flow patterns, California nonattainment areas are upwind of Arizona emissions sources. Third, the 8-hour ozone nonattainment area in Colorado is separated from Arizona by the Rocky Mountains, with elevations greater than 14,000 feet and are more than 200 miles from the Arizona-Colorado border and more than 400 miles from the Phoenix-Mesa Nonattainment Area. With respect to $PM_{2.5}$, as noted, California nonattainment areas are upwind of Arizona emissions sources. All other states that border Arizona are designated unclassifiable/attainment for $PM_{2.5}$.

• *Modeling.* With respect to the $PM_{2.5}$ NAAQS, ADEQ also points to modeling that EPA conducted in connection with EPA's promulgation of the Clean Air Interstate Rule (CAIR), which purportedly shows Arizona's contribution to nonattainment in downwind states to be minimal. The information that EPA provided ADEQ concerning EPA's modeling for the CAIR rule, however, was in error. The State of Arizona was not included in the modeling. We believe that ADEQ has presented sufficient support for the negative declaration in its discussion of the other factors and need not rely on CAIR modeling results.

C. Prevention of Significant Deterioration (PSD) and Visibility

As noted above, CAA section 110(a)(2)(D)(i)(II) requires States to prohibit emissions that interfere with measures required to be included in the SIP for any other State to prevent significant deterioration of air quality or to protect visibility.

The Arizona Interstate Transport SIP explains that non-interference with CAA PSD measures in other states is achieved through preconstruction review and permitting procedures for stationary sources. Specifically, all new sources and modifications to existing sources in Arizona are subject to state requirements for preconstruction review and permitting pursuant to Arizona Administrative Code (AAC), Title 18, Chapter 2, Articles 2 and 4 or relevant county rules. All new major sources and major modifications to existing major sources in Arizona are subject to the nonattainment New Source Review (NNSR) provisions of these rules (including 8-hour ozone nonattainment areas) or Prevention of Significant Deterioration (PSD) for attainment areas. ADEQ indicates that Arizona will update the NSR rules when EPA's $PM_{2.5}$ implementation guidance is finalized and that Arizona will implement the current rules in accordance with EPA's interim guidance using PM_{10} as a surrogate for $PM_{2.5}$ in the PSD and NNSR programs.

The Arizona Interstate Transport SIP explains that non-interference with CAA visibility measures in other states is achieved with respect to 8-hour ozone and $PM_{2.5}$ through implementation and enforcement of the State's reasonably attributable visibility impairment (RAVI) rule (codified at Arizona Administrative Code Sections R18–2–1601 through R18–2–1606), which requires Arizona to analyze and implement control strategies where applicable should a source be certified and found attributable for causing or contributing to visibility impairment.

The Arizona Interstate Transport SIP notes that Arizona Administrative Code Section R18–2–410 provides additional protection of visibility by requiring new major sources or major modifications to complete an analysis of the anticipated impacts on visibility to any Class I area that may be affected by the emissions from the source. Federal Land Managers (FLMs) may also submit a visibility impact analysis for additional consideration during the permitting process.

Regarding visibility impairment caused by regional haze, the Arizona Interstate Transport SIP concurs with EPA in concluding that it is currently premature to determine whether or not SIPs for 8-hour ozone or $PM_{2.5}$ contain adequate provisions to prohibit emissions that interfere with measures in other States' SIPs designed to address regional haze.[2] Under EPA's regional haze regulations, regional haze SIPs are not due until December 17, 2007, and until these SIPs are submitted, accurate assessments regarding the impact of emissions and control measures on other States' SIPs cannot be made.

D. Evaluation and Conclusion

We find that ADEQ's selection of factors and accompanying analysis (see section III.B., above) provide a reasonable basis with which to evaluate the impacts of emissions from within Arizona on other states. We also find that ADEQ's conclusion that emissions from Arizona do not significantly contribute to nonattainment or interfere with maintenance of the 8-hour ozone or $PM_{2.5}$ standard in any other state is adequately supported by the information in the Arizona Interstate Transport SIP.

We also find that the Arizona Interstate Transport SIP adequately provides for non-interference with CAA PSD and visibility (not including regional haze) measures in other states with respect to 8-hour ozone and $PM_{2.5}$ and reasonably concludes that a determination of whether or not the Arizona SIP for 8-hour ozone or $PM_{2.5}$ contains adequate provisions to prohibit emissions that interfere with measures in other States' SIPs designed to address regional visibility impairment caused by regional haze must wait for the submittal of regional haze SIPs.

Based on these findings, we are approving the Arizona Interstate Transport SIP as meeting the requirements of CAA section 110(a)(2)(D)(i), and as a result of our approval of this SIP, we are no longer obligated to promulgate a FIP for Arizona addressing the CAA section 110(a)(2)(D)(i) requirement.

IV. Nevada's Interstate Transport SIP

A. CAA Procedural Provisions

On December 18, 2007, NDEP's Bureau of Air Quality Planning (BAQP) published a notice on their Web site of a comment period on a proposed SIP to address the requirements of section 110(a)(2)(D)(i). Notice of the comment period was also sent via the State Environmental Commission's (SEC's) electronic mailing list as well as the BAQP's lists of interested persons. The comment period was open until January 19, 2007. No public comments were received on the proposed SIP. The notice provided the opportunity for members of the public to request a public hearing, but no such request was made. On February 5, 2007, in accordance with Nevada law, the Administrator of NDEP adopted the Nevada Interstate Transport SIP and submitted the SIP to EPA for approval. NDEP's section 110(a)(2)(D)(i) SIP submittal package includes evidence of public notice and opportunity for public hearing, and NDEP adoption, and, based on review of these materials, we find that NDEP has met the procedural requirements of CAA section 110 and 40 CFR part 51, subpart F.

B. ''Significant Contribution'' and ''Interference With Maintenance'' Requirements

As noted above, CAA section 110(a)(2)(D)(i)(I) requires States to prohibit emissions that contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the NAAQS. NDEP's Nevada Interstate Transport SIP concludes that emissions from air pollution sources in Nevada do not significantly contribute to nonattainment of the 8-hour ozone or $PM_{2.5}$ NAAQS or interfere with maintenance of those standards in another state. In support of this negative declaration, the Nevada Interstate Transport SIP identifies the following factors and provides the following analysis:

- *Prevailing Winds and Location of $PM_{2.5}$ Nonattainment Areas in Neighboring States.* There are no $PM_{2.5}$ nonattainment areas in Nevada. Moreover, prevailing winds are from the south to west, and $PM_{2.5}$ nonattainment areas in neighboring states are located to the east, *i.e.*, upwind, in California.
- *Prevailing Winds and Location of 8-Hour Ozone Nonattainment Areas in Neighboring States.* There is one nonattainment area in Nevada, the Las Vegas area. Data from McCarran International Airport in Las Vegas indicate that prevailing winds are from the southwest. Thus, 8-hour ozone nonattainment areas in southern California lie upwind of the Las Vegas area. The Phoenix metropolitan area, the only 8-hour ozone nonattainment area in Arizona, lies 300 miles south of Las Vegas and is characterized by east-west winds and thus is not downwind of Las Vegas.
- *Nonattainment Plans.* Clark County Department of Air Quality and Environmental Management (Clark County) is currently required to develop a SIP revision for the Las Vegas area which will demonstrate attainment of the 8-hour ozone standard by 2009.

In the Nevada Interstate Transport SIP, NDEP commits to continue to review new air quality information as it becomes available to ensure that the negative declaration based on the above factors and analysis is still supported by such information.

C. Prevention of Significant Deterioration (PSD) and Visibility

As noted above, CAA section 110(a)(2)(D)(i)(II) requires States to prohibit emissions that interfere with measures required to be included in the SIP for any other State to prevent significant deterioration of air quality or to protect visibility.

The Nevada Interstate Transport SIP explains that non-interference with CAA PSD measures in other states is achieved through preconstruction review and permitting procedures for major new sources and major modifications under the State's PSD program (delegated from EPA) and under the State's regulations for nonattainment New Source Review (NNSR). NDEP notes that EPA has established or will establish schedules for SIP submissions that incorporate revisions to EPA's preconstruction permitting regulations that are specific to the 8-hour ozone and $PM_{2.5}$ NAAQS and that Nevada intends to revise the Nevada SIP consistent with such schedules. In the meantime, NDEP will implement the current rules and PSD delegation in accordance with EPA's interim guidance using PM_{10} as a surrogate for $PM_{2.5}$ in the PSD and NNSR programs.

For showing non-interference with CAA visibility measures in other states, the Nevada Interstate Transport SIP notes that EPA has made no determination that the emissions from any State interfere with measures required to be included in a plan to address reasonably attributable visibility impairment. With respect to regional haze, NDEP notes in the Nevada Interstate Transport SIP that Nevada is working on a SIP to address visibility impairment due to regional haze and is required to submit a regional haze SIP by December 17, 2007.

D. Evaluation and Conclusion

We find that NDEP's selection of factors and accompanying analysis (see section IV.B., above) provide a reasonable basis with which to evaluate

[2] See pages 9 and 10 in EPA's Interstate Transport Guidance, referenced in Footnote 1.

the impacts of emissions from within Nevada on other states. We also find that NDEP's conclusion that emissions from Nevada do not significantly contribute to nonattainment or interfere with maintenance of the 8-hour ozone or $PM_{2.5}$ standard in any other state is adequately supported by the information in the Nevada Interstate Transport SIP.

We also find that the Nevada Interstate Transport SIP adequately provides for non-interference with CAA PSD and visibility (not including regional haze) measures in other states with respect to 8-hour ozone and $PM_{2.5}$. A determination of whether or not the Nevada SIP for 8-hour ozone or $PM_{2.5}$ contains adequate provisions to prohibit emissions that interfere with measures in other States' SIPs designed to address regional visibility impairment caused by regional haze must wait for the submittal of regional haze SIPs.

Based on these findings, we are approving the Nevada Interstate Transport SIP as meeting the requirements of CAA section 110(a)(2)(D)(i), and as a result of our approval of this SIP, we are no longer obligated to promulgate a FIP for Nevada addressing the CAA section 110(a)(2)(D)(i) requirement.

V. EPA's Final Action

In today's action, EPA is approving the SIPs submitted by the States of Arizona and Nevada to satisfy the requirements of section 110(a)(2)(D)(i) of the CAA for the 8-hour ozone and $PM_{2.5}$ NAAQS. These approvals eliminate the obligation on EPA to promulgate section 110(a)(2)(D)(i) FIPs for these States.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal should adverse comments be filed. This action will be effective October 1, 2007, without further notice unless the EPA receives relevant adverse comments by August 30, 2007.

If we receive such comments, then we will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 1, 2007 and no further action will be taken on the proposed rule.

VI. 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 state plans as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, 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 State plans 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 approves State plans implementing a Federal standard.

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. section 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. section 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 October 1, 2007. 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 11, 2007.

Laura Yoshii,

Acting 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 D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(136) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(136) The following plan was submitted on May 24, 2007 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) Revision to the Arizona State Implementation Plan Under Clean Air Act Section 110(a)(2)(D)(i)—Regional Transport (May 2007), adopted by the Arizona Department of Environmental Quality on May 24, 2007.

Subpart DD—Nevada

■ 3. Section 52.1470 is amended by adding paragraph (c)(64) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(64) The following plan was submitted on February 5, 2007 by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(*1*) Nevada State Implementation Plan for Interstate Transport to Satisfy the Requirements of Clean Air Act 110(a)(2)(D)(i) for the 8-hour Ozone and $PM_{2.5}$ NAAQS Promulgated in July 1997 (January 31, 2007), adopted by the Nevada Division of Environmental Protection on February 5, 2007.

[FR Doc. E7–14473 Filed 7–30–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

State	City/town/ county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified
Town of North Canaan, Connecticut Docket No.: FEMA–B–7472				
Connecticut	Town of North Canaan	Blackberry River	Approximately 700 feet downstream of Route 44.	+656
			Approximately 1,050 feet upstream of Route 7	+672

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

ADDRESSES

Maps are available for inspection at Town Hall, 100 Pease Street, Canaan, Connecticut 06018.

State	City/town/ county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified
Town of Van Buren, Maine Docket No.: FEMA–B–7708				
Maine	Town of Van Buren	Violette Brook	At confluence of Violette Stream	+468
			Just upstream of Castonguay Road	+530
			Approximately 2,500 feet upstream of private road at the Corporate Limits.	+608
		Violette Stream	At Bangor and Aroostook Railroad	+451
			At confluence of Violette Brook	+468
			Approximately 1,000 feet upstream of Champlain Street.	+483

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

ADDRESSES

Town of Van Buren

Maps are available for inspection at 51 Main Street, Suite 101, Van Buren, ME 04785.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Village of Cambridge, New York Docket No.: FEMA–B–7711			
Cambridge Creek	Confluence with Owl Kill	+477	Village of Cambridge.
	Approximately 3,000 feet upstream of State Route 372	+508	
Owl Kill	Approximately 850 feet upstream of County Route 71	+466	Village of Cambridge.
	Approximately 1,000 feet upstream of N. Park Street	+493	
White Creek	Corporate limits of Village of Cambridge	+493	Village of Cambridge.
	Approximately 150 feet downstream of corporate limits of Village of Cambridge.	+523	

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

ADDRESSES

Village of Cambridge

Maps are available for inspection at 23 West Main Street, Cambridge, NY 12819.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Grand County, Colorado and Incorporated Areas Docket No.: FEMA–B–7705			
Fraser River	Approximately 1700 ft upstream of the intersection with State Highway 8.	+8550	Town of Fraser, Grand County (Unincorporated Areas).
	Approximately 2445 ft downstream of the confluence with Leland Creek.	+8628	

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected

+ North American Vertical Datum.

ADDRESSES

Town of Fraser

Maps are available for inspection at 153 Fraser Avenue, Fraser, CO 80442.

Grand County (Unincorporated Areas)

Maps are available for inspection at 308 Byers Avenue, Hot Sulphur Springs, CO 80451.

Edwards County, Kansas and Incorporated Areas
Docket No.: FEMA–B–7705

Arkansas River	At U.S. Highway 50	+2160	Edwards County (Unincorporated Areas).
	Approximately 2 miles upstream of Old U.S. Highway 183	+2187	
Big Coon Creek	At U.S. Highway 50	+2164	Edwards County (Unincorporated Areas), City of Kinsley.
	At Colony Avenue	+2172	
	Approximately 1 mile upstream of Winchester Avenue	+2179	
Little Coon Creek	At Winchester Avenue	+2169	Edwards County (Unincorporated Areas).
	Approximately 2 miles upstream of County Road 13	+2183	

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

ADDRESSES

Edwards County (Unincorporated Areas)

Maps are available for inspection at the County Clerk's Office, 312 Massachusetts Avenue, Kinsley, KS 67547.

City of Kinsley

Maps are available for inspection at City Hall, 721 Marsh, Kinsley, KS 67547.

Dodge County, Nebraska and Incorporated Areas
Docket No.: FEMA–B–7705

Platte River (levee failure)	At Downing Street, south of Union Pacific Railroad	+1188	City of Fremont, City of Inglewood, City of North Bend, Unincorporated Areas of Dodge County.
	At U.S. Highway 77	+1197	
	Approximately 1 mile downstream of State Highway 79	+1268	
	South of U.S. Highway 30 at County Road 5	+1279	
		+1287	
Platte River (levee)	Approximately ½ mile downstream of Burlington Northern Railroad.	+1195	City of Fremont, City of Inglewood, City of North Bend, Dodge County (Unincorporated Areas).
	At U.S. Highway 77	+1201	
	At County Road 19, south of Union Pacific Railroad	+1216	
	Approximately 1 mile downstream of State Highway 79	+1272	
	Approximately 1 mile upstream of State Highway 79	+1285	
	South of Union Pacific Railroad, just upstream of County Road 3.	+1300	
Platte River Overflow	Just north of 23rd Street, west of Burlington Northern Railroad.	#2	City of Fremont, City of Inglewood, City of North Bend, Dodge County (Unincorporated Areas).
	At the intersection of County Road 5 and County Road S	#2	
	Between U.S. Highway 275 and Old Highway 8	#2	
	East of Burlington Northern Railroad and north of U.S. Highway 30/Highway 275.	#2	
	Between U.S. Highway 30 and Burlington Northern Railroad, north of Rawhide Creek.	#2	
	U.S. Highway 77, north of U.S. Highway 30/Highway 275	+1197	
	At County Road 19, north of U.S. Highway 30	+1212	
	At the intersection of County Road 17 and County Road T	+1222	
	At County Road 11, north of U.S. Highway 30	+1255	
	At Cottonwood Street, north of U.S. Highway 30	+1276	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected

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

ADDRESSES

City of Inglewood

Maps are available for inspection at Inglewood Village Office, 445 Boulevard Street, Fremont, NE 68025.

City of North Bend

Maps are available for inspection at City Hall, North Bend, NE 68649.

Dodge County (Unincorporated Areas)

Maps are available for inspection at Dodge County Zoning Office, 435 N. Park, Fremont, NE 68025.

Cooke County, Texas and Incorporated Areas
Docket No.: FEMA–B–7705

Indian Creek East Lower Reach.	At confluence with Lake Ray Roberts	+645	Cooke County (Unincorporated Areas).
	At Lake Kiowa Dam	+705	
Indian Creek East Tributary 1	At the confluence with Indian Creek East	+645	Cooke County (Unincorporated Areas).
	Approximately 1,000 feet upstream from FM 217	+693	
Tributary 2	At the confluence with Indian Creek East Lower Reach	+663	Cooke County (Unincorporated Areas).
	Approximately 1,000 feet downstream from FM Road 3496	+724	
Indian Creek Upper Reach	At confluence with Lake Kiowa	+705	Cooke County (Unincorporated Areas).
	Approximately 2500 feet upstream from confluence with Lake Kiowa.	+718	
Lake Kiowa	Lake Kiowa	+705	Cooke County (Unincorporated Areas).
Lake Ray Roberts	Lake Ray Roberts	+645	Cooke County (Unincorporated Areas).
Pecan Creek North	Approximately 4,000 feet downstream from FM Road 2071	+703	Cooke County (Unincorporated Areas).
	Approximately 2,000 feet upstream from I–35	+783	
Pecan Creek South	At the Confluence with Lake Ray Roberts	+645	City of Valley View, Cooke County (Unincorporated Areas).
	Approximately 750 feet upstream from FM Road 922	+712	
Tributary 1	At the Confluence with Pecan Creek South	+646	Cooke County (Unincorporated Areas).
	At intersection with FM Road 922	+687	
Persimmon Creek	At confluence with Elm Fork Trinity River	+645	Cooke County (Unincorporated Areas).
	Approximately 2,000 feet upstream from North Shore Drive	+700	
Tributary 1	At confluence with Persimmon Creek (Pioneer Valley Lake).	+664	Cooke County (Unincorporated Areas).
	Approximately 2,000 feet upstream from confluence with Persimmon Creek (Pioneer Valley Lake).	+689	
Tributary 2	Confluence with Persimmon Creek (Pioneer Valley Lake)	+664	Cooke County (Unincorporated Areas).
	Approximately 1,500 feet upstream from confluence with Persimmon Creek (Pioneer Valley Lake).	+667	
Tributary 3	At confluence with Persimmon Creek	+678	Cooke County (Unincorporated Areas).
	Approximately 1,500 feet upstream from the confluence with Persimmon Creek.	+697	
Pond Creek	Approximately 1,000 feet downstream from confluence with Pond Creek Tributary 2 (County Border).	+646	Cooke County (Unincorporated Areas).
	Approximately 1,000 feet downstream from Rail Road (County Border).	+674	
Tributary 1	At the confluence with Pond Creek	+646	Cooke County (Unincorporated Areas).
	Approximately 1,200 feet upstream from I–35	+705	
Tributary 2	At the confluence with Pond Creek Tributary	+675	Cooke County (Unincorporated Areas).
	Approximately 1,000 feet upstream from I–35	+702	
Tributary Kiowa 1	Confluence with Lake Kiowa	+705	Cooke County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
	Approximately 1,200 feet upstream from confluence with Lake Kiowa.	+713	
Kiowa 2	At confluence with Lake Kiowa	+705	Cooke County (Unincorporated Areas).
	Approximately 2,500 feet upstream from confluence with Lake Kiowa.	+723	
Wolf Creek	At the confluence with Lake Ray Roberts	+645	Cooke County (Unincorporated Areas).
	Approximately 1,000 feet upstream from FM 295	+746	
Tributary 1	At the confluence with Wolf Creek	+681	Cooke County (Unincorporated Areas).
	Approximately 2,700 feet upstream from confluence with Wolf Creek.	+709	

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

ADDRESSES

City of Valley View

Maps are available for inspection at 100 South Dixon, Gainesville, TX 76240.

Cooke County (Unincorporated Areas)

Maps are available for inspection at 100 South Dixon, Gainesville, TX 76240.

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

Dated: July 24, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–14719 Filed 7–30–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1999–6189; Amendment 1–305]

RIN 1999–AA51

Organization and Delegation of Powers and Duties; Delegations to the Maritime Administrator

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating to the Maritime Administrator the authorities delegated to the Secretary by the President under section 1019 of Public Law 109–364 dated October 17, 2006, and entitled The John Warner National Defense Authorization Act for Fiscal Year 2007.

EFFECTIVE DATE: July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Director, Office of Management Services, Maritime Administration, MAR–310, Room W26–310, 1200 New Jersey Ave., SE., Washington, DC 20590, Phone: (202) 366–2811.

SUPPLEMENTARY INFORMATION: The President delegated his authority under section 1019 of Public Law 109–364 to the Secretary of Transportation (Secretary) by Memorandum dated February 15, 2007 (published in the **Federal Register** on February 20, 2007 (72 FR 7819)). The Secretary is further delegating this authority to the Maritime Administrator. This delegation authorizes the Maritime Administrator: (1) To transfer the ex-Liberty ship SS Arthur M. Huddell (Vessel) to the Government of Greece in accordance with such terms and conditions as appropriate; (2) to convey additional equipment from obsolete vessels of the National Defense Reserve Fleet (NDRF) in order to assist the Government of Greece in using the vessel as a museum exhibit; and (3) to require, to the maximum extent practicable, as a condition of the transfer of the Vessel, that the Government of Greece have such repair or refurbishment of the Vessel as is needed performed at a shipyard located in the United States. The Secretary is delegating this authority to the Maritime Administrator because the vessel is in the custody of the Maritime Administration and falls within the purview of the Maritime Administration's statutory mission to dispose of the vessels in the NDRF as appropriate.

This final rule adds paragraph (hh) to 49 CFR 1.66 to reflect the Secretary of Transportation's delegation of these authorities. Since this rulemaking relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the rulemaking expedites the Maritime Administration's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for this final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, part 1 of Title 49, Code of Federal Regulations is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295, 116 Stat. 2064; Pub. L.

108–136, 117 Stat. 1392; Pub. L. 101–115, 103 Stat. 691; Pub. L. 108–293, 118 Stat. 1028; Pub. L. 109–364, 120 Stat. 2083.

■ 2. Section 1.66 is amended by adding paragraph (hh) to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(hh) Carry out the functions and exercise the authorities vested in the President by section 1019 of Pub. L. 109–364 and delegated to the Secretary by the President.

Issued at Washington, DC, this 25th day of June, 2007.

Mary E. Peters,

Secretary of Transportation.

[FR Doc. 07–3635 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 72, No. 146
Tuesday, July 31, 2007

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. RM07–21–000]

Blanket Authorization Under FPA Section 203

July 20, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations pursuant to section 203 of the Federal Power Act (FPA) to provide for a limited blanket authorization under FPA section 203(a)(1). The Commission seeks public comment on the rules and amended regulations proposed herein. The Commission also seeks comment on whether it should grant an additional blanket authorization for certain acquisitions or dispositions of jurisdictional contracts.

DATES: Comments are due August 30, 2007.

ADDRESSES: You may submit comments identified in Docket No. RM07–21–000, by one of the following methods:

Agency Web Site: http://www.ferc.gov. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the preamble.

Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures section of the preamble for additional information on how to file paper comments.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Introduction

1. Pursuant to section 203 of the Federal Power Act (FPA),[1] the Commission is proposing to amend its regulations to revise Part 33 of Title 18 of the Code of Federal Regulations (CFR) to provide for an additional blanket authorization under FPA section 203(a)(1). The Commission seeks public comment on the proposed rule.

II. Background

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

3. Through the Order No. 669 rulemaking proceeding, the Commission promulgated regulations adopting certain modifications to 18 CFR 2.26 and Part 33 to implement amended section 203.[3] The Commission also provided blanket authorizations for certain transactions subject to section 203. These blanket authorizations were crafted to ensure that there is no harm to captive utility customers, but sought to accommodate investments in the electric utility industry and market liquidity. Some commenters in the rulemaking proceeding argued that the Commission should have granted additional blanket authorizations that would benefit the marketplace and not harm customers. Other commenters argued that the Commission should adopt additional generic rules to guard against inappropriate cross-subsidization associated with the mergers. Yet other commenters argued that the Commission should modify its competitive analysis for mergers, which has been in place for 10 years. The Commission stated that it would re-evaluate these and other issues at a future technical conference on the Commission's section 203 regulations as well as certain issues raised in the Order No. 667 rulemaking proceeding implementing the Public Utility Holding Company Act of 2005.[4]

4. On December 7, 2006, the Commission held a technical conference (December 7 Technical Conference) to discuss several of the issues that arose in the Order No. 667 and Order No. 669 rulemaking proceedings. The December 7 Technical Conference discussed a range of topics. The first panel discussed whether there are additional

[1] 16 U.S.C. 824b, *amended by* Energy Policy Act of 2005, Pub. L. 109–58, 1289, 119 Stat. 594, 982–83 (2005) (EPAct 2005).

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

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

[4] EPAct 2005, Pub. L. 109–58, 1261, *et seq.*, 119 Stat. 594, 972–78 (2005) (PUHCA 2005). *See also Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213, *order on reh'g*, Order No. 667–B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g*, Order No. 667–C, 72 FR 8277 (Feb. 26, 2007), 118 FERC ¶ 61,133 (2007).

These issues included matters related to inappropriate cross-subsidization and pledges or encumbrance of utility assets, whether our current merger policy should be revised, and whether additional exemptions, different reporting requirements, or other regulatory action (under PUHCA 2005 or the FPA or Natural Gas Act (NGA)) needed to be considered.

actions, under the FPA or the NGA, that the Commission should take to supplement the protections against cross-subsidization that were implemented in the Order No. 667 and Order No. 669 rulemaking proceedings. The second panel discussed whether, and if so how, the Commission should modify its Cash Management Rule [5] in light of PUHCA 2005 and whether the Commission should codify specific safeguards that must be adopted for cash management programs and money pool agreements and transactions. The third panel discussed whether modifications to the specific exemptions, waivers and blanket authorizations set forth in the Order No. 667 and Order No. 669 rulemaking proceedings are warranted. Post-technical conference comments were accepted.

5. On March 8, 2007, the Commission held a second technical conference (March 8 Technical Conference) to discuss whether the Commission's section 203 policy should be revised and, in particular, whether the Commission's Appendix A merger analysis is sufficient to identify market power concerns in today's electric industry market environment. The first panel discussed whether the Appendix A analysis is appropriate to analyze a merger's effect on competition, given the changes that have occurred in the industry (*e.g.*, the development of Regional Transmission Organizations (RTOs)) and statutory changes (*e.g.*, as a result of the repeal of the Public Utility Holding Company Act of 1935 [6] and new authorities given to the Commission in EPAct 2005 [7]). The second panel assessed the factors the Commission uses in reviewing mergers and the coordination between the Commission and other agencies (including state commissions) with merger review responsibility.

6. This Notice of Proposed Rulemaking is one of three actions being taken based on the Commission's experience implementing amended FPA section 203 and PUHCA 2005, as well as the record from the Commission's December 7 and March 8 Technical Conferences regarding section 203 and PUHCA 2005. In this docket, the Commission is proposing to grant an additional blanket authorization for certain dispositions of jurisdictional facilities under FPA section 203(a)(1). In addition, in separate orders, the Commission is concurrently issuing a section 203 Supplemental Policy Statement [8] and a Notice of Proposed Rulemaking proposing to codify restrictions on affiliate transactions between franchised public utilities with captive customers and their market-regulated power sales affiliates or non-utility affiliates.[9] The proposed changes to the regulations in this proceeding are discussed below.

III. Discussion

7. The Commission proposes to amend 18 CFR part 33 (Applications Under Federal Power Act Section 203) to provide for an additional blanket authorization under FPA section 203(a)(1).

8. In the Order No. 669 rulemaking proceeding, the Commission set forth several blanket authorizations under which participants to FPA section 203-jurisdictional transactions need not seek *ex ante* Commission approval. These authorizations included a blanket authorization under section 203(a)(2) under which certain holding companies may acquire the voting securities of a public utility if the acquisition would give the holding company less than 10 percent ownership of the outstanding voting securities of such public utility.[10] The Commission found in Order No. 669 that several classes of transactions covered by amended section 203(a)(2) would not harm competition or captive customers, including acquisitions of voting securities that would give the acquiring entity not more than 9.99 percent ownership of the outstanding voting securities of the acquired utility or company.[11] While parties sought an additional blanket authorization under section 203(a)(1) to parallel that provided under section 203(a)(2), the Commission could not make a determination with respect to section 203(a)(1) at that time. Specifically, with regard to the request for parallel blanket authorization under section 203(a)(1) for equity ownership interests in public utilities that result in a change in control over the underlying public utility, we found in Order No. 669–A that such a blanket authorization would not address the ''[c]oncerns with control, markets and protections of captive customers or customers receiving transmission service over jurisdictional transmission facilities'' [12] implicated by section 203(a)(1). However, in Order No. 669–B, in response to comments that the lack of a parallel section 203(a)(1) authorization could thwart utility investment, the Commission stated that this issue would be included in the forthcoming technical conferences.[13]

9. Based on the record from the technical conferences (including both oral and written comments) and the Commission's experience under amended section 203 to date, the Commission proposes to provide for a limited blanket authorization to public utilities under section 203(a)(1). This blanket authorization would work in conjunction with the blanket authorization granted to holding companies under section 203(a)(2) in 18 CFR 33.1(c)(2)(ii).[14] Under this limited blanket authorization, a public utility would be pre-authorized to dispose of less than 10 percent of its voting securities to a public utility holding company but only if, after the disposition, the holding company and any associate company *in aggregate* will own less than 10 percent of that public utility. We note that this proposed blanket authorization would not entirely ''parallel'' the section 203(a)(2) authorization since the section 203(a)(2) authorization does not contain the ''in aggregate'' limitation. However, we believe this limitation would provide better protection against possible transfer of ''control'' of a public utility. We seek comment on this limitation.

10. The Commission believes that the disposition of such limited voting interests (less than 10 percent), with the proposed ''in aggregate'' restriction and the existing reporting requirements

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

[6] 16 U.S.C. 79a *et seq.* (PUHCA 1935).

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

[8] *FPA Section 203 Supplemental Policy Statement,* 119 FERC ¶ 61,060 (2007) (issued in Docket No. PL07–1–000).

[9] *Cross-Subsidization Restrictions on Affiliate Transactions,* 119 FERC ¶ 61,061 (2007) (issued in Docket No. RM07–15–000).

[10] The section 203(a)(2) blanket authorization states:

Any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to purchase, acquire, or take: * * * (ii) Any voting security in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company if, after the acquisition, the holding company will own less than 10 percent of the outstanding voting securities.

18 CFR 33.1(c)(2)(ii). Because a ''transmitting utility'' or ''electric utility company'' may also be a ''public utility'' as defined in the FPA, the public utility may need to obtain separate authorization for the same transaction under FPA section 203(a)(1), which requires authorization for public utilities to dispose of jurisdictional facilities.

[11] Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 141.

[12] Order No. 669–A, FERC Stats. & Regs. ¶ 31,214 at P 103.

[13] Order No. 669–B, FERC Stats. & Regs. ¶ 31,225 at P 26.

[14] *See supra* note 10.

applicable to holding companies,[15] will not harm competition or captive customers. Moreover, this 10 percent threshold is consistent with the definition of ''holding company'' under section 1262(8)(A) of PUHCA 2005. Under that definition, any company that has the power to vote *10 percent or more* of the securities of a public utility company (or a holding company of a public utility company) triggers holding company status and thus is presumed to raise sufficient concerns about controlling influence over a subsidiary public utility that regulatory oversight is needed. The 10 percent threshold is also consistent with the blanket authorization granted under section 203(a)(2) in the Order No. 669 rulemaking proceeding, under which holding companies are pre-authorized to acquire up to 9.99 percent of voting securities of a public utility.

11. As noted, as part of the existing ''parallel'' blanket authorization under section 203(a)(2), the Commission already requires the holding company to provide to the Commission copies of any Schedule 13D, Schedule 13G and Form 13F at the same time and on the same basis, as filed with the SEC in connection with any securities purchased, acquired or taken pursuant to the blanket authorization under section 203(a)(2) provided in § 33.1(c)(2) of the Commission's regulations.[16] Importantly, a Schedule 13 filer must acquire the subject securities ''in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect'' over entities whose securities it holds.[17] It is also required to file a notification with the SEC of any acquisition of beneficial ownership of more than five percent of a class of equity securities.[18] Because we already receive these filings from the holding company, we propose not to require additional reporting on the part of individual public utilities to duplicate the reporting of information we are already getting about the same transaction. However, we seek comments on whether any additional reporting by the public utility should be required.

12. Further, we seek comment on whether the blanket authorization under section 203(a)(1), proposed herein, should be extended to the transfer of securities by a public utility to a holding company granted a blanket authorization under section 203(a)(2) in §§ 33.1(c)(8),[19] 33.1(c)(9),[20] and 33.1(c)(10) [21] of the Commission's regulations.

13. In addition, certain participants to the technical conferences argue that a blanket authorization under section 203(a)(1) should be granted for transactions in which a public utility or a holding company is acquiring or disposing of a jurisdictional contract where the acquirer does not have captive customers and the contract does not convey control over the operation of a generation or transmission facility. These commenters argue that, because acquisition of these contracts cannot create competitive or rate concerns, the Commission should grant blanket authorization under section 203(a)(1) for such transactions. Because the specific request for blanket authorization may present concerns where the transferor has captive customers, we seek comment on whether the Commission should grant a generic blanket authorization under section 203(a)(1) for the acquisition or disposition of a jurisdictional contract where neither the acquirer nor transferor has captive customers and the contract does not convey control over the operation of a generation or transmission facility.

IV. Information Collection Statement

14. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection and data retention requirements imposed by agency rules.[22] Therefore, the Commission is submitting the proposed modifications to its information collections to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.[23]

15. The Commission is proposing amendments to the Commission's regulations to provide for a limited blanket authorization under FPA section 203(a)(1). The regulations that the Commission proposes should have a minimal impact on the current reporting burden associated with an individual application, as they do not substantially change the filing requirements with which section 203 applicants must currently comply. Further, the Commission does not expect the total number of section 203 applications under amended section 203 to increase, but rather expects the total number of section 203 applications to decrease. This is due to the proposed rule providing for a category of jurisdictional transactions for which the Commission would not require applications seeking before-the-fact approval. This would reduce the burden on the electric industry, because it will reduce the number of applications that need to be made with the Commission.

16. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Burden Estimate: The Public Reporting and records retention burden for the proposed reporting requirements and the records retention requirement are as follows.

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

Action: Revised Collection.

OMB Control No: 1902–0082.

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

Respondents: Businesses or other for profit.

Frequency of Responses: N/A.

Necessity of the Information: This proposed rule proposes codification of a limited blanket authorization under

[15] *See, e.g.*, 18 CFR 33.1(c)(4) (requiring the filing of Securities and Exchange Commission (SEC) Schedule 13D, Schedule 13G, and Form 13F, if applicable); 18 CFR 35.42(a) (effective 60 days after publication in the **Federal Register** of *Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities,* Order No. 697, 72 FR 39903 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007)) (requiring a notification of any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority); 18 CFR 366.4(a) (requiring Form FERC–65 (notification of holding company status)).

[16] 18 CFR 33.1(c)(4).

[17] 17 CFR 240.13d–1(b)(1)(i).

[18] 17 CFR 240.13d–1(a).

[19] 18 CFR 33.1(c)(8) (granting a blanket authorization under section 203(a)(2) to a person that is a holding company solely with respect to one or more exempt wholesale generators (EWGs), foreign utility companies (FUCOs), or qualifying facilities (QFs) to acquire the securities of additional EWGs, FUCOs, or QFs).

[20] 18 CFR 33.1(c)(9) (granting a conditional blanket authorization under section 203(a)(2) to a holding company, or a subsidiary of that company, that is regulated by the Board of Governors of the Federal Reserve Bank or by the Office of the Comptroller of the Currency, under the Bank Holding Company Act of 1956 as amended by the Gramm-Leach-Bliley Act of 1999).

[21] 18 CFR 33.1(c)(10) (granting a limited blanket authorization under section 203(a)(2) to a holding company, or a subsidiary of that company, for the acquisition of securities of a public utility or a holding company that includes a public utility for purposes of underwriting activities or hedging transactions).

[22] 5 CFR part 1320.

[23] 44 U.S.C. 3507(d).

FPA section 203(a)(1), providing for a category of jurisdictional transactions under section 203(a)(1) for which the Commission would not require applications seeking before-the-fact approval.

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

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

V. Environmental Analysis

18. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[24] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[25] The proposed regulations are categorically excluded as they address actions under section 203.[26] Accordingly, no environmental assessment is necessary and none has been prepared in this NOPR.

VI. Regulatory Flexibility Act Certification

19. The Regulatory Flexibility Act of 1980 (RFA)[27] requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[28] However, the RFA does not define ''significant'' or ''substantial.'' Instead, the RFA leaves it up to an agency to determine the effect of its regulations on small entities.

20. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.[29] Moreover, as noted above, this proposed rule proposes codification of a limited blanket authorization under FPA section 203(a)(1), providing for a category of jurisdictional transactions under section 203(a)(1) for which the Commission would not require before-the-fact approval. Thus, filing requirements are reduced by the rule. Therefore, the Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis is required.

VII. Comment Procedures

21. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 30, 2007. Comments must refer to Docket No. RM07–21–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

22. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats, but requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

23. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

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

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

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

List of Subjects in 18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 33, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 33—APPLICATIONS UNDER FEDERAL POWER ACT SECTION 203

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

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

2. In § 33.1, paragraph (c)(12) is added to read as follows:

§ 33.1 Applicability, definitions, and blanket authorizations.

* * * * *

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

[25] 18 CFR 380.4.

[26] *See* 18 CFR 380.4(a)(16).

[27] 5 U.S.C. 601–12.

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

[29] 5 U.S.C. 601(3), *citing* to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

(c) * * *

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

[FR Doc. E7–14619 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM07–15–000]

Cross-Subsidization Restrictions on Affiliate Transactions

July 20, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations pursuant to sections 205 and 206 of the Federal Power Act to codify restrictions on affiliate transactions between franchised public utilities with captive customers and their market-regulated power sales affiliates or non-utility affiliates. The Commission seeks public comment on the rules and amended regulations proposed herein.

DATES: *Comment Date:* Comments are due August 30, 2007.

ADDRESSES: You may submit comments identified in Docket No. RM07–15–000, by one of the following methods:

Agency Web site: http://www.ferc.gov. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the preamble.

Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures section of the preamble for additional information on how to file paper comments.

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

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

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

Stuart Fischer (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8517.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. Pursuant to sections 205 and 206 of the Federal Power Act (FPA),[1] the Commission is proposing to amend its regulations to revise Part 35 of Title 18 of the Code of Federal Regulations (CFR) to codify affiliate restrictions that would be applicable to all power and non-power goods and services transactions between franchised public utilities with captive customers and their market-regulated power sales and non-utility affiliates.[2] The Commission's goal in proposing these prophylactic restrictions is to protect against inappropriate cross-subsidization of market-regulated and unregulated activities by the captive customers of public utilities. The proposed restrictions are based upon those already imposed by the Commission in the context of certain FPA section 203 [3] and 205 approvals, but expand the transactions and entities to which they apply.[4] The Commission seeks public comment on the proposed rules.

II. Background

2. The Commission requires public utilities to implement codes of conduct with regard to affiliate transactions where an entity seeks market-based rate authorization. The Commission also imposes codes of conduct on entities seeking merger authorization under section 203 of the FPA. The discussion below summarizes the Commission's existing practices in these two areas.

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

1. Historical Approach

3. The Commission began considering proposals for market-based pricing of wholesale power sales and attendant cross-subsidy issues in 1988. At that time, the Commission acted on market-based rate proposals filed by various wholesale suppliers on a case-by-case basis. In doing so, the Commission considered whether there was evidence of affiliate abuse or reciprocal dealing involving the seller or its affiliates.[5] As the Commission explained, ''[t]he

[1] 16 U.S.C. 824d, 824e.

[2] For purposes of this Notice of Proposed Rulemaking, a ''market-regulated'' power sales affiliate means any power sales affiliate, other than a franchised public utility, whose power sales are regulated in whole or in part on a market basis. This would include, *e.g.*, a power marketer, exempt wholesale generator, qualifying facility or other power seller affiliate permitted to make some or all of its power sales at market-based rates. A ''non-utility'' affiliate would include an affiliate that is not in the power sales or transmission business, *e.g.*, a coal mining company, construction company, real estate company, energy-related technology company, communications systems company, among others. While the Commission, in previous documents, has referred to both categories of affiliates as ''non-regulated,'' consistent with the discussion on cross-subsidization issues in our recent Market-Based Rate Final Rule, we believe the term ''market-regulated'' more accurately describes power sellers with market-based rates since they remain subject to regulation. *Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities,* Order No. 697, 72 FR 39903 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252, at P 490 (2007) (Market-Based Rate Final Rule). Accordingly, we have modified our terminology in this Notice of Proposed Rulemaking.

[3] 16 U.S.C. 824b, *amended by* Energy Policy Act of 2005, Pub. L. 109–58, 1289, 119 Stat. 594, 982–83 (2005) (EPAct 2005).

[4] This Notice of Proposed Rulemaking is one of three actions being taken based on the Commission's experience implementing amended FPA section 203 and the Public Utility Holding Company Act of 2005, EPAct 2005, Pub. L. No. 109–58, 1261, *et seq.*, 119 Stat. 594, 972–78 (2005) (PUHCA 2005), as well as the record from the Commission's December 7, 2006 and March 8, 2007 technical conferences regarding Section 203 and PUHCA 2005. In addition, in separate orders, the Commission is concurrently issuing a section 203 Supplemental Policy Statement, *FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 (2007) (issued in Docket No. PL07–1–000), and a Notice of Proposed Rulemaking proposing to grant a limited blanket authorization for certain dispositions of jurisdictional facilities under FPA section 203(a)(1), *Blanket Authorization Under FPA Section 203*, 120 FERC ¶ 61,062 (2007) (issued in Docket No. RM07–21–000).

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

The other three ''prongs'' of the Commission's ''four-prong'' analysis include: (1) Whether the seller and its affiliates lack, or have adequately mitigated, market power in generation; (2) whether the seller and its affiliates lack, or have adequately mitigated, market power in transmission; and (3) whether the seller or its affiliates can erect other barriers to entry. *See* Market-Based Rate Final Rule, FERC Stats. & Regs. ¶ 31,252 at P 7. These additional ''prongs'' are not directly at issue in this proceeding.

Commission's concern with the potential for affiliate abuse is that a utility with a monopoly franchise may have an economic incentive to exercise market power through its affiliate dealings.'' [6] The Commission also stated its concern that a franchised public utility and an affiliate may be able to transact in ways that transfer benefits from the captive customers of the franchised public utility to the affiliate and its shareholders.[7] Where a franchised public utility makes a power sale to an affiliate, the Commission is concerned that such a sale could be made at a rate that is too low, in effect, transferring the difference between the market price and the lower rate from captive customers to the market-regulated affiliated entity. Where a power seller with market-based rates makes power sales to an affiliated franchised public utility, the concern is that such sales could be made at a rate that is too high, which would give an undue profit to the affiliated entity at the expense of the franchised public utility's captive customers.[8] In determining whether to allow power sales affiliate transactions, the Commission, over time, has adopted several methods, all of which have focused on ensuring that captive customers are adequately protected against affiliate abuse.

4. Just as the Commission has expressed concern about the potential for affiliate abuse in connection with power sales between affiliates, it also has recognized that there may be a potential for affiliate abuse through other means, such as the pricing of non-power goods and services or the sharing of market information between affiliates.[9] The same concerns about giving undue profits to affiliated ''unregulated'' entities and shareholders, discussed above with respect to power sales, also apply with respect to non-power goods and services transactions.

5. Accordingly, the Commission's policy for many years has been to require that, as a condition of market-based rate authorization, applicants adopt a code of conduct applicable to non-power goods and services transactions between regulated and non-regulated affiliated power sellers. The Commission has also required that applicants include a provision in their market-based rate tariffs prohibiting power sales between regulated and non-regulated affiliated power sellers without first receiving authorization of the transaction under section 205 of the FPA.[10]

6. The purpose of the market-based rate code of conduct is to safeguard against affiliate abuse by protecting against the possible diversion of benefits or profits from franchised public utilities (*i.e.*, traditional public utilities with captive ratepayers) to an affiliated entity for the benefit of shareholders. The Commission has waived the market-based rate code of conduct requirement in cases where there are no captive customers, and thus no potential for affiliate abuse, or where the Commission finds that such customers are adequately protected against affiliate abuse.[11] In such cases, however, the Commission directed the utilities to notify the Commission should they acquire captive customers in the future and expressly reserved the right to reimpose the market-based rate code of conduct requirement.

2. The Market-Based Rate Final Rule

7. In the Commission's recent Market-Based Rate Final Rule, among other things, the Commission codified in the regulations at 18 CFR part 35, subpart H, an explicit requirement that any seller with market-based rate authority must comply with the affiliate power sales restrictions and other affiliate restrictions. Compliance on an ongoing basis is a condition of retaining market-based rate authority. The Market-Based Rate Final Rule retains the policy that wholesale sales of power between a franchised public utility and any of its market-regulated power sales affiliates must be pre-approved by the Commission. It also adopts uniform affiliate restrictions governing power sales, sales of non-power goods and services, separation of functions, and information sharing between franchised public utilities with captive customers and their market-regulated power sales affiliates.[12] The power and non-power goods and services restrictions, however, apply only to transactions involving two power sellers. They do not apply to transactions between a franchised public utility and a non-utility affiliate.

B. Affiliate Transactions Under Section 203

1. Before EPAct 2005

8. The Commission has also addressed cross-subsidization issues in the context of section 203 merger applications. Prior to EPAct 2005, the Commission's policy was to condition its approval of certain section 203 mergers on the applicants' agreement to abide by certain restrictions on non-power goods and services transactions between a merged company's utility and non-utility or market-regulated subsidiaries. The condition was imposed on those mergers involving registered holding companies under the Public Utility Holding Company Act of 1935 [13] in order to find that the merger would not adversely affect federal regulation.[14] That requirement grew out of judicial determinations that, when a merger would create or involve a registered holding company, the actions of the Securities and Exchange Commission (SEC) may preclude the Commission from asserting jurisdiction over the non-power transactions between subsidiaries of that holding company.[15] Under *Ohio Power,* if the

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

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

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

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

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

[11] *See, e.g., CMS Marketing, Services and Trading Co.,* 95 FERC ¶ 61,308, at 62,051 (2001) (granting request for cancellation of code of conduct where wholesale contracts, as amended, ''cannot be used as a vehicle for cross-subsidization of affiliate power sales or sales of non-power goods and services''); *Alcoa Inc.,* 88 FERC ¶ 61,045, at 61,119 (1999) (waiving code of conduct requirement where there were no captive customers); *Green Power Partners I LLC,* 88 FERC ¶ 61,005, at 61,010–11 (1999) (waiving code of conduct requirement where there are no captive wholesale customers and retail customers may choose alternative power suppliers under retail access program).

[12] Market-Based Rate Final Rule, FERC Stats. & Regs. ¶ 31,252 at P 23.

[13] 16 U.S.C. 79a *et seq.* (PUHCA 1935). EPAct 2005 repealed PUHCA 1935. EPAct 2005, Pub. L. No. 109–58, 1263.

[14] *See, e.g., Niagara Mohawk Holdings, Inc.,* 95 FERC ¶ 61,381, at 62,414, *order on reh'g,* 96 FERC ¶ 61,144 (2001).

[15] *See Ohio Power Co.* v. *FERC,* 954 F.2d 779, 782–86 (D.C. Cir.), *cert. denied sub nom., Arcadia*

Continued

SEC approved an affiliate contract involving special purpose subsidiary goods or services at cost, the Commission had to allow pass-through of the costs in jurisdictional rates even if the public utility purchasing the goods or services could have obtained them at a lower market price from a non-affiliate.[16] For over a decade following the *Ohio Power* decision, the Commission required that, to gain section 203 approval of a proposed merger without a hearing, if the transaction would create a registered holding company under the PUHCA 1935, applicants must agree to waive the *Ohio Power* immunity and abide by the Commission's policy on intra-system transactions for non-power goods and services.[17]

2. After EPAct 2005

9. Because EPAct 2005 repealed PUHCA 1935, certain activities of previously-registered holding companies that were previously subject to SEC regulation, including intra-system affiliate transactions, are no longer exempt from this Commission's full regulatory review. In particular, the Commission's conditions and policies under FPA sections 205 and 206 with respect to non-power goods and services transactions between holding company affiliates may now be applied to all public utilities that are members of holding companies, whether in the context of a section 203 merger proceeding or the context of a section 205–206 rate proceeding.[18] In addition, the Commission has authority to review allocation of service company costs among members of holding companies that have public utilities with captive customers.

10. In the Order No. 669 rulemaking proceedings,[19] which revised the Commission's regulations pursuant to amended section 203, the Commission continued its past approach with respect to affiliate abuse restrictions involving power and non-power goods and services transactions, in the context of section 203 applications.[20] However, the Commission made two additional clarifications.

11. First, in its implementation of regulations pursuant to PUHCA 2005,[21] the Commission discussed one exception to the traditional standards articulated in the 1996 Merger Policy Statement. In the Order No. 667 rulemaking proceeding,[22] the Commission explained that there are two circumstances in which the at-cost or market standards may arise in the context of the Commission's jurisdictional responsibilities: (1) The Commission's review of the costs of non-power goods and services provided by a traditional, centralized service company to public utilities within the holding company system; and (2) when a service company that is a special-purpose company within a holding company provides non-power goods or services to one or more public utilities in the same holding company system. Under both scenarios, the similar concerns regarding affiliate abuse arise: ''[w]hether the public utility's costs incurred in purchasing from the affiliate are prudently incurred and just and reasonable, and whether non-regulated affiliates purchasing non-power goods and services from the same special-purpose company are receiving preferential treatment vis-à-vis the public utility.'' [23] In Order No. 667, the Commission exempted traditional, centralized service companies, which at that time were using the SEC's ''at-cost'' standard, from complying with the Commission's market standard for their sales of non-power goods and services to regulated affiliates and created a rebuttable presumption that costs incurred under at-cost pricing for such services are reasonable.[24] However, with respect to non-power goods and services transactions between holding company affiliates other than traditional, centralized service companies, *i.e.*, service companies that are non-regulated, special-purpose affiliates, such as a fuel supply company or a construction company, the Commission continued with its prior practice.[25]

12. Second, in recent section 203 merger proceedings, the Commission has extended the applicability of the code of conduct restrictions previously applied only to registered holding companies. In *National Grid plc,*[26] the Commission announced that it would require all merging parties to abide by a code of conduct containing specific provisions regarding power and non-power goods and services transactions between the utility subsidiaries and their affiliates:

> Implementation of the Code of Conduct for all utility subsidiaries of the merged company, as required by our decision here, will address both power and non-power goods and services transactions between the utility subsidiaries and their affiliates. The Code of Conduct to be implemented by the

v. *Ohio Power Co.,* 506 U.S. 981 (1992) (*Ohio Power*).

[16] The Commission's policy since the mid-1990s has been that where the regulated public utility has provided non-power goods or services to the non-regulated affiliate, the public utility provides the goods or services at the higher of cost or market. A non-regulated affiliate that sells non-power goods or services to an affiliate with captive customers may not sell at higher than market price. This is often referred to as the ''market'' standard. These standards were articulated in the Commission's 1996 Merger Policy Statement. *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement,* Order No. 592, 61 FR 68595 (Dec. 30, 1996), FERC Stats. & Regs. ¶ 31,044, at 30,124–25 (1996) (1996 Merger Policy Statement), *reconsideration denied,* Order No. 592–A, 62 FR 33341 (June 19, 1997), 79 FERC ¶ 61,321 (1997).

[17] *Public Service Company of Colorado,* 75 FERC ¶ 61,325, at 62,046 (1996); 1996 Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124–25.

[18] The provisions of PUHCA 1935 that formed the basis for *Ohio Power* are no longer in effect, thus removing the *Ohio Power* limitation on our oversight of non-power transactions. Further, FPA section 318, which provided for SEC preemption in certain circumstances where there was a conflict between SEC PUHCA 1935 regulation and Commission regulation, was repealed.

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

[20] Amended section 203(a)(4) does add to the Commission's merger analysis the explicit requirement that the Commission find that any proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

[21] PUHCA 2005 is primarily a books and records access statute and does not give the Commission any new substantive authorities, other than the requirement that the Commission review and authorize certain non-power goods and services cost allocations among holding company members upon request. EPAct 2005, Pub. L. No. 109–58, 1275.

[22] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g,* Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213, *order on reh'g,* Order No. 667–B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g,* 72 FR 8277 (Feb. 26, 2007), 118 FERC ¶ 61,133 (2007).

[23] Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 168.

[24] *Id.* P 169.

[25] Order No. 667 states, in relevant part:

> First, with respect to sales from a public utility to a non-regulated, affiliated special-purpose company, we agree * * * that the price should be no less than cost, *i.e.*, the higher of cost or market; otherwise, a public utility could attempt to game the system and forego profits it could otherwise obtain by selling to a non-affiliate, to the benefit of its non-regulated affiliate who receives a good or service at a below-market price. When the situation is reversed, *i.e.*, the non-regulated, affiliated special-purpose company is providing non-power goods and services to the public utility affiliate, the Commission will continue to apply its market standard. The non-regulated, affiliated special-purpose company may not sell to its public utility affiliate at a price above the market price. We believe that such transactions involving such non-regulated, affiliated special-purpose companies pose a greater risk of inappropriate cross-subsidization and adverse effects on jurisdictional rates.

Id. P 171.

[26] 117 FERC ¶ 61,080 (2006) (*National Grid*).

merged company shall (1) require our approval of all power sales by a utility to an affiliate, (2) require a utility with captive customers to provide non-power goods or services to a non-utility or ''non-regulated utility'' affiliate at a price that is the higher of cost or market price, (3) prohibit a non-utility or non-regulated utility affiliate from providing non-power goods or services to a utility affiliate with captive customers at a price above market price, and (4) prohibit a centralized service company from providing non-power services to a utility affiliate with captive customers at a price above cost. These requirements protect a utility's captive customers against inappropriate cross-subsidization of non-utility or non-regulated utility affiliates by ensuring that the utility with captive customers neither recovers too little for goods and services that the utility provides to an affiliate nor pays too much for goods and services that the utility receives from an affiliate. Implementation of these requirements provides a prophylactic mechanism to ensure that the merger will not result in cross-subsidization of non-utility or non-regulated utility companies in the same holding company system and therefore meets the requirement of section 203(a)(4) that a merger not result in inappropriate cross-subsidization of a non-utility associate company.[27]

13. While these affiliate restrictions are broad in terms of transactions covered (covering transactions between power sales affiliates as well as transactions between power sales affiliates and non-utility affiliates) and have been extended within the context of section 203 approvals, they do not apply to public utilities that do not need to seek section 203 merger approval.

III. Discussion

14. Historically, section 205 rate review has been the primary mechanism by which the Commission disallowed as imprudent or unjust and unreasonable the costs incurred by a franchised public utility in purchasing power or non-power goods and services from a non-utility or power sales affiliate when the utility could have purchased such power or non-power goods and services from a non-affiliated entity. However, as discussed above, the Commission's policy over the years has been to develop prophylactic affiliate cross-subsidy restrictions in the context of blanket market-based rate authorizations under FPA section 205 and merger proceedings under section 203. We believe prophylactic restrictions setting forth the standards under which affiliates may transact are superior to relying exclusively on after-the-fact rate reviews of costs already incurred. Further, it would be virtually impossible for the Commission to individually pre-approve every power and non-power goods and services transaction given the volume of transactions that occur on a daily basis. The affiliate restrictions the Commission has previously imposed in individual cases involving market-based rate applicants and merger applicants allow public utilities to know up-front the standards under which they may transact with affiliates; and, if they do not follow those standards, they are at risk for full refunds plus interest, or other remedial action.

15. Accordingly, to provide better assurance against inappropriate cross-subsidization, we believe it is appropriate to continue imposing affiliate restrictions, to expand the coverage of those restrictions, and to codify them in our regulations. As noted above, there is a gap in coverage of the restrictions as they are currently imposed. Specifically, the restrictions imposed on section 205 market-based rate applicants do not cover non-power goods and services transactions between a franchised public utility and non-utilities; they cover only transactions between power sales affiliates and are imposed only on the market-based rate applicants. Additionally, while the restrictions imposed on section 203 applicants cover transactions between a franchised public utility and market-regulated power sales affiliates as well as non-utility affiliates, they apply only to merger applicants; they do not apply to other section 203 applicants and do not apply to public utilities that do not require any section 203 authorization.[28] Finally, while the preamble to Order No. 667 discussed the Commission's pricing policy on affiliate non-power goods and services transactions, including pricing of non-power goods and services provided by centralized service companies, the pricing policy (which technically is a ratemaking policy rather than a PUHCA 2005 issue) was not codified in the regulations.

16. To address this gap in coverage, the uniform affiliate restrictions that the Commission proposes to implement would be applicable to all franchised public utilities with captive customers and their market-regulated and non-utility affiliates and would address both power and non-power goods and services transactions between the utility and its affiliates. Specifically, they would: (1) Require the Commission's approval of all power sales by a franchised utility with captive customers to a market-regulated power sales affiliate; (2) require a franchised public utility with captive customers to provide non-power goods and services to a market-regulated power sales affiliate or a non-utility affiliate at a price that is the higher of cost or market price; (3) prohibit a franchised public utility with captive customers from purchasing non-power goods or services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market price (with the exception of (4)); and (4) prohibit a franchised public utility with captive customers from receiving non-power services from a centralized service company at a price above cost. These restrictions will help the Commission meet the requirement of amended section 203(a)(4) that a transaction not result in the inappropriate cross-subsidization of a non-utility associate company and, moreover, help us assure just and reasonable rates and the protection of captive customers for all public utilities pursuant to sections 205 and 206 of the FPA, irrespective of whether they need approval of a section 203 transactions.

17. We note that there is overlap in the affiliate restrictions proposed herein and those that were recently adopted in the Market-Based Rate Final Rule. However, as discussed above, those restrictions apply only to market-based rate applicants and only to transactions between power sales affiliates. The restrictions herein are consistent with, and in some instances mirror, those imposed in the Market-Based Rate Final Rule. We believe any overlap is appropriate and necessary to ensure that all franchised public utilities with captive customers have the same restrictions imposed on them. We also note that we are proposing one additional restriction that is not covered in the Market-Based Rate Final Rule, but which has been imposed on section 203 merger applicants. That restriction would prohibit a centralized service company from providing non-power goods and services to a franchised public utility with captive customers at a price above cost. This implements the findings made in Order No. 667 and, by codifying it in the regulations along with the other affiliate restrictions, will eliminate any gaps in coverage and ensure uniformity in the restrictions being applied.

18. The Commission seeks comments on these proposed affiliate cross-subsidy restrictions. We also seek comment on whether the Commission should impose any after-the-fact reporting requirements on transactions covered by the restrictions and, if so, what they should be. In this regard, we note that the Commission already receives reporting of public utility affiliate power sales transactions through Electric Quarterly

[27] *Id.* P 66 (internal citations removed).

[28] *See supra* P 12.

Reports and we see no need to duplicate existing power sales reporting. However, we are particularly interested in: Whether any reporting requirements regarding affiliate non-power goods and services transactions should be imposed; whether such reporting, if it were to be required, should be on a yearly basis or within some other time frame, and what specific information should be reported; whether states already require such reporting; and the burdens that any reporting requirements would impose. Although the Commission has authority to review such transactions through auditing and in individual section 205 rate proceedings, we seek comment on the general usefulness of additional reporting requirements.

IV. Information Collection Statement

19. The Office of Management and Budget's (OMB) regulations require that OMB approve information collection requirements imposed by agency rules.[29] The Commission is proposing amendments to the Commission's regulations to codify restrictions on affiliate transactions between franchised public utilities with captive customers and their market-regulated power sales affiliates or non-utility affiliates. The Commission is not imposing an information collection requirement upon the public. However, the Commission will submit for informational purposes only a copy of this rulemaking to OMB.

V. Environmental Analysis

20. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[30] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[31] The proposed regulations are categorically excluded as they address rate filings submitted under sections 205 and 206 of the FPA.[32] Accordingly, no environmental assessment is necessary and none has been prepared in this NOPR.

VI. Regulatory Flexibility Act Certification

21. The Regulatory Flexibility Act of 1980 (RFA)[33] requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have significant economic impact on a substantial number of small entities.[34] Agencies are not required to make such an analysis if a rule would not have such an effect.

22. The proposed rule will be applicable to franchised public utilities with captive customers. Most such companies regulated by the Commission do not fall within the RFA's definition of small entity.[35] Therefore, the Commission certifies the proposed rule will not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis is required.

VII. Comment Procedures

23. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 30, 2007. Comments must refer to Docket No. RM07–15–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

24. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats, but requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

25. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

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

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

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

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

[29] 5 CFR 1320.

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

[31] 18 CFR 380.4.

[32] *See* 18 CFR 380.4(a)(15).

[33] 5 U.S.C. 601–12.

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

[35] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

2. Subpart I is added to read as follows:

Subpart I—Cross-Subsidization Restrictions on Affiliate Transactions

Sec.
35.43 Generally.
35.44 Protections against affiliate cross-subsidization.

Subpart I—Cross-Subsidization Restrictions on Affiliate Transactions

§ 35.43 Generally.

(a) For purposes of this subpart:

(1) *Captive customers* means any wholesale or retail electric energy customers served under cost-based regulation.

(2) *Franchised public utility* means a public utility with a franchised service obligation under state law.

(3) *Market-regulated power sales affiliate* means any power seller affiliate other than a franchised public utility, including a power marketer, exempt wholesale generator, qualifying facility or other power seller affiliate, whose power sales are regulated in whole or in part on a market-rate basis.

(4) *Non-utility affiliate* means any affiliate that is not in the power sales or transmission business.

(b) The provisions of this subpart apply to all franchised public utilities with captive customers.

§ 35.44 Protections against affiliate cross-subsidization.

(a) *Restriction on affiliate sales of electric energy.* No wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the Federal Power Act.

(b) *Non-power goods or services.* (1) Unless otherwise permitted by Commission rule or order, sales of any non-power goods or services by a franchised public utility with captive customers, including sales made to or through its affiliated exempt wholesale generators or qualifying facilities, to a market-regulated power sales affiliate or non-utility affiliate, must be at the higher of cost or market price.

(2) Unless otherwise permitted by Commission rule or order, and except as permitted by paragraph (b)(3) of this section, a franchised public utility with captive customers may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market.

(3) A franchised public utility with captive customers may not purchase or receive non-power goods and services from a centralized service company at a price above cost.

[FR Doc. E7–14618 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, and 416

[Docket No. SSA 2007–0053]

RIN 0960–AG54

Compassionate Allowances

AGENCY: Social Security Administration (SSA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Under titles II and XVI of the Social Security Act (the Act), we pay benefits to individuals who meet our rules for entitlement and have medically determinable physical or mental impairments that are severe enough to meet the definition of disability in the Act. The rules for determining disability can be very complicated, but some individuals have such serious medical conditions that their conditions obviously meet our disability standards. To address these individuals' needs, we strive to provide not only responsive, but also compassionate, public service that ensures the most severely disabled in our society who meet the Act's requirements are awarded benefits quickly. To that end, we are investigating methods of making ''compassionate allowances'' by quickly identifying individuals with obvious disabilities. The purpose of this notice is to give you an opportunity to send us comments about what standards we should use for compassionate allowances, methods we might use to identify compassionate allowances, and suggestions for how to implement those standards and methods.

DATES: To be sure that your comments are considered, we must receive them by October 1, 2007.

ADDRESSES: You may give us your comments by: Internet through the Federal eRulemaking Portal at *http://www.regulations.gov;* e-mail to regulations@ssa.gov; telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 960 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on the Federal eRulemaking Portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: James Julian, Director, Office of Compassionate Allowances and Listings Improvements, Social Security Administration, 4470 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4015. 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 Web 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.*

Sequential Evaluation Process for Determining Disability

We use a five-step ''sequential evaluation process'' to decide whether an individual is disabled, but will stop at any point in the process at which we are able to make a disability determination. At step one, we determine whether an individual is currently engaged in substantial gainful activity. If not, we then move to step two and determine whether the individual has a ''severe'' impairment or combination of impairments significantly limiting the ability to perform basic work activities. At step three, we compare the individual's impairment(s) to those in the Listing of Impairments in appendix 1 of subpart P of part 404 of our regulations (listing). If the impairment does not meet or equal in severity a listing, at step four, we assess the individual's residual functional capacity to determine if the individual can do any past relevant work. Finally, at step five, we determine whether other work exists in significant numbers that such an individual can perform, considering the individual's residual functional capacity, age, education, and work experience. We use different sequential evaluation processes for children and for individuals already receiving benefits when we determine whether they are still disabled. See §§ 404.1594, 416.924, 416.994, and 416.994a of our regulations.

Current Examples of Compassionate Allowances

In making disability determinations, we already apply screening methods that identify and assist some of the most obviously disabled individuals. Some of our current screening methods include:

1. *Presumptive Disability/Presumptive Blindness.* Under the Act, an individual, including a child, applying for supplemental security income (SSI) based on disability or blindness, may receive up to 6 months of payments before we make a formal determination of disability or blindness if we determine that he or she is presumptively disabled or blind (PD/PB) and meets all other eligibility requirements. Generally, our field offices are authorized to make a PD/PB finding only for certain impairments that are readily observable or that can be easily confirmed; however, the State agencies that make initial disability determinations for us may make a PD/PB finding in any case where there is a strong likelihood that the claim will be allowed on formal determination.

2. *Terminal Illness.* We expedite the determinations of all disability cases in which there is an indication of a terminal illness (TERI). We may identify a claim as a TERI case when an individual alleges a terminal illness, when there is an allegation or diagnosis of AIDS, when an individual is receiving hospice care, or when medical records indicate that an individual has an impairment that is untreatable.

3. *Quick Disability Determinations (QDD).* Through the QDD process, we screen claims for special assignment within the State agencies so that they may allow the claims quickly, often within less than 10 days. We use a complex computer screening tool at the time an individual files his or her application for disability benefits to identify some cases that are likely to qualify with evidence we can obtain quickly. The screening tool searches the application and other documents for key words in identifying a claim as a likely QDD.

4. *The Listing of Impairments.* As described above, at the third step of the ''sequential evaluation process'' that we use for determining disability, we consider whether an individual's impairment meets or medically equals the criteria of a listing. When an individual's impairment meets or medically equals the criteria of any listed impairment, we find the individual disabled without considering residual functional capacity, age, education, or work experience.

Examples of some listing-level impairments that qualify for favorable determinations with minimal medical evidence establishing the diagnosis include:

- Hemipelvectomy (sections 1.05D and 101.05D),
- Non-mosaic Down syndrome (sections 10.06 and 110.06),
- Catastrophic congenital anomalies, such as anencephaly and cri du chat (deletion 5p) syndrome (section 110.08),
- Amyotrophic lateral sclerosis (section 11.10),
- Acute leukemia (sections 13.06A and 113.06A),
- Small-cell carcinoma of a lung (section 13.14B),
- Carcinoma (except islet cell carcinoma) of the pancreas (section 13.20A), and
- Major organ transplants, such as heart, liver, or lungs (various sections).

There are also some impairments that qualify for favorable determinations under a listing based solely on objective medical evidence but with criteria for clinical or laboratory findings demonstrating the severity of the impairment. However, this evidence is also generally minimal. For example:

- Impairment of visual acuity (statutory blindness) with remaining vision in the better eye after best correction of 20/200 or less (section 2.02 and 102.02A),
- Cystic fibrosis with specified levels of forced expiratory volume (FEV1) (sections 3.04A and 103.04A),
- Any symptomatic congenital heart disease with cyanosis at rest and a specified hematocrit or arterial oxygen level (sections 4.06A and 104.06A),
- Any chronic renal (kidney) disease requiring chronic hemodialysis or peritoneal dialysis (sections 6.02A and 106.02A), and
- Many inoperable cancers and cancers with distant metastases (various provisions in sections 14.00 and 114.00).

Examples of Other Compassionate Allowances That We Are Considering

In addition to these methods of identifying compassionate allowances, we are considering the creation of an extensive list of impairments that we can allow quickly with minimal objective medical evidence that is based on clinical signs or laboratory findings or a combination of both. We believe that we could use certain listed impairments, such as those described above, as a starting point for a much longer list of impairments that could be allowed based on established diagnoses alone (supported by objective medical evidence) or based on diagnoses that have reached certain points in their progression that would be considered disabling. We would not limit, however, the compilation of conditions to those already covered by our listing. We would incorporate any conditions that should be allowed quickly with minimal, but sufficient, objective medical evidence. As such, the list of qualifying conditions would be specific and extensive.

Additionally, although we already have some policies and procedures for identifying the most obviously disabled individuals quickly, we are investigating methods for identifying compassionate allowances by perhaps starting with a specific allegation or through the use of a computer system that is able to search key words included in an electronic disability folder. Because the health care industry is capturing more and more clinical information in structured electronic formats using standardized codesets, we also are interested in your ideas about whether and how we can use that information for identifying compassionate allowances.

Many, although by no means all, of the individuals who would qualify for a compassionate allowance will have impairments that are expected to result in death and need immediate decisions on their claims. It is our hope that compassionate allowances will not only bring faster benefits to individuals in need, but that they will also help to quicken the processing time of those claims that must be processed through our existing procedures.

Request for Comments

Please provide us with any comments and suggestions you have about new standards and identification methods for compassionate allowances. The following questions raise issues that you may wish to consider. Feel free to raise other questions, thoughts, or comments.

- Do you have any ideas for how we can better identify impairments that can quickly be allowed without going through the entire disability determination process?
- Do you have any ideas for different standards we should be using in our effort to provide compassionate assistance to individuals with the most serious impairments?
- What is the minimum amount of medical evidence we should accept to support a compassionate allowance finding?
- What procedures should we follow in our Social Security field offices, the State agencies, and the Office of Disability Adjudication and Review to identify compassionate allowances?

• How can we best take advantage of clinical information captured electronically using standardized codes to specify the nature of the impairment?

• What do you think about our idea of a more extensive and specific list of impairments based on established diagnoses?

• What should the *general* criteria for inclusion on such a list be?

• What *specific* impairment(s) or kinds of impairments do you believe we should include on such a list, and what specific criteria for inclusion should we use for those impairments (including specific standardized codes if appropriate)?

• How should the rules or procedures for such a list be structured; for example, should we include a list of all of the diagnoses in the regulations, or should we have the list on SSA's Internet site or somewhere else?

• What sources should we consult to create such a list; for example, our Listing of Impairments, the latest edition of the World Health Organization's *International Classification of Diseases* (ICD), and the latest edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM)? Are there individuals and organizations we should also be consulting?

• How should we keep the list up to date?

• We intend to undertake special outreach efforts in order to encourage public discussion regarding potential methods and standards for identifying compassionate allowances, including periodic quarterly hearings. What methods should we use for community outreach, and where should the outreach take place?

We will not respond directly to comments you send us because of this notice. After we consider your comments in response to this notice, we will decide whether and how to revise the rules we use to determine disability. If we propose specific revisions to the rules, we will publish a notice of proposed rulemaking (NPRM) in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose when we publish the NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

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 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance, Public assistance programs, Reporting and recordkeeping requirements, Social Security, Supplemental Security Income (SSI).

20 CFR Part 416

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

Dated: July 24, 2007.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E7–14686 Filed 7–30–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118719–07]

RIN 1545–BG65

Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes changes to the regulations concerning the diversification requirements of section 817(h) of the Internal Revenue Code (Code). The proposed changes would expand the list of holders whose beneficial interests in an investment company, partnership, or trust do not prevent a segregated asset account from looking through to the assets of the investment company, partnership, or trust, to satisfy the requirements of section 817(h). The proposed regulations also would remove the sentence in § 1.817–5(a)(2) that provides that the payment required to remedy an inadvertent diversification failure must be based on the tax that would have been owed by the policyholders if they were treated as receiving the income on the contract. These proposed regulations would affect insurance companies that issue variable contracts and would affect policyholders who purchase such contracts.

DATES: Written or electronic comments and requests for a public hearing must be received by October 29, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–118719–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–118719–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–118719–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, James Polfer, at (202) 622–3970 (not a toll-free number). Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, e-mail *Richard A. Hurst@irscousel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 817(d) defines a variable contract for purposes of part I of subchapter L of the Code (sections 801–818). For a contract to be a variable contract, it must provide for the allocation of all or a part of the amounts received under the contract to an account that, pursuant to state law or regulation, is segregated from the general asset accounts of the issuing insurance company. In addition, for a life insurance contract to be a variable contract, it must qualify as a life insurance contract for Federal income tax purposes, and the amount of the death benefits (or the period of coverage) must be adjusted on the basis of the investment return and the market value of the segregated asset account; for an annuity contract to be a variable contract, it must provide for the payment of annuities, and the amounts paid in, or the amount paid out, must reflect the investment return and the market value of the segregated asset account; for a contract that provides funding of insurance on retired lives to be a variable contract, the amounts paid in, or the amounts paid out, must reflect the investment return and the market value of the segregated asset account.

Section 817(h)(1) provides that a variable contract that is based on a segregated asset account is not treated as an annuity, endowment, or life insurance contract unless the segregated asset account is adequately diversified in accordance with regulations prescribed by the Secretary. If a

segregated asset account is not adequately diversified for a calendar quarter, then the contracts supported by that segregated asset account are not treated as annuity, endowment, or life insurance contracts for that period and subsequent periods, even if the segregated asset account is adequately diversified in those subsequent periods. Under § 1.817–5(a), if a segregated asset account is not adequately diversified, income earned by that segregated asset account is treated as ordinary income received or accrued by the policyholders. Section 1.817–5(a)(2) provides conditions an issuer of a variable contract must satisfy in order to correct an inadvertent failure to diversify. Rev. Proc. 92–25, 1992–1 CB 741, see § 601.601(d)(2) of this chapter, sets forth in more detail the procedure by which an issuer may request the relief described in § 1.817–5(a)(2).

Congress enacted the diversification requirements of section 817(h) to ''discourage the use of tax-preferred variable annuity and variable life insurance primarily as investment vehicles.'' H.R. Conf. Rep. No. 98–861, at 1055 (1984). In section 817(h)(1), Congress granted the Secretary broad regulatory authority to develop rules to carry out this intent. Congress directed that these standards be imposed because ''by limiting a customer's ability to select specific investments underlying a variable contract, [adequate diversification] will help ensure that a customer's primary motivation in purchasing the contract is more likely to be the traditional economic protections provided by annuities and life insurance.'' S. Prt. 98–169, Vol. I at 546 (1984). A primary directive from Congress to Treasury in enacting the standards was to ''deny annuity or life insurance treatment for investments that are publicly available to investors.'' H.R. Conf. Rep. No. 98–861, at 1055 (1984).

Section 817(h)(4) provides a look-through rule under which taxpayers do not treat the interest in a regulated investment company (RIC) or trust as a single asset of the segregated asset account but rather apply the diversification tests by taking into account the assets of the RIC or trust. Section 817(h) further provides that the look-through rule applies only if all of the beneficial interests in a RIC or trust are held by one or more insurance companies (or affiliated companies) in their general account or segregated asset accounts, or by fund managers (or affiliated companies) in connection with the creation or management of the RIC or trust.

Under § 1.817–5(f)(1), if look-through treatment is available, a beneficial interest in a RIC, real estate investment trust, partnership, or trust that is treated under sections 671 through 679 as owned by the grantor or another person (''investment company, partnership or trust'') is not treated as a single investment of a segregated asset account for purposes of testing diversification. Instead, a pro rata portion of each asset of the investment company, partnership, or trust is treated as an asset of the segregated asset account. Section 1.817–5(f)(2)(i) provides that the look-through rule applies to any investment company, partnership, or trust if (1) All the beneficial interests in the investment company, partnership, or trust are held by one or more segregated asset accounts of one or more insurance companies; and (2) public access to the investment company, partnership, or trust is available exclusively through the purchase of a variable contract (except as otherwise permitted in § 1.817–5(f)(3)).

Under § 1.817–5(f)(3), look-through treatment is not prevented by reason of beneficial interests in an investment company, partnership, or trust that are:

(1) Held by the general account of a life insurance company or a corporation related to a life insurance company, but only if the return on such interests is computed in the same manner as the return on an interest held by a segregated asset account is computed, there is no intent to sell such interests to the public, and a segregated asset account of such life insurance company also holds or will hold a beneficial interest in the investment company, partnership, or trust;

(2) Held by the manager, or a corporation related to the manager, of the investment company, partnership or trust, but only if the holding of the interests is in connection with the creation or management of the investment company, partnership or trust, the return on such interest is computed in the same manner as the return on an interest held by a segregated asset account is computed, and there is no intent to sell such interests to the public;

(3) Held by the trustee of a qualified pension or retirement plan; or

(4) Held by the public, or treated as owned by the policyholders pursuant to Rev. Rul. 81–225, see § 601.601(d)(2) of this chapter, but only if (A) the investment company, partnership or trust was closed to the public in accordance with Rev. Rul. 82–55, 1982–1 CB 12, see § 601.601(d)(2) of this chapter, or (B) all the assets of the segregated asset account are attributable to premium payments made by policyholders before September 26, 1981, to premium payments made in connection with a qualified pension or retirement plan, or to any combination of such premium payments.

Explanation of Provisions

This document contains proposed amendments to 26 CFR part 1 under section 817(h).

The amendments would remove the sentence from § 1.817–5(a)(2) which provides that the amount required to be paid to remedy an inadvertent failure to diversify must be based on the tax that would have been owed by the policyholders if they were treated as receiving the income on the contract for the period or periods of nondiversification.

The amendments also would expand the list of permitted investors in § 1.817–5(f)(3) to include (i) Qualified tuition programs as defined in section 529, (ii) trustees of foreign pension plans established and maintained outside the United States, primarily for the benefit of individuals, substantially all of whom are nonresident aliens, and (iii) accounts that, pursuant to Puerto Rican law or regulation, are segregated from the general asset accounts of the life insurance companies that own the accounts, provided the requirements of section 817(d) and (h) are satisfied (without regard to the requirement the accounts be segregated pursuant to ''State'' law or regulation).

Reasons for Change

1. Proposed Amendment to § 1.817–5(a)(2) (Remedy for Inadvertent Nondiversification

The proposed regulations would remove the sentence in § 1.817–5(a)(2) that provides that the payment required to remedy an inadvertent diversification failure must be based on the tax that would have been owed by the policyholders if they were treated as receiving the income on the contract. In Notice 2007–15, 2007–7 I.R.B. 503 (February 12, 2007), the IRS requested comments on how various correction procedures, including those described in § 1.817–5(a)(2) and Rev. Proc. 92–25, may be improved. Section 5.03(e) and (f) of the Notice specifically requested comments on the computation of the amounts required to be paid under these correction procedures. Moreover, in the past, the provision in § 1.817–5(a)(2) of the amount required to be paid has caused confusion about the scope of the IRS's authority to provide for amounts that depart from the plain language of the regulation. See, for example, Notice 2000–9, 2000–1 C.B. 449 (reduced amount applied for a limited period of

time in the case of failures due to investments in U.S. Treasury securities). See § 601.601(d)(2) of this chapter.

Even with the proposed modification of § 1.817–5(a)(2), the amount required to be paid to remedy an inadvertent failure to diversify remains the amount set forth in Rev. Proc. 92–25, section 4.02. The modification of § 1.817–5(a)(2) will preserve flexibility, however, should the IRS choose to modify this amount by publication in the Internal Revenue Bulletin in response to comments on Notice 2007–15.

2. Expansion of List of Permitted Investors Under § 1.817–5(f)(3)

On July 30, 2003, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–163974–02, 2003–2 CB 595) under section 817 in the **Federal Register** (68 FR 44689), proposing to remove a specific rule that applied to nonregistered partnerships for purposes of testing diversification. Written comments were received both on the proposed regulations and on the need for further guidance under section 817 more generally. Comments on the proposed regulations were taken into account in final regulations (T.D. 9185, 2005–1 CB 752) that were published March 1, 2005 in the **Federal Register** (70 FR 9869). Comments on section 817 more generally covered a broad range of issues. Two of those issues have since been addressed by revenue ruling. See Rev. Rul. 2005–7, 2005–1 CB 464 (concerning application of the look-through rule in the case of tiered regulated investment companies); Rev. Rul. 2007–7, 2007–7 I.R.B. 468 (February 12, 2007) (concluding that an interest held by a permitted investor is not treated as an interest held by the general public for purposes of Rev. Rul. 2003–92, 2003–2 CB 350).

These proposed regulations would expand the list of permitted investors in § 1.817–5(f)(3) to include two categories of holders that were the subject of comments in 2003: (i) Qualified tuition programs as defined in section 529, and (ii) trustees of pension or retirement plans established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens.

Section 529 provides for the exemption from Federal income tax of qualified tuition programs. The term ''qualified tuition program'' means a program established and maintained by a state or agency or instrumentality thereof or by one or more eligible educational institutions (A) Under which a person (i) May purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or (ii) in the case of a program established and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, and (B) which meets the other requirements of section 529(b).

The Treasury Department and the IRS agree with the 2003 commentators that permitting qualified tuition programs and certain trustees of foreign pension plans to own a beneficial interest in an investment company, partnership, or trust that is also owned by one or more segregated asset accounts would be consistent with the purpose and operation of section 817(h). In addition, neither qualified tuition programs nor the foreign pension plans that are described in the proposed regulations present the possibility of investment by the general public, as that term is used in Rev. Rul. 81–225, 1981–2 CB 12, and Rev. Rul. 2003–92. See also Rev. Rul. 2007–7. The inclusion of qualified tuition programs in the list of permitted investors in § 1.817–5(f)(3) does not relieve those programs of the need to satisfy all requirements of section 529 and the regulations under that section. In particular, the inclusion of such programs does not imply that an investment in a single investment company, partnership, or trust satisfying the minimum diversification requirements of § 1.817–5(b) would necessarily be treated as a permitted investment under section 529, whether as a ''broad-based investment strategy'' within the meaning of Notice 2001–55, 2001–2 C.B. 299 or otherwise. The Treasury Department and the IRS will continue to evaluate other comments received in this area for future guidance by publication in the Internal Revenue Bulletin.

Finally, the proposed regulations would expand the list of permitted investors in § 1.817–5(f)(3) to include investment by an account which, pursuant to Puerto Rican law or regulation, is segregated from the general asset accounts of the life insurance company that owns the account, provided the requirements of section 817(d) and (h) are satisfied (without regard to the requirement that the account be segregated pursuant to ''State'' law or regulation). The Treasury Department and the IRS have received a number of requests for guidance interpreting the term ''variable contract'' to include a contract issued by a Puerto Rican company, based on accounts that are segregated under Puerto Rican law or regulation. One reason for these requests is to ensure that a beneficial interest held by a Puerto Rican company in an investment company, partnership, or trust does not prevent look-through treatment for the other holders of an interest in the same investment, company, partnership, or trust under § 1.817–5(f)(2). The Treasury Department and the IRS believe that expanding the list of permitted investors as proposed would address this issue without implicating the interpretive question of what constitutes a ''State'' within the meaning of sections 817(d) and 7701(a)(10).

Proposed Effective Date

The Treasury Department and the IRS intend these regulations to be effective on the date the final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. In addition to comments on the proposed regulations more generally, the Treasury Department and the IRS specifically request comments on (i) the clarity of the proposed regulations and how they can be made easier to understand; and (ii) whether rules similar to those proposed to apply to accounts that are segregated pursuant to Puerto Rican law or regulation should apply to accounts that are segregated pursuant to the laws or regulations of other territories.

All comments will be available for public inspection and copying. A public hearing may be scheduled if requested

in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is James Polfer, Office of the Associate Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.817–5 also issued under 26 U.S.C. 817(h). * * *

Par. 2. Section 1.817–5 is amended as follows:

1. The last sentence of paragraph (a)(2)(iii) is removed.

2. Paragraph (f)(3)(iii) is revised.

3. Paragraph (f)(3)(iv) is redesignated as paragraph (f)(3)(vii).

4. New paragraphs (f)(3)(iv) through (vi) are added.

The revisions and additions read as follows:

§ 1.817–5 Diversification requirements for variable annuity, endowment, and life insurance contracts.

* * * * *

(f) * * *

(3) * * *

(iii) Held by the trustee of a qualified pension or retirement plan;

(iv) Held by a qualified tuition program as defined in section 529;

(v) Held by the trustee of a pension plan established and maintained outside of the United States, as defined in section 7701(a)(9), primarily for the benefit of individuals substantially all of whom are nonresident aliens, as defined in section 7701(b)(1)(B);

(vi) Held by an account which, pursuant to Puerto Rican law or regulation, is segregated from the general asset accounts of the life insurance company that owns the account, provided the requirements of section 817(d) and (h) are satisfied. Solely for purposes of this paragraph (f)(3)(vi), the requirement under section 817(d)(1) that the account be segregated pursuant to State law or regulation shall be disregarded; or

* * * * *

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–14620 Filed 7–30–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

Naval Restricted Area, Port Townsend, Indian Island, Walan Point, WA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations for the restricted area established in the waters of Port Townsend Bay off Puget Sound adjacent to Naval Magazine Indian Island, Jefferson County, Washington. The amendments will enable the affected units of the United States military to enhance safety and security around an active military establishment. The regulations are necessary to safeguard military vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. The regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of military use of the area.

DATES: Written comments must be submitted on or before August 30, 2007.

ADDRESSES: You may submit comments, identified by docket number COE–2007–0020, by any of the following methods:

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

E-mail: david.b.olson@usace.army.mil. Include the docket number COE–2007–0020 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2007–0020. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that 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* Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

Consideration will be given to all comments received within 30 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922; Ms. Michelle Walker, Regulatory Branch Chief, U.S. Army Corps of Engineers, Seattle District, Northwest Division, at 206–764–6915; or Ms. Koko Ekendiz of the Regulatory Branch, U.S. Army Corps

of Engineers, Seattle District, at 206–764–6878.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is proposing to amend the restricted area regulations in 33 CFR part 334 by modifying the area at § 334.1270. The proposed modification to this existing restricted area is described below. This request has been made to increase safety and security of naval operations at Naval Magazine, Indian Island.

In addition to the publication of the proposed rule, the Seattle District Engineer is concurrently soliciting public comment on the proposed rule by distribution of a public notice to all known interested parties.

Procedural Requirements

a. *Review Under Executive Order 12866.* This proposed rule is issued with respect to a military function of the United States and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the proposed modification to the existing restricted area would have practically no economic impact on the public, and would create no anticipated navigational hazard or interference with existing waterway traffic.

c. *Review Under the National Environmental Policy Act.* The Corps has concluded, based on the minor nature of the proposed rule, that the addition of and amendment to a restricted area, if adopted, will not be a major federal action having a significant impact on the quality of the human environment, and preparation of an environmental impact statement is not required. An environmental assessment will be prepared after all comments have been received and considered. After it is prepared, the environmental assessment may be reviewed at the district office listed at the end of the **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* The proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend a portion of 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Amend § 334.1270 by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

§ 334.1270 Port Townsend, Indian Island, Walan Point; naval restricted area.

(a) *The area.* The waters of Port Townsend Bay bounded by a line commencing on the north shore of Walan Point at latitude 48°04′42″ North, longitude 122°44′30″ West (Point A); thence to latitude 48°04″50″ North, longitude 122°44′38″ West (Point B); thence to latitude 48°04′52″ North, latitude 122°44′57″ West (Point C); thence to latitude 48°04′44″ North, longitude 122°45′12″ West (Point D); thence to latitude 48°04′26″ North, longitude 122°45′21″ West (Point E); thence to latitude 48°04′10″ North, longitude 122°45′15″ West (Point F); thence to latitude 48°04′07″ North, longitude 122°44′49″ West (Point G); thence to a point on the Walan Point shoreline at latitude 48°04′16″ North, longitude 122°44′37″ West (Point H).

(b) *The regulations.* This area is for the exclusive use of the U.S. Navy. No person, vessel, craft, article or thing shall enter the area without permission from the enforcing agency. The restriction shall apply during periods when ship loading and/or pier operations preclude safe entry. The periods will be identified by flying a red flag from the ship and/or pier.

(c) *Enforcement.* The regulation in this section shall be enforced by Commander, Navy Region Northwest and such agencies and persons as he/she shall designate.

Dated: July 25, 2007.

Mark Sudol,

Acting Chief, Operations, Directorate of Civil Works.

[FR Doc. E7–14650 Filed 7–30–07; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

Naval Restricted Area, Manchester Fuel Depot, WA; and Naval Restricted Areas, Sinclair Inlet, WA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations to establish a restricted area in the waters of Puget Sound adjacent to the Manchester Fuel Depot near Manchester, Kitsap County, Washington. The Corps is also proposing to amend the existing regulations that established the restricted areas in the waters of Sinclair Inlet, Puget Sound adjacent to Naval Base Kitsap Bremerton, Kitsap County, Washington. The proposed amendments will enable the affected units of the United States military to enhance safety and security around active military establishments. The regulations are necessary to safeguard military vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. The regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of military use of the area.

DATES: Written comments must be submitted on or before August 30, 2007.

ADDRESSES: You may submit comments, identified by docket number COE–2007–0019, by any of the following methods:

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

E-mail: david.b.olson@usace.army.mil. Include the docket number COE–2007–0019 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2007–0019. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided,

unless the commenter indicates that 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* Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov*. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

Consideration will be given to all comments received within 30 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, at 202–761–4922; Ms. Michelle Walker, Regulatory Branch Chief, U.S. Army Corps of Engineers, Seattle District, Northwest Division, at 206–764–6915; or Ms. Koko Ekendiz of the Regulatory Branch, U.S. Army Corps of Engineers, Seattle District, at 206–764–6878.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is proposing to add a new regulation at 33 CFR 334.1244 to establish a restricted area that would surround the Manchester Fuel Depot pier during times of active fueling. The restricted area would establish a no-entry zone around the fueling pier during active fueling. The U.S. Navy would alert the public by utilizing flashing lights on the pier.

Under the same authorities noted above, the Corps is also proposing to amend the restricted area regulations in 33 CFR part 334 by modifying the areas at § 334.1240. The proposed modifications to the existing restricted areas are described below. This request has been made to clarify that Washington State Ferries on established routes are exempt from the restrictions for Area 1, disestablish a portion of Area 2 by the Washington State Ferry terminal, and enlarge a portion of Area 2 near Mooring E.

In addition to the publication of these proposed rules, the Seattle District Engineer is concurrently soliciting public comment on the proposed rules by distribution of a public notice to all known interested parties.

Procedural Requirements

a. *Review Under Executive Order 12866.* These proposed rules were issued with respect to a military function of the United States and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act. These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the addition of, and proposed modification to, the existing restricted areas would have practically no economic impact on the public, and would create no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, it is certified that this proposal if adopted, will not have a significant economic impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* The Corps has concluded, based on the minor nature of the proposed rules, that the establishment of a new restricted area at Manchester and amendments to the restricted areas in Sinclair Inlet, if adopted, would not be a major federal action having a significant impact on the quality of the human environment, and preparation of an environmental impact statement is not required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* These proposed rules do not impose an enforceable duty among the private sector and, therefore, are not a Federal private sector mandate and are not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4). We have also found under Section 203 of the Act that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Amend § 334.1240 by revising paragraphs (a) and (b) to read as follows:

§ 334.1240 Sinclair Inlet; naval restricted areas.

(a) *Sinclair Inlet: naval restricted areas*—(1) *Area No. 1.* All the waters of Sinclair Inlet westerly of a line drawn from the Bremerton Ferry Landing at latitude 47°33′48″ North, longitude 122°37′23″ West on the north shore of Sinclair Inlet; and latitude 47°32′52″ North, longitude 122°36′58″ West, on the south shore of Sinclair Inlet.

(2) *Area No. 2.* That area of Sinclair Inlet to the north and west of an area bounded by a line commencing at latitude 47°33′40″ North, longitude 122°37′32″ West (Point A); thence south to latitude 47°33′36″ North, longitude 122°37′30″ West (Point B); thence southwest to latitude 47°33′23″ North, longitude 122°37′45″ West (Point C); thence southwest to latitude 47°33′19″ North, longitude 122°38′12″ West (Point D); thence southwest to latitude 47°33′10″ North, longitude 122°38′19″ West (Point E); thence southwest to latitude 47°33′07″ North, longitude 122°38′29″ West (Point F); thence southwest to latitude 47°33′04″ North, longitude 122°39′07″ West (Point G); thence west to the north shore of

Sinclair Inlet at latitude 47°33′04.11″ North, longitude 122°39′41.92″ West (Point H).

(3) *The regulations*—(i) *Area No. 1.* No vessel of more than, or equal to, 100 gross tons shall enter the area or navigate therein without permission from the enforcing agency, except Washington State Ferries on established routes.

(ii) *Area No. 2.* This area is for the exclusive use of the United States Navy. No person, vessel, craft, article or thing, except those under supervision of military or naval authority shall enter this area without permission from the enforcing agency.

(b) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region Northwest, and such agencies and persons as he/she shall designate.

3. Add § 334.1244 to read as follows:

§ 334.1244 Puget Sound, Manchester Fuel Depot, Manchester, Washington; Naval Restricted Area.

(a) *The area.* The waters of Puget Sound surrounding the Manchester Fuel Depot Point A, a point along the northern shoreline of the Manchester Fuel Depot at latitude 47°33′55″ North, longitude 122°31′55″ West; thence to latitude 47°33′37″ North, longitude 122°31′50″ West (Point B); thence to latitude 47°33′32″ North, longitude 122°32′06″ West (Point C); thence to latitude 47°33′45.9″ North, longitude 122°32′16.04″ West (Point D), a point in Puget Sound on the southern shoreline of the Manchester Fuel Depot.

(b) *The regulations.* No person, vessel, craft, article or thing except those under the supervision of the military or naval authority shall enter the area without the permission of the enforcing agency or his/her designees. The restriction shall apply during periods when a ship is loading and/or pier operations preclude safe entry. The restricted periods will be identified by the use of quick-flashing beacon lights, which are mounted on poles at the end of the main fuel pier on the north side of Orchard Point at the entrance of Rich Passage. Entry into the area is prohibited when the quick-flashing beacons are in a flashing mode.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region Northwest, and such agencies and persons as he/she shall designate.

Dated: July 25, 2007.

Mark Sudol,

Acting Chief, Operations, Directorate of Civil Works.

[FR Doc. E7–14652 Filed 7–30–07; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–AZ–0295; FRL–8443–6]

Approval and Promulgation of Implementation Plans; States of Arizona and Nevada; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plans submitted by the States of Arizona and Nevada that address interstate transport with respect to the 8-hour ozone and fine particulate matter national ambient air quality standards. In so doing, EPA has determined that the plans submitted by Arizona and Nevada and approved herein satisfy requirements under Clean Air Act section 110(a)(2)(D)(i) for each State to submit a plan containing adequate provisions to prohibit interstate transport with respect to the standards for 8-hour ozone and fine particulate matter. EPA is proposing this action pursuant to those provisions of the Clean Air Act that obligate the Agency to take action on submittals of state implementation plans. The effect of this proposal would be to approve the Arizona and Nevada state implementation plans addressing interstate transport with respect to the 8-hour ozone and fine particulate standards and to eliminate obligations on the Agency to promulgate Federal Implementation Plans for these States addressing this same requirement.

DATES: Any comments on this proposal must arrive by August 30, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2007–AZ–0295 by one of the following methods:

- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: tax.wienke@epa.gov.*
- *Fax:* (415) 947–3579 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region IX, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.
- *Hand Delivery:* Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region IX, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2007–AZ–0295. 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 form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Air Planning, Environmental Protection Agency (EPA), Region IX, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER**

INFORMATION CONTACT section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For Arizona issues, contact Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region IX, (520) 622–1622, e-mail: *tax.wienke@epa.gov.* For Nevada issues, contact Karina O'Connor, Office of Air Planning, U.S. Environmental Protection Agency, Region IX, (775) 833–1276, *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

EPA is proposing to approve state implementation plans submitted by the States of Arizona and Nevada that address interstate transport with respect to the 8-hour ozone and fine particulate matter national ambient air quality standards. In so doing, EPA has determined that the plans submitted by Arizona and Nevada and approved herein satisfy requirements under Clean Air Act section 110(a)(2)(D)(i) for each State to submit a plan containing adequate provisions to prohibit interstate transport with respect to the standards for 8-hour ozone and fine particulate matter. The effect of this proposal would be to approve the Arizona and Nevada state implementation plans addressing interstate transport with respect to the 8-hour ozone and fine particulate standards and to eliminate obligations on the Agency to promulgate Federal Implementation Plans for these States addressing this same requirement.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action to take these actions because we believe that they are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive comments, no further activity is planned. For further information on this proposal and the rationale underlying our proposed action, please see the direct final rule.

Dated: June 11, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–14475 Filed 7–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2007–0173; FRL–8448–1]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Central Indiana To Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 26, 2007, the Indiana Department of Environmental Management (IDEM) submitted a request for EPA approval of a redesignation of Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby Counties (the Central Indiana Area) to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). IDEM also requested EPA approval of an ozone maintenance plan for this area as a revision of the Indiana State Implementation Plan (SIP). EPA proposes to determine that the Central Indiana Area has attained the 8-hour ozone NAAQS. EPA proposes to approve Indiana's request to redesignate the Central Indiana Area to attainment of the 8-hour ozone NAAQS and to approve the State's ozone maintenance plan for this area as a revision of the Indiana SIP. Finally, EPA proposes to approve Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the Central Indiana Area, as supported by the ozone maintenance plan for this area, for purposes of transportation conformity determinations.

DATES: Comments must be received on or before August 30, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0173, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of operation are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–0173. 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 www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hardcopy. Publicly available docket materials are available either electronically in www.regulations.gov or in hardcopy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago,

Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. It is recommended that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this proposed rule whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. This supplementary information section is arranged as follows:

I. What Action is EPA Proposing to Take?
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VI. What Are the Effects of EPA's Proposed Actions?
VII. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing to Take?

We are proposing to take several related actions for the Central Indiana Area (Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby Counties). First, we are proposing to determine that this area has attained the 8-hour ozone NAAQS. Second, we are proposing to approve Indiana's ozone maintenance plan for this area as a revision of the Indiana SIP. The maintenance plan is designed to keep this area in attainment of the 8-hour ozone NAAQS through 2020. Third, as supported by and consistent with the ozone maintenance plan, we are proposing to approve the 2006 and 2020 VOC and NO_X MVEBs (54.32 tons VOC/day and 106.19 tons NO_X/day in 2006, and 29.52 tons VOC/day and 35.69 tons NO_X/day in 2020) for the nine counties in the Central Indiana Area for transportation conformity determination purposes. Finally, we are proposing to approve the redesignation of the Central Indiana Area to attainment of the 8-hour ozone NAAQS.

II. What Is the Background for This Action?

A. General Background Information

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS (62 FR 38856) of 0.08 parts per million parts of air (0.08 ppm) (80 parts per billion (ppb)).[1] This 8-hour ozone standard replaced a prior 1-hour ozone NAAQS, which was promulgated on February 8, 1979 (44 FR 8202), and which EPA revoked on June 15, 2005 (69 FR 23858).

Ground-level ozone is generally not emitted directly by emission sources. Rather, emitted NO_X and VOC react in the presence of sunlight to form ground-level ozone along with other secondary compounds. NO_X and VOC are referred to as ''ozone precursors.'' Control of ground-level ozone concentrations is achieved through controlling VOC and NO_X emissions.

Section 107 of the CAA requires EPA to designate as nonattainment any area that violates the 8-hour ozone NAAQS. A **Federal Register** notice promulgating 8-hour ozone designations and classifications was published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and emission control requirements for nonattainment areas. Both are found in title I, part D of the CAA. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas for any pollutant governed by a NAAQS. Subpart 2 contains more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA.

In the April 30, 2004, designation rulemaking, EPA divided 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment (''basic'' nonattainment) and subpart 2 nonattainment (''classified'' nonattainment). EPA based this division on the areas' 8-hour ozone design values (i.e., on the three-year averages of the annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the designated areas) and on their 1-hour ozone design values (i.e., on the fourth-highest daily maximum 1-hour ozone concentrations over the three-year period at the worst-case monitoring sites in the designated areas)[2] using ozone data from the period of 2001–2003. EPA classified 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or

[1] This standard is violated in an area when any ozone monitor in the area (or in its nearby downwind environs) records 8-hour ozone concentrations with a three-year average of the annual fourth-highest daily maximum 8-hour ozone concentrations equaling or exceeding 85 ppb. See 40 CFR 50.10.

[2] The 8-hour ozone design value and the 1-hour ozone design value for each area were not necessarily recorded at the same monitoring site. The worst-case monitoring site for each ozone concentration averaging time was considered for each area.

exceeding 121 ppb as subpart 2, classified nonattainment areas. EPA classified all other 8-hour nonattainment areas as subpart 1, basic nonattainment areas. The basis for area classification was defined in a separate April 30, 2004, final rule (the Phase 1 implementation rule) (69 FR 23951). In the April 30, 2004, ozone designation/classification rulemaking, EPA designated the Central Indiana Area, as a subpart 1, basic nonattainment area for the 8-hour ozone NAAQS.

On March 26, 2007, the State of Indiana requested redesignation of the Central Indiana Area to attainment of the 8-hour ozone NAAQS based on ozone data collected in this area during the period of 2004–2006.

B. What Is the Impact of December 22, 2006, and June 8, 2007, United States Court of Appeals Decisions Regarding EPA's Phase 1 Implementation Rule?

1. Summary of Court Decision

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's Phase 1 implementation rule for the 8-hour ozone standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA,* Docket No. 04–1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing of emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour ozone standard and those anti-backsliding provisions of the Phase 1 rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe and extreme nonattainment areas; and, (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. In addition, the June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emission budgets until 8-hour budgets are available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court, thus, clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Ozone Standard

With respect to the 8-hour ozone standard, EPA notes that the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour ozone standard, and remanded that matter to the EPA. Consequently, it is possible that the Central Indiana Area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for this area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating redesignation requests in accordance with the requirements due at the time the redesignation request is submitted; and, (2) consideration of the inequity of applying retroactively any future requirements.

First, at the time the redesignation request was submitted by the State, the Central Indiana Area was classified under subpart 1 and was obligated to meet only subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). See also September 17, 1993, Michael Shapiro memorandum, 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor), and *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, e.g. also 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the redesignation request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. See *Sierra Club* v. *Whitman*, 285 F.3d 63 (DC Cir. 2002), in which the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory timeframe, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly, here it would be unfair to penalize the area by applying to it, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect at the time the State submitted its redesignation request.

3. Requirements Under the 1-Hour Ozone Standard

With respect to the requirements under the 1-hour ozone standard, we note that the Central Indiana Area was made up of two types of areas relative to the 1-hour ozone standard at the time the 8-hour ozone standard was promulgated. First, Marion County was an ozone maintenance area, having been previously designated as a nonattainment area under the 1-hour

ozone standard and having subsequently been redesignated to attainment of the 1-hour ozone standard. Second, all remaining Counties in the Central Indiana Area were designated as attainment/unclassifiable areas under the 1-hour ozone standard, having never been designated as 1-hour ozone nonattainment areas. The Court's ruling on EPA's Phase 1 rule does not impact redesignation requests for either of these types of areas.

First, because Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Morgan, and Shelby Counties were designated as attainment/unclassifiable under the 1-hour ozone standard, and were never designated nonattainment for the 1-hour ozone standard, there are no outstanding 1-hour ozone nonattainment requirements that these counties would be required to meet. Thus, we find that the Court's ruling does not result in any additional 1-hour requirements for purposes of redesignation.

Second, with respect to the 1-hour ozone standard requirements for Marion County, this area was an attainment area subject to a Clean Air Act section 175A maintenance plan under the 1-hour ozone standard. The Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court in its June 8th decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their 1-hour ozone maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must continue to comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93. The Court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

With respect to the three other anti-backsliding provisions for the 1-hour ozone standard that the Court found were not properly retained, Marion County is an attainment area subject to a maintenance plan for the 1-hour ozone standard, and the NSR, contingency measures (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to this area because it has been redesignated to attainment of the 1-hour ozone standard.

Thus, the decision in *South Coast Air Quality Management Dist.* should not preclude EPA from finalizing the redesignation of this area.

III. What Are the Criteria for Redesignations to Attainment?

The CAA provides the basic requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA authorizes the EPA to redesignate an area to attainment of the NAAQS provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and, (5) the State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1900 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). The two main policy guidelines affecting the review of ozone redesignation requests are the following: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the September 4, 1992 Calcagni memorandum); and, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995 (the May 10, 1995 Seitz memorandum). For additional policy guidelines used in the review of ozone redesignation requests, see our proposed rule for the redesignation of the Evansville, Indiana ozone nonattainment area at 70 FR 53606 (September 9, 2005).

IV. What Are EPA's Analyses and Opinions of the State's Requests and What Are the Bases for EPA's Proposed Action?

EPA is proposing to: (1) Determine that the Central Indiana Area has attained the 8-hour ozone standard; (2) approve the ozone maintenance plan for the Central Indiana Area and the VOC and NO_X MVEBs supported by the maintenance plan; and, (3) approve the redesignation of the Central Indiana Area to attainment of the 8-hour ozone NAAQS. The bases for our proposed determination and approvals follow.

A. Has the Central Indiana Area Attained the 8-Hour Ozone NAAQS?

For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and appendix I, based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at all ozone monitoring sites in the area and in its nearby downwind environs. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitor (the monitoring site's ozone design value) within the area and in its nearby downwind environs over the most recent three-year period must not exceed the ozone standard. Based on an ozone data rounding convention described in 40 CFR 50, appendix I, the 8-hour ozone standard is attained if the area's ozone design value [3] is 0.084 ppm (84 ppb) or less. The data must be collected and quality-assured in accordance with 40 CFR 58, and must be recorded in EPA's Air Quality System (AQS). The ozone monitors generally should have remained at the same locations for the duration of the monitoring period required to demonstrate attainment (for three years or more). The data supporting attainment of the standard must be complete in accordance with 40 CFR 50, appendix I.

As part of the ozone redesignation request, IDEM submitted summarized 2004–2006 peak 8-hour ozone monitoring data for the Central Indiana Area. These ozone concentrations are part of the quality-assured ozone data recorded in the Air Quality System. The annual fourth-high 8-hour daily maximum concentrations for each year, along with the three-year averages,[4] are summarized in Table 1.

[3] The worst-case monitoring site-specific ozone design value in the area and in its nearby downwind environs.

[4] Three-year averages are specified for the last year of each three-year period and specify the monitoring site design values.

TABLE 1.—ANNUAL FOURTH-HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM)

Site Id	County	Site name	Year	Percent observations ozone season	Fourth-high concentration	Three-year average
18–011–0001	Boone	Whitestown	2004	100	0.072	
		Whitestown	2005	100	0.082	
		Whitestown	2006	100	0.080	0.078
18–057–1001	Hamilton	Noblesville	2004	99	0.075	
		Noblesville	2005	99	0.087	
		Noblesville	2006	100	0.077	0.079
18–059–0003	Hancock	Fortville	2004	100	0.072	
		Fortville	2005	99	0.080	
		Fortville	2006	99	0.075	0.075
18–063–0004	Hendricks	Avon	2004	100	0.071	
		Avon	2005	100	0.078	
		Avon	2006	100	0.073	0.074
18–081–0002	Johnson	Trafalgar	2004	100	0.073	
		Trafalgar	2005	100	0.077	
		Trafalgar	2006	98	0.078	0.076
18–095–0010	Madison	Emporia	2004	100	0.072	
		Emporia	2005	100	0.078	
		Emporia	2006	97	0.073	0.074
18–097–0050	Marion	Ft. Benjamin Harrison	2004	99	0.073	
		Ft. Benjamin Harrison	2005	99	0.080	
		Ft. Benjamin Harrison	2006	100	0.076	0.076
18–097–0057	Marion	Harding St.	2004	100	0.066	
		Harding St.	2005	100	0.081	
		Harding St.	2006	93	0.076	0.074
18–097–0042	Marion	Mann Road	2004	99	0.065	
		Mann Road	2005	100	0.076	
		Mann Road	2006	98	0.074	0.071
18–097–0073	Marion	Naval Air Warfare Center	2004	100	0.071	
		Naval Air Warfare Center	2005	100	0.080	
		Naval Air Warfare Center	2006	93	0.072	0.074
18–109–0005	Morgan	Monrovia	2004	99	0.072	
		Monrovia	2005	100	0.078	
		Monrovia	2006	100	0.077	0.075
18–145–0001	Shelby	Fairland	2004	99	0.071	
		Fairland	2005	100	0.080	
		Fairland	2006	98	0.073	0.074

The above data show that, during the period of 2004–2006, no violations of the 8-hour ozone standard were recorded in the Central Indiana Area. In addition, we find that the ozone data for the years considered meet data completeness requirements of 40 CFR part 50, appendix I. Based on these data, we conclude and find that the Central Indiana Area has attained the 8-hour ozone NAAQS.

B. Has the State of Indiana Committed To Maintain the Ozone Monitoring System in the Central Indiana Area?

IDEM commits to maintain the ozone monitoring network in the Central Indiana Area during the ozone maintenance period. Any necessary changes in the ozone monitoring system will be discussed in advance with the EPA. This commitment is acceptable.

C. Have the Central Indiana Area and the State of Indiana Met All of the Applicable Requirements of Section 110 and Part D of the Clean Air Act, and Does the Central Indiana Area Have a Fully Approved SIP Under Section 110(k) of the Clean Air Act?

We have determined that the Central Indiana Area and the State of Indiana have met all currently applicable SIP requirements for the Central Indiana Area, including the requirements under section 110 of the CAA (general SIP requirements) and the requirements under subpart 1 part D of title I of the CAA (requirements specific to all ozone nonattainment areas). See section 107(d)(3)(E)(v) of the CAA. In addition, EPA has fully approved the pertinent elements of the Indiana SIP. See section 107(d)(3)(E)(ii) of the CAA. We note that SIPs must be fully approved only with respect to currently applicable requirements of the CAA, which were those CAA requirements applicable to the Central Indiana Area at the time the State of Indiana submitted the final, complete ozone redesignation request for this area, March 26, 2007.

1. The Central Indiana Area Has Met All Applicable Requirements of Section 110 and Part D of the Clean Air Act

The September 4, 1992, Calcagni memorandum describes EPA's interpretation of section 107(d)(3)(E) of the CAA. To qualify for redesignation of an area to attainment under this interpretation, the State and the area must meet the relevant CAA requirements that come due prior to the State's submittal of a complete redesignation request for the area. See also the September 17, 1993, Michael Shapiro memorandum and 66 FR 12459, 12465–12466 (March 7, 1995, redesignating Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the State's submittal of a complete redesignation request remain applicable until a redesignation of the area to attainment of the standard is approved, but are not required as

prerequisites to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 25424, 25427 (May 12, 2003, redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

a. Section 110 and General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP, which include: enforceable emission limitations and other emission control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; programs to enforce the emission limitations; submittal of a SIP that has been adopted by the State after reasonable public notice and a hearing; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and part D requirements (NSR for new sources or major source modifications); criteria for stationary source emission control measures, monitoring, and reporting; provisions for air quality modeling; and provisions for public and local agency participation.

SIP requirements and elements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. See also other guidance documents listed above.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA required States to establish programs to address transport of air pollutants (NO_X SIP call and Clean Air InterState Rule (CAIR)). EPA has also found, generally, that States have not submitted SIPs under section 110(a)(1) of the CAA to meet the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA (70 FR 21147, April 25, 2005). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular area's designation. EPA believes that the requirements linked with a particular area's nonattainment designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State.

We believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and that are not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with an area's designation and classification are the relevant measures for evaluating this aspect of a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See: Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, we also note that EPA has previously approved provisions in the Indiana SIP addressing section 110 elements under the 1-hour ozone standard. We have analyzed the Indiana SIP as codified in 40 CFR part 52, subpart P and have determined that it is consistent with the requirements of section 110(a)(2) of the CAA. The SIP, which has been adopted after reasonable public notice and hearing, contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications of existing sources; provisions for adequate funding, staff, and associated resources necessary to implement its requirements; requires stationary source emissions monitoring and reporting; and otherwise satisfies the applicable requirements of section 110(a)(2).

b. Part D SIP Requirements

EPA has determined that the Indiana SIP meets applicable SIP requirements under part D of the CAA. Under part D, an area's classification—either subpart 1 or subpart 2 (marginal, moderate, serious, severe, and extreme)—indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment area plan requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification. Since the Central Indiana Area is designated as a subpart 1 nonattainment area for the 8-hour ozone standard, the subpart 2 part D requirements do not apply to these Counties.

c. Part D, Subpart 1 SIP Requirements

For purposes of evaluating this redesignation request, the applicable subpart 1 part D requirements are contained in sections 172(c)(1)–(9) and 176. A thorough discussion of the requirements of section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). See also 68 FR 4852–4853, an ozone redesignation notice of proposed rulemaking for the St. Louis area, for a discussion of section 172 requirements.

No requirements for the 8-hour ozone standard under part D, subpart 1 of the CAA came due for the Central Indiana Area prior to when the State submitted the complete ozone redesignation request. For example, the requirement for an ozone attainment demonstration, as contained in section 172(c)(1), was not yet due when the State submitted the ozone redesignation request for these counties, nor were the requirements for Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) (section 172(c)(1)), Reasonable Further Progress (RFP) (section 172(c)(2)), and attainment plan and RFP contingency measures (section 172(c)(9)). All of these SIP elements are required for submittal after Indiana

submitted the complete, adopted ozone redesignation request and maintenance plan for the Central Indiana Area. Therefore, none of the part D requirements for the 8-hour ozone standard are considered to be applicable to the Central Indiana Area for purposes of redesignation.

d. Section 176 Conformity Requirements

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. and the Federal Transit Act (transportation conformity), as well as to all other Federally-supported or funded projects (general conformity). State conformity SIP revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

As with other part D requirements, EPA interprets the conformity requirements as not applying for purposes of evaluating the ozone redesignation request under section 107(d) of the CAA. In addition, please note that conformity rules are required for areas that are redesignated to attainment of a NAAQS, and that Federal conformity rules apply where State rules have not been approved. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

e. Part D New Source Review (NSR) Requirements

EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without emission reductions from part D NSR, since Prevention of Significant Deterioration (PSD) requirements will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Indiana has demonstrated that the Central Indiana Area will be able to maintain the 8-hour ozone standard without part D NSR in effect, and therefore, we conclude that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Central Indiana Area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

We conclude that the Central Indiana Area has satisfied all applicable requirements under section 110 and part D of the CAA to the extent that these requirements apply for purposes of reviewing the State's ozone redesignation request.

2. The Central Indiana Area Has a Fully Approved SIP Under Section 110(k) of the Clean Air Act (CAA)

EPA has fully approved the Indiana SIP for the Central Indiana Area under section 110(k) of the CAA for all applicable requirements. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992, John Calcagni memorandum, page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); and, *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003). Since the passage of the CAA of 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to the Central Indiana Area for purposes of ozone redesignation. No SIP provisions relevant to the Central Indiana Area are currently disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of review of the State's redesignation request. EPA believes that approval of section 110 SIP elements under the 1-hour ozone standard satisfies the prerequisite for approval of the ozone redesignation request for purposes of attaining and maintaining the 8-hour ozone standard. EPA also believes that since the part D requirements for the 8-hour ozone standard did not become due prior to Indiana's submittal of the final, complete redesignation request, they also are not applicable requirements for purposes of redesignation.

D. Are the Air Quality Improvements in the Central Indiana Area Due to Permanent and Enforceable Emission Reductions Resulting From the Implementation of the Indiana SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Emission Reductions?

We believe that the State of Indiana has adequately demonstrated that the observed air quality improvements in the Central Indiana Area are due to permanent and enforceable emission reductions resulting from the implementation of the SIP, Federal measures, and other State-adopted measures. In making this demonstration, the State has documented the changes in VOC and NO_X emissions from anthropogenic (man-made or man-based) sources in the Central Indiana Area and the changes in NO_X emissions from Electric Generating Units (EGUs) Statewide occurring over the period of 1999–2005. This period includes 2002, an ozone standard violation year, and 2005, the year in the middle of the 2004–2006 attainment period. The State has also identified the emission control regulations that have been implemented in the Central Indiana Area and that have contributed to attainment of the ozone standard.

Table 2 summarizes the VOC and NO_X emissions totals from the anthropogenic sources in the Central Indiana Area for 1999, 2002, and 2005 as documented in the State's redesignation request. Table 3 summarizes the NO_X emissions trend for EGUs in the Central Indiana Area, and Table 4 summarizes the NO_X emissions trend for EGUs Statewide.

TABLE 2.—VOC AND NO_X EMISSIONS TOTALS IN THE CENTRAL INDIANA AREA IN TONS PER SUMMER DAY

Year	VOC	NO_X
1999	290.84	293.15
2002	249.67	264.69
2005	199.25	220.18

TABLE 3.—NO_X EMISSIONS TOTALS FOR EGUS IN THE CENTRAL INDIANA AREA IN TONS PER OZONE SEASON (APRIL–SEPTEMBER)

Year	NO_X emissions
1999	31,815
2000	25,028
2001	27,394
2002	22,661
2003	17,984
2004	11,798

TABLE 3.—NO_X EMISSIONS TOTALS FOR EGUS IN THE CENTRAL INDIANA AREA IN TONS PER OZONE SEASON (APRIL–SEPTEMBER)—Continued

Year	NO_X emissions
2005	10,591

TABLE 4.—NO_X EMISSIONS TOTALS FOR EGUS IN INDIANA STATEWIDE IN TONS PER OZONE SEASON

Year	NO_X emissions
1999	149,827
2000	133,881
2001	136,052
2002	113,996
2003	99,283
2004	66,568
2005	55,486

Information in the above tables indicates that both VOC and NO_X emissions significantly decreased in the Central Indiana Area between 2002 and 2005. In particular, the NO_X emissions from EGUs in this area significantly decreased during this period due to the implementation of EPA's NO_X SIP call and acid rain control requirements. As discussed further below, these emission reductions are primarily due to the implementation of permanent and enforceable emission controls, which are believed to have significantly contributed to the attainment of the 8-hour ozone standard in this area.

The Statewide NO_X emission reductions for EGUs are believed to have significantly reduced ozone transport into the Central Indiana Area, further reducing the peak ozone concentrations in this area. These emission reductions are primarily due to the implementation of the State's NO_X emission control rules stemming from EPA's NO_X SIP call and acid rain control requirements. These NO_X emission control rules are permanent and enforceable. We agree with the State that these NO_X control rules have significantly reduced ozone levels in and ozone transport to the Central Indiana Area.

Besides the NO_X SIP call regulations, IDEM notes that the following VOC emission control regulations have been implemented in the Central Indiana Area (''IAC'' is the Indiana Administrative Code):

326 IAC 8–1–6 Best Available Control Technology (BACT) for non-specific sources

326 IAC 8–2 Surface Coating Emission Limitations

326 IAC 8–3 Organic Solvent Degreasing Operation Controls

326 IAC 8–4 Petroleum Sources Controls

326 IAC 8–5 Miscellaneous Operations Controls

326 IAC 8–6 Organic Solvent Emission Limitations

326 IAC 8–8.1–1 Municipal Solid Waste Landfills Not Located in Clark, Floyd, Lake and Porter Counties Controls.

In addition, because EPA had initially designated Marion County as nonattainment under the 1-hour ozone standard, VOC sources that existed after July 1, 1990, in Marion County are also subject to RACT rules. Sources in the surrounding Counties (Boone, Hancock, Hamilton, Johnson, Morgan, and Shelby Counties) are subject to portions of 326 IAC 8–4 (326 IAC 8–4–4 through 8–4–7 and 8–4–9) that do not apply Statewide. These emission control requirements have led to reduced VOC emissions in the Central Indiana Area.

Finally, the State notes that several nationwide rules have been implemented (or will be implemented in the near future), resulting in VOC and NO_X emission reductions subsequent to 2002 in the Central Indiana Area and Statewide. These emission reduction rules include: (a) Tier II emission standards for vehicles and gasoline sulfur standards; (b) heavy-duty diesel engine standard and low-sulfur diesel fuel standards; and, (c) Clean Air Non-road Diesel Rule. These emission reduction rules will provide additional emission reductions in the future.

The State commits to maintain existing emission control measures after the redesignation of the Central Indiana Area to attainment of the 8-hour ozone NAAQS. If an emission control rule must be changed, the State will submit the rule change as a requested SIP revision to the EPA. IDEM maintains that it has the legal authority and necessary resources to enforce any violations of the existing emission control rules.

E. Does the Central Indiana Area Have a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA?

In conjunction with its request to redesignate the Central Indiana Area to attainment of the 8-hour ozone NAAQS, Indiana submitted a SIP revision request to provide for maintenance of the 8-hour ozone NAAQS in the Central Indiana Area through 2020, exceeding the 10 year minimum maintenance period required by the CAA.

1. What Is Required in an Ozone Maintenance Plan?

Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation to attainment of a NAAQS. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that maintenance of the standard will continue for 10 years following the initial 10-year maintenance period. The maintenance plan must commit the State to submit this revised maintenance plan to the EPA. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of maintenance plans. An ozone maintenance plan should, at minimum, address the following items: (1) The attainment VOC and NO_X emissions inventories; (2) a maintenance demonstration showing maintenance for the first 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and, (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

2. What Are the Attainment Emission Inventories for the Central Indiana Area?

IDEM estimated future VOC and NO_X emissions for the Central Indiana Area for 2010, 2015, and 2020 to compare with the 2005 VOC and NO_X emissions for this area and to demonstrate maintenance of the ozone standard in this area. Future emissions were estimated for point (significant stationary sources), area (smaller point and/or widely distributed stationary sources), on-road mobile, and non-road mobile sources for this area. To develop the 2010, 2015, and 2020 emissions, IDEM projected the 2002 base year emissions applying various source category-specific growth factors and emission control factors or growth estimates collected directly from the sources. The following summarizes the procedures and data sources used by IDEM to derive the projected emissions.

a. Point Sources

The primary source of point source information for the base period, 2002, was facility-specific emissions and source activity data collected annually by the State for inclusion in IDEM's annual emissions statement database. This information includes emissions, process rates, source operating schedules, emissions control data, and other relevant source information. Emission growth factors and future emission control factors provided by the Lake Michigan Air Directors Consortium (LADCO) were used to project the point source VOC and non-EGU NO_X emissions to 2005, 2010, 2015, and 2020. The NO_X emissions from EGUs were projected based on the EGU NO_X emission budget contained in the Indiana NO_X rule.

b. Area Sources

Area sources are those sources which are generally small, numerous, and have not been inventoried as specific point, mobile, or non-road mobile sources. The emissions for these sources are generally calculated using various surrogates, such as population by county, estimates of employees in various occupational groups, etc., and grouped by general source types. The area source emissions are typically defined at the county level.

IDEM developed area source emissions for a 2002 periodic emissions inventory submitted to the EPA. The surrogate data used to derive these emissions were grown to 2005, 2010, 2015, and 2020. The projected surrogates or other assumed annual growth rates were used to calculate the projected VOC and NO_X emissions for each area source type.

c. On-Road Mobile Sources

On-road mobile source emissions were calculated using the MOBILE 6.2 emission factor model and other mobile source data, including estimated traffic levels and vehicle type and age distribution data, extracted from the area's travel-demand model.

d. Non-Road Mobile Sources

Non-road mobile source emissions were based on emissions in the 2002 National Emissions Inventory (NEI). The 2005, 2010, 2015, and 2020 non-road mobile source emissions were grown from the 2002 NEI emissions. To address concerns about the accuracy of the emissions derived for some of the non-road mobile source categories in EPA's non-road emissions model, LADCO contracted with several companies to review the base data used in the emissions model. A contractor also estimated emissions for two non-road source categories not included in EPA's non-road emissions model, commercial marine vessels and railroads. Recreational motorboat emissions were significantly updated. The equipment population and spatial surrogate data for other source types were also significantly updated. A new non-road estimation model was also provided by the EPA for the 2002 emissions analysis. The updated 2002 emissions were used to project the emissions to 2005, 2010, 2015, and 2020.

3. Has the State Demonstrated Maintenance of the Ozone Standard in the Central Indiana Area?

As part of the redesignation request submittal, IDEM requested a revision of the Indiana SIP to incorporate an ozone maintenance plan for the Central Indiana Area as required under section 175A of the CAA. The maintenance plan demonstrates maintenance of the 8-hour ozone NAAQS through 2020 by documenting the attainment year (2005) and future VOC and NO_X emissions. Indiana has shown that VOC and NO_X emissions will remain below the attainment year levels through 2020. An ozone maintenance demonstration need not be based on ozone modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), and 68 FR 25430–25432 (May 12, 2003).

Table 5 summarizes the VOC and NO_X emissions projected to occur in the entire Central Indiana Area during the demonstrated maintenance period. The State of Indiana chose 2020 as a maintenance year to meet the 10-year maintenance requirement of the CAA, allowing several years for the EPA to complete the redesignation rulemaking process. The State also chose 2010 and 2015 as interim years to demonstrate that VOC and NO_X emissions will remain below the attainment year levels throughout the maintenance period.

TABLE 5.—VOC AND NO_X EMISSIONS IN THE CENTRAL INDIANA AREA DURING THE OZONE MAINTENANCE PERIOD IN TONS PER SUMMER DAY

Source sector	2005	2010	2015	2020
VOC Emissions				
Area	94.85	99.29	106.31	100.81
Point	13.54	14.34	16.00	14.85
Non-Road Mobile	30.36	28.77	24.06	25.29
On-Road Mobile	60.50	44.19	35.33	26.47
Total	199.25	186.59	181.70	167.42
NO_X Emissions				
Area	24.26	22.39	23.12	22.74
Point	56.63	33.31	32.41	32.77
Non-Road Mobile	22.55	33.05	24.06	18.36
On-Road Mobile	116.74	78.40	55.42	32.45
Total	220.18	167.15	135.01	106.32

IDEM notes that the State's EGU NO_X emissions control rules stemming from EPA's NO_X SIP call and CAIR, to be implemented primarily after 2006, will further lower NO_X emissions throughout the State of Indiana and upwind of the Central Indiana Area. This will result in reduced ozone and ozone precursor transport into the Central Indiana Area, and will support maintenance of the 8-hour ozone NAAQS in this area.

The emissions projections for the Central Indiana Area lead to the conclusion that this area should maintain the 8-hour ozone NAAQS throughout the required 10-year maintenance period and through 2020. The projected decreases in local VOC and local and regional NO_X emissions indicate that peak ozone levels in the Central Indiana Area may further decline during the maintenance period.

We conclude that IDEM has successfully demonstrated that the 8-hour ozone standard will be maintained in the Central Indiana Area.

4. What Is the Contingency Plan for the Central Indiana Area?

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a commitment that the State will continue to implement all emission control measures that were included in the SIP before the redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by the CAA, Indiana has adopted a contingency plan to address possible future ozone air quality problems in the Central Indiana Area. The contingency plan has two levels of actions/responses depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level Response) or has actually occurred or appears to be imminent (Action Level Response).

A Warning Level Response will be triggered whenever an annual (1-year) fourth-high monitored 8-hour ozone concentration of 0.089 ppm occurs in a single ozone season, or a 2-year average fourth-high monitored 8-hour ozone concentration of 0.085 ppm or higher occurs within the Central Indiana maintenance area (within the Central Indiana Area). A Warning Level Response will consist of a study to determine whether the high ozone concentration indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will determine if the trend toward high ozone concentrations is likely to continue. If so, the emission control measures necessary to reverse the trend, taking into consideration ease and timing of implementation and economic and social considerations, will be adopted and implemented. Implementation of necessary emission controls will take place no later than 12 months from the conclusion of the most recent ozone season (September 30).

An Action Level Response will be triggered when a violation of the 8-hour ozone standard is monitored, when the three-year average annual fourth-high daily maximum 8-hour concentration is 0.085 ppm or higher at any monitor, in the Central Indiana Area. In the event that an Action Level Response is triggered and is not found to be due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, IDEM will determine the additional emission control measures needed to assure future attainment of the ozone NAAQS. Emission control measures that can be implemented in a short time will be selected in order to be in place within 18 months from the close of the ozone season in which the Action Level Response is triggered.

Assuming that new emission controls are needed, if a new emission control measure is already promulgated and scheduled to be implemented at the Federal or State level and that control measure is determined to be sufficient to address the upward trend in ozone concentrations, additional local emission control measures may be unnecessary. The State will submit to EPA an analysis to demonstrate that the proposed emission control measures are adequate to return the area to attainment or to correct the air quality trend.

The selection of emission control measures for implementation will be based on cost-effectiveness, emission reduction potential, economic and social considerations, and other factors that IDEM deems appropriate. IDEM will solicit input from interested and affected persons in the maintenance area prior to selecting appropriate contingency measures. IDEM has not specified a definitive list of measures that will be considered and may consider emission control measures not included in the list of potential emission control measures summarized in the ozone maintenance plan.

The ozone maintenance plan lists the following emission control measures as possible contingency measures that have been selected and reviewed by the Central Indiana Air Quality Advisory Group (a group of industrial representatives, individuals, and local government representatives from the Central Indiana Area):

- Lower Reid vapor pressure gasoline;
- Broader geographic applicability of existing emission control requirements;
- Tightening of RACT on existing sources covered by EPA control technique guidelines issued in response to the 1990 Clean Air Act revisions;
- Application of RACT to smaller existing sources;
- Vehicle inspection/maintenance program;
- One or more transportation control measure sufficient to achieve at least a half of a percent (0.5 percent) reduction of actual area-wide VOC emissions. Transportation control measures will be selected from the following based on the factors discussed above and after consultation with the affected local governments:

(a) Trip reduction programs, including employer-based transportation management plans, area-wide rideshare programs, work schedule changes, and telecommuting;

(b) Transit improvements;

(c) Traffic flow improvements; and,

(d) Other new or innovative transportation measures;

- Alternative fuel and diesel retrofit programs for fleet vehicle operations;
- VOC or NO_X emission offsets for new and modified major sources;
- VOC or NO_X emission offsets for new and modified minor sources;
- Increase the ratio of emission offsets required for new sources; and,
- VOC or NO_X emission controls on new minor sources.

No contingency measure will be implemented without providing the opportunity for public participation in the selection process, during which the relative costs and benefits of individual emission control measures will be evaluated.

5. Has the State Committed to Update the Ozone Maintenance Plan in Eight Years After the Redesignation of the Central Indiana Area to Attainment of the 8-Hour Ozone NAAQS?

As required by section 175A(b) of the CAA, the State commits to review the maintenance plan 8 years after redesignation of the Central Indiana Area and to submit a revised maintenance plan to the EPA extending the maintenance period for 10 years beyond the initial 10-year maintenance period.

We find Indiana's ozone maintenance demonstration, contingency plan, and commitment to update the maintenance plan to be acceptable.

V. Has the State Adopted Acceptable Motor Vehicle Emissions Budgets for the End Year of the Ozone Maintenance Period Which Can Be Used To Support Conformity Determinations?

A. How Are the Motor Vehicle Emission Budgets Developed, and What Are the Motor Vehicle Emission Budgets for the Central Indiana Area?

Under the CAA, States are required to submit, at various times, SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard or revising existing ozone maintenance plans). These emission control SIP revisions (e.g., reasonable further progress and attainment SIP revisions), including ozone maintenance plans, must create MVEBs based on on-road mobile source emissions that are allocated to highway and transit vehicle use and that, together with emissions from all other sources in the area, will provide for attainment or maintenance of the ozone NAAQS.

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are established for the last year of the maintenance period (for the maintenance demonstration year). The MVEBs serve as ceilings on mobile source emissions from an area's planned transportation system, and are used to test planned transportation system changes or projects to assure compliance with the emission limits assumed in the SIP. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the SIP that addresses emissions from cars, trucks, and other on-road vehicles. Conformity to the SIP means that transportation activities should not cause new air quality standard violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the vehicle capacity of the roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA's policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by State and Federal agencies in determining whether proposed transportation projects conform to the SIPs as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are specified in 40 CFR 93.118(e)(4).

EPA's process of determining adequacy of MVEBs consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEBs during a public comment period; and (3) making a finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Rule Amendments—Response to Court Decision and Additional Rule Change'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Transportation Conformity Rule, in 40 CFR 93.118(f), provides for adequacy findings through two mechanisms. First, 40 CFR 93.118(f)(1) provides for posting a notice to the EPA conformity Web site at: *http://www.epa.gov/otaq/Stateresources/transconf/adequacy.htm* and providing a 30-day public comment period. Second, a mechanism is described in 40 CFR 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan submission simultaneously with its review of the implementation plan itself.

The Central Indiana Area ozone maintenance plan contains VOC and NO_X MVEBs for 2006 and 2020. An interagency group of consultation partners chose to include MVEBs for 2006 to assist in streamlining the transportation conformity process. The year 2006 was chosen because it represents one of the years the Central Indiana Area attained the 8-hour ozone standard and because the travel demand models used in transportation planning contain a defined mobile source network for 2006.

The 2006 MVEBs are 54.32 tons VOC/day and 106.19 tons NO_X/day. The 2020 MVEBs are 29.52 tons VOC/day and 35.69 tons NO_X/day. Note that the 2020 MVEBs contain safety margins (emission levels exceeding the on-road mobile source emissions levels actually projected for the area and included in the maintenance demonstration). See the 2020 on-road mobile source emissions specified in Table 5 above.

The State is applying safety margins in specifying the 2020 MVEBs to accommodate the assumptions and associated potential estimate errors that are factored into the projection of future emission estimates. Since assumptions change over time or are shown to be incorrect, some errors may actually occur in estimated future emissions. Therefore, it is reasonable, if not necessary, to incorporate safety margins into the setting of MVEBs.

A ''margin of safety'' is the difference between the attainment level emissions from all sources and the projected levels of emissions from all sources in the maintenance plan for the maintenance year. As noted in Table 5 above, the Central Indiana Area is projected to have a VOC margin of safety of 31.83 tons/day and a NO_X margin of safety of 113.86 tons/day in 2020. These margins of safety significantly exceed the safety margins incorporated into the 2020 MVEBs (the 2020 MVEB VOC safety margin is 3.05 tons/day and the 2020 MVEB NO_X safety margin is 3.24 tons/day, the differences between the 2020 MVEBs and the projected on-road mobile source emissions). Therefore, the safety margins incorporated into the 2020 MVEBs will not threaten maintenance of the 8-hour ozone standard in the Central Indiana Area.

No safety margins were applied to the 2006 MVEBs. These MVEBs are the on-road mobile emission estimates for this year.

B. Are the MVEBs Approvable?

EPA, through this rulemaking, is proposing to approve the 2006 and 2020 MVEBs for use in demonstrating transportation conformity in the Central Indiana Area because EPA has determined that the MVEBs are consistent with the emission control measures and future emissions projected in the SIP and because the Central Indiana Area can maintain attainment of the 8-hour ozone NAAQS for the required maintenance period with on-road mobile source emissions at the levels of the MVEBs. The VOC and NO_X MVEBs are approvable because they maintain the total emissions for the

Central Indiana Area at or below the attainment year emission levels, as required by the transportation conformity regulations.

VI. What Are the Effects of EPA's Proposed Actions?

Approval of the redesignation request would change the official designation of Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby Counties, Indiana for the 8-hour ozone NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Final rulemaking approving the redesignation request would incorporate into the Indiana SIP a plan for maintaining the ozone NAAQS through 2020 in these Counties. The maintenance plan includes contingency measures to remedy possible future violations of the 8-hour ozone NAAQS, and establishes 2006 and 2020 MVEBs for these counties.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'', and therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed 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.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed 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.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, 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).

Executive Order 13132: Federalism

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 proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed 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).

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

This proposed 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.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' 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).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the State to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: July 23, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–14741 Filed 7–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R05–OAR–2007–0405; FRL–8446–5]

Approval of Implementation Plans; Wisconsin; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove a revision to the Wisconsin State Implementation Plan (SIP) submitted on June 19, 2007. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) which concerns sulfur dioxide (SO_2), oxides of nitrogen (NO_X) annual, and NO_X ozone season emissions for the State of Wisconsin, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Wisconsin's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

The SIP revision that EPA is proposing to approve is an abbreviated

SIP revision that addresses the methodology to be used to allocate annual and ozone season NO_X allowances under the CAIR FIP, except for allowances in the compliance supplement pool. The portions of Wisconsin's submittal (those associated with the compliance supplement pool and Superior Environmental Performance) that EPA is proposing to disapprove are inconsistent with CAIR and/or otherwise inappropriate to include in a CAIR SIP and must, therefore, be disapproved.

DATES: Comments must be received on or before August 30, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0405, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–0405. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353–6960, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov.*

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I. What Action Is EPA Proposing to Take?

CAIR SIP Partial Approval and Partial Disapproval

EPA is proposing to partially approve and partially disapprove a revision to Wisconsin's SIP, submitted on June 19, 2007, which would modify the application of certain provisions of the CAIR FIP concerning SO_2, NO_X annual and NO_X ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) Wisconsin is subject to the CAIR FIP that implements the CAIR requirements by requiring certain EGUs to participate in the EPA-administered Federal CAIR SO_2, NO_X annual, and NO_X ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO_X allowances for the NO_X annual and NO_X ozone season trading programs. The CAIR FIP provides that this methodology, if approved as EPA is proposing, will be used to allocate NO_X allowances to sources in Wisconsin, instead of the Federal allocation methodology otherwise provided in the FIP. The SIP revision also provides a methodology for allocating the CSP in the CAIR NO_X annual trading program. Consistent with the flexibility provided in the FIP, these provisions, if approved, will be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIP for Wisconsin. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Wisconsin's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

EPA is proposing to disapprove a portion of Wisconsin's submittal. Certain separable provisions of Wisconsin's abbreviated SIP are not approvable. These provisions include NR 432.04 ''Compliance supplement pool'' and NR 432.08 ''Superior environmental performance.'' As discussed below, NR 432.04 includes provisions that would be inconsistent with CAIR. NR 432.08 would grant regulatory flexibility to sources that voluntarily reduce emissions beyond what is required under State and Federal regulations. The scope of

regulatory flexibility provided by NR 432.08 is ambiguous. To the extent this flexibility relates to state-only regulatory requirements, the regulatory provisions are not appropriately included in a SIP. To the extent this flexibility relates to Federal requirements reflected in state regulations, this type of flexibility is not allowed under CAIR, and it is inappropriate to simply assume that other Federal requirements allow such flexibility. Therefore, the regulatory flexibility provisions cannot be included in Wisconsin's CAIR abbreviated SIP revision and cannot be approved.

II. What Is the Regulatory History of CAIR and the CAIR FIPs?

The CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 states and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind states in the eastern part of the country. As a result, EPA required those upwind states to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual statewide emission reduction requirements (i.e., budgets) for SO_2 and annual statewide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets statewide emission reduction requirements for NO_X for the ozone season (May 1st to September 30th). Under CAIR, states may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR sets forth what subject states must include in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective May 25, 2005, that the states had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, three years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a two-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all states covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR state is subject to the FIPs until the state fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone-season model trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to effectively create a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all states covered by CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow states to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO_X allowances to sources in the state), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two more CAIR-related final rules that added the States of Delaware and New Jersey to the list of states subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes statewide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires states to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or, (2) adopting other control measures of the state's choosing and demonstrating that such control measures will result in compliance with the applicable state SO_2 and NO_X budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that states must adopt (with certain limited changes, if desired), if they want to participate in the EPA-administered trading programs.

With two exceptions, only states that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for states that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for states that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most states will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such states, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, states may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of, or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (*e.g.*, the NO_X allowance allocation methodology).

A state submitting an abbreviated SIP revision may submit limited SIP revisions to tailor the CAIR FIP cap-and-trade program as it applies in their state. Specifically, an abbreviated SIP revision may establish certain applicability and allowance allocation provisions that will be used instead of, or in conjunction with, the corresponding provisions in the CAIR FIP rules in that state. Specifically, the abbreviated SIP revisions may:

1. Include NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO_X ozone season trading program;

2. Provide for allocation of NO_X annual or NO_X ozone season allowances by the state, rather than the

Administrator, using a methodology chosen by the state;

3. Provide for allocation of NO_X annual allowances from the CSP by the state, rather than by the Administrator, using the state's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP cap-and-trade programs under the opt-in provisions in the CAIR FIP rules.

With approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the state by that approved SIP revision.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the state's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO_X allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the state's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, the June 19, 2007, submittal from Wisconsin has been submitted as an abbreviated SIP revision.

V. Analysis of Wisconsin's CAIR SIP Submittal

A. Nature of Wisconsin's Submittal

On June 19, 2007, Wisconsin submitted a request to process their draft rules for addressing CAIR requirements. The Wisconsin Department of Natural Resources (WDNR) held hearings on these proposed rules on October 10 and October 12, 2006. The 30-day public comment period for the proposed rules ended on October 23, 2006.

B. Summary of Wisconsin's Rules

Chapter NR 432 of the Wisconsin Administrative Code Chapters Related to Air Pollution Control, entitled ''Allocation of Clean Air Interstate Rule NO_X Allowances,'' includes provisions addressing utility emissions of NO_X. These rules are designed to address the requirements of the CAIR.

Chapter NR 432 includes eight subparts:

1. NR 432.01 Applicability; purpose
2. NR 432.02 Definitions
3. NR 432.03 CAIR NO_X allowance allocation
4. NR 432.04 Compliance supplement pool
5. NR 432.05 CAIR NO_X ozone season allowance allocation
6. NR 432.06 Timing requirements for allocations of CAIR NO_X allowances and CAIR NO_X ozone season allowances
7. NR 432.07 CAIR renewable units
8. NR 432.08 Superior environmental performance

Subchapter NR 432.01 entitled, ''Applicability; purpose'' consolidates the applicability and purpose section for both the annual and ozone season trading programs. While the FIP already contains an applicability section, the state is required to adopt this section to satisfy its own rulemaking requirements. Wisconsin is adopting the applicability section to apply only to the allocation methodology in their rule but this does not affect the applicability of the CAIR FIP.

Subchapter NR 432.02 entitled, ''Definitions'' adopts many of the CAIR FIP definitions but is rewritten in a format to conform to the state's regulatory writing style requirements. While the FIP already contains a definitions section, the state is required to adopt this section to satisfy its own rulemaking requirements. Wisconsin is adopting the definition section to apply only to the allocation methodology in their rule but this does not affect the applicability of the CAIR FIP. Additionally, WDNR has added definitions not found in the CAIR FIP. These definitions are included to address the fact that Wisconsin's rule allocates allowances to renewable energy sources, which the FIP does not do, and to address the fact that Wisconsin allocates allowances to emitting sources based on energy output rather than heat input. The CAIR FIP uses a heat input based allocation methodology.

Subchapter NR 432.03 entitled, ''CAIR NO_X allowance allocation'' contains the state's annual NO_X allowance allocation methodology. The state rule uses gross electrical output as the basis for calculating the number of allowances existing sources should be allocated. Also included in the allocation methodology are renewable energy units.

Subchapter NR 432.04 entitled, ''Compliance supplement pool'' allocates a limited number of allowances to sources that make early reductions and to sources that can make a demonstration that electric reliability will be compromised.

Subchapter NR 432.05 entitled, ''CAIR NO_X ozone season allowance allocation'' contains the state's ozone season NO_X allowance allocation methodology. The state rule uses gross electrical output as the basis for calculating the number of allowances existing sources that should be allocated. Also included in the allocation methodology are renewable energy units.

Subchapter NR 432.06 entitled, ''Timing requirements for allocations of CAIR NO_X allowances and CAIR NO_X ozone season allowances'' consolidates the timing requirements for issuance of NO_X allowances for both the annual and ozone season programs.

Subchapter NR 432.07 entitled, ''CAIR renewable units'' was added by Wisconsin to address renewable energy units. Under the CAIR FIP, EPA did not allocate allowances for renewable energy units. Wisconsin has chosen to allocate both NO_X annual and NO_X ozone season allowances to renewable units. NR 432.07 requires renewable units to comply with the same trading requirements that the regulated EGUs comply with, such as designating an account representative who represents the unit in any trading activity, and establishing accounts for the NO_X trading programs and the process for requesting NO_X allowances.

Subchapter NR 432.08 entitled, ''Superior environmental performance'' offers regulatory flexibility to sources that enter into voluntary agreements to reduce emissions of NO_X, SO_2, mercury, carbon dioxide, or heavy metals beyond levels required by Federal and state laws.

C. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu for phase 1, and 0.125 lb/mmBtu for phase 2, to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the state NO_X annual and NO_X ozone season budgets from the regional budgets using state heat input data adjusted by fuel factors.

The CAIR state SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under Title IV of the CAA. Under CAIR, each allowance allocated under the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO_2 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO_2 emissions in the CAIR trading program.

The CAIR FIP established the budgets for Wisconsin as 40,759 tons for NO_X annual emissions for 2009–2014, 33,966 tons for NO_X annual emissions for 2015 and beyond, 17,987 tons for NO_X ozone season emissions for 2010–2014, 14,989 tons for NO_X ozone season emissions for 2015 and beyond, 87,264 tons for SO_2 emissions for 2010–2014, and 61,085 tons for SO_2 emissions for 2015 and beyond. Wisconsin's SIP revision, proposed for approval in today's action, does not affect these budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIP. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

D. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and NO_X ozone season FIPs both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and NO_X ozone season FIPs are similar, there are some differences. For example, the NO_X annual FIP (but not the NO_X ozone season FIP) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season FIP reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X ozone season FIP provides incentives for early emissions reductions by allowing banked, pre–2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone-season trading program. In addition, states have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program.

The provisions of the CAIR SO_2 FIP are also similar to the provisions of the NO_X annual and ozone season FIPs. However, the SO_2 FIP is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA Title IV. The SO_2 FIP uses the Title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked Title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

Wisconsin is subject to the CAIR FIP for ozone and $PM_{2.5}$, and the CAIR FIP trading programs for SO_2, NO_X annual, and NO_X ozone season apply to sources in Wisconsin. Consistent with the flexibility it gives to states, the CAIR FIP provides that states may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. The June 19, 2007 submission of Wisconsin is such an abbreviated SIP revision.

E. Applicability Provisions for Non-EGU NO_X SIP Call Sources

In general, the CAIR FIP trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the latter of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

States have the option of bringing in, for the CAIR NO_X ozone season program only, those units in the state's NO_X SIP Call trading program that are not EGUs as defined under CAIR. EPA advises states exercising this option to use provisions for applicability that are substantively identical to the provisions in 40 CFR 96.304, and add the applicability provisions in the state's NO_X SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304, in order to include in the CAIR NO_X ozone season trading program all units required to be in the state's NO_X SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_X ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (*i.e.* units serving a generator with a nameplate capacity of 25 MWe or less), that the state currently requires to be in the NO_X SIP Call trading program.

Because Wisconsin was not included in the NO_X SIP Call trading program, Wisconsin did not have an option of expanding the applicability provisions of the CAIR NO_X ozone season trading program.

F. NO_X Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and NO_X ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIP provides states the flexibility to establish a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the states if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, states have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;

2. The frequency of allocations;

3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and

4. The use of allowance set-asides and, if used, their size.

Consistent with the flexibility given to states in the CAIR FIP, Wisconsin has chosen to replace the provisions of the CAIR NO_X annual FIP concerning the allocation of NO_X annual allowances with its own methodology. NR 432.03 contains the provisions for the NO_X annual allowance distribution methodology Wisconsin has adopted. Wisconsin has chosen to distribute NO_X annual allowances based upon gross electrical output. Where the CAIR FIP allocates allowances to NO_X emitting sources only and does so on a fuel-weighted basis (as mentioned above), Wisconsin's rule eliminates that fuel weighting and allocates allowances to renewable energy units as well. For units that have operated for five or more consecutive years, the three highest annual amounts of the unit's gross electrical output will be the basis for determining that unit's allocations.

Wisconsin has created a new unit set-aside for sources that have fewer than five years of operating data. The new unit set-aside is equal to seven percent of the total trading budget. The number of NO_X annual allocations a new unit can request from the new unit set-aside is limited by the number of the unit's total tons of NO_X emissions during the calendar year immediately before the calendar year of the request. Updating of unit baselines for allocation purposes occurs every five years beginning in 2011. The initial allocation of allowances for the years 2009–2014 is set forth in NR 432.03.

Consistent with the flexibility given to states in the CAIR FIP, Wisconsin has chosen to replace the provisions of the CAIR NO_X ozone season FIP concerning allowance allocations with their own methodology. NR 432.05 contains the provisions for the NO_X ozone season allowance distribution methodology Wisconsin has adopted. Wisconsin has chosen to distribute NO_X ozone season allowances based upon gross electrical output where the CAIR FIP allocates allowances to NO_X emitting sources only and does so on a fuel-weighted basis (as mentioned above); Wisconsin's rule eliminates that fuel weighting and allocates allowances to renewable energy units as well. For units that have operated for five or more consecutive years, the three highest ozone season amounts of the unit's gross electrical output will be the basis for determining that unit's allocations. Wisconsin has created a new unit set-aside for sources that have fewer than five years of operating data. The new unit set-aside is equal to seven percent of the total trading budget. The number of NO_X ozone season allocations a new unit can request from the new unit set-aside is limited by the number of the unit's total tons of NO_X emissions during the ozone season immediately before the calendar year of the request. Updating of unit baselines for allocation purposes occurs every five years beginning in 2011. The initial allocation of allowances for the years 2009–2014 is set forth in NR 432.05.

Since Wisconsin has chosen to allocate both NO_X annual and NO_X ozone season allowances to renewable energy units, the state has adopted provisions specifically for these sources to comply with. These provisions are found in NR 432.07 which requires renewable units to comply with the same trading requirements that the regulated EGUs comply with, such as designating an account representative who represents the unit in any trading activity, and establishing accounts for the NO_X trading programs and the process for requesting NO_X allowances.

G. Allocation of NO_X Allowances From the Compliance Supplement Pool

The CSP provides an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a state's share of the CSP is based upon the state's share of the projected emission reductions under CAIR. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008 beyond what is required by any applicable state or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR NO_X annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those states. *See* 40 CFR 51.123(p)(2) (requiring that State CSP provisions be consistent with the model rule at 40 CFR 96.143, the FIP at 40 CFR 97.143, or CAIR at 40 CFR 51.123(e)(4)).

Consistent with the flexibility given to states in the FIP, Wisconsin has chosen to modify the provisions of the CAIR NO_X annual FIP concerning the allocation of allowances from the CSP. NR 432.04 contains the provisions Wisconsin has adopted for distribution of the CSP. Wisconsin has chosen to distribute CSP allowances based on early reduction credits or based on the need to avoid undue risk to electric reliability. The first methodology based on early reduction credits essentially mirrors the FIP's early reduction credit methodology.

The description in Wisconsin's rule of the second methodology based on need is somewhat unclear. EPA interprets the provision to require a demonstration that a unit cannot avoid undue risk to electric reliability if it keeps its emissions in 2009 from exceeding its 2009 allowance allocation. Even if the unit could obtain additional allowances to cover emissions above its allocation, and thereby comply with the requirement to hold allowances covering emissions, the unit could be given CSP allowances. In contrast, EPA's CSP provisions in the model rule, the FIP, and CAIR require a demonstration that, without being given CSP allowances, a unit cannot avoid undue risk while keeping its 2009 emissions from exceeding *all* the allowances it holds, both its 2009 allowance allocations and other allowances it can obtain for compliance. Thus, Wisconsin's provision is inconsistent with EPA's CSP provisions. Moreover, since Wisconsin's entire CSP is available for units meeting either the early reduction credit or the undue risk criteria, the early reduction credit and undue risk provisions cannot be administered separately, and the Wisconsin CSP must be administered by a single agency. Consequently, EPA proposes to disapprove all of Wisconsin's CSP provisions. This portion of Wisconsin's SIP submittal is separable from the rest of the submittal and can be disapproved without compromising the integrity of the portion where we are proposing approval.

In the absence of approved CSP provisions in an abbreviated CAIR SIP, the FIP provisions for the allocation of CSP allowances would continue to apply. Therefore, with the disapproval of Wisconsin's CSP provisions providing for distribution of the CSP the FIP CSP provisions would continue to apply in Wisconsin.

H. Individual Opt-In Units

The opt-in provisions allow for certain non-EGUs (*i.e.*, boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (*i.e.*, opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the CAIR FIP trading programs include opt-in provisions that

are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a state only if the state's abbreviated SIP revision adopts the opt-in provisions. The state may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The state also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the state without the ability for units to opt into the program.

Consistent with the flexibility given to states in the FIP, Wisconsin has chosen not to allow non-EGUs meeting certain requirements to participate in the CAIR NO_X annual trading program.

Consistent with the flexibility given to states in the FIP, Wisconsin has chosen not to permit non-EGUs meeting certain requirements to participate in the CAIR NO_X ozone season trading program.

Consistent with the flexibility given to states in the FIPs, Wisconsin has chosen not to allow certain non-EGUs to opt into the CAIR SO_2 trading program.

I. Additional Provisions Found in Wisconsin's Abbreviated CAIR SIP Submittal

In addition to the already mentioned portions of Wisconsin's rules that have been submitted as part of the abbreviated CAIR SIP, Wisconsin has two other provisions.

NR 432.06 describes the timing requirements for allocating both NO_X annual allowances and NO_X ozone season allowances. These requirements are consistent with the timing requirements for allocating allowances under an abbreviated SIP scenario found in 40 CFR 51.123 and are, therefore, being proposed for approval.

NR 432.08 would allow sources to make voluntary reductions beyond state and Federal requirements in exchange for regulatory flexibility. For the reasons discussed above, we are proposing to disapprove this portion of Wisconsin's CAIR abbreviated SIP. This portion is separable from the rest of Wisconsin's SIP submittal and can be disapproved without compromising the integrity of the portion where we are proposing approval.

VI. Proposed Action

EPA is proposing to partially approve and partially disapprove Wisconsin's abbreviated CAIR SIP revision submitted on June 19, 2007. Wisconsin is covered by the CAIR FIP, which requires participation in the EPA-administered CAIR FIP cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. Under this abbreviated SIP revision and consistent with the flexibility given to states in the FIP, Wisconsin adopts provisions for allocating allowances under the CAIR FIP NO_X annual and NO_X ozone season trading programs. As provided for in the CAIR FIP, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIP in Wisconsin. These provisions in Wisconsin's abbreviated SIP revision meet the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO_X annual and NO_X ozone season emissions. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Wisconsin's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

Wisconsin's submittal also contains provisions that are inconsistent with requirements concerning the CSP and that grant unacceptable regulatory flexibility to some sources. EPA is proposing to disapprove these portions of Wisconsin's rule. We are able to propose disapproval of these specific portions of Wisconsin's submittal because they are separable from the rest of Wisconsin's submittal and disapproving only these parts has no effect on the rest of the submittal that we are proposing to approve.

VII. 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 proposes to approve state law as meeting Federal requirements and would impose no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule would 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 action proposes to approve pre-existing requirements under state law and would not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposal also does not have tribal implications because it would 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 proposed action also does not have Federalism implications because it would 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 proposes to approve a State rule implementing a Federal standard and to amend the appropriate appendices in the CAIR FIP trading rules to note that approval. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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 would approve a State rule implementing a Federal Standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: July 18, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–14465 Filed 7–30–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 71

RIN 0920–AA03

Foreign Quarantine Regulations, Proposed Revision of HHS/CDC Animal-Importation Regulations

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services (HHS) is issuing this Advance Notice of Proposed Rulemaking (ANPRM) to begin the process of revising the regulations that cover the importation of dogs and cats (42 CFR 71.51), including by extending these regulations to cover domesticated ferrets. This ANPRM will also address the importation of African rodents (42 CFR 71.56) into the United States. HHS/CDC is also considering the need for additional regulations to prevent the introduction of zoonotic diseases into the United States.

The input received from stakeholders and other interested parties via the ANPRM process will lead to a Notice of Proposed Rulemaking (NPRM), with the aim of improving HHS's ability to prevent importation of communicable diseases into the United States. The scope of this ANPRM does not include the non-human primate regulations (42 CFR 71.53).

DATES: To be assured consideration, written comments must be received on or before October 1, 2007.

ADDRESSES: You may submit written comments to the following address: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Division of Global Migration and Quarantine, ATTN: Animal Importation Regulations, 1600 Clifton Road, N.E., (E03), Atlanta, GA 30333. Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road, NE., Atlanta, GA 30333. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Global Migration and Quarantine to schedule your visit.

You may also submit written comments electronically via the Internet at *http://www.regulations.gov* or via e-mail to *animalimportcomments@cdc.gov*. Electronic comments may be viewed at *http://wwwn.cdc.gov/publiccomments/*. CDC's general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet as they are received and without change, including any personal identifiers or contact information.

You can download an electronic version of the ANPRM at *http://www.regulations.gov*. CDC has also posted the ANPRM and related materials to its Web site at *http://www.cdc.gov/ncidod/dq*.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Mullan, (404) 639–4537.

SUPPLEMENTARY INFORMATION: Zoonoses are diseases that are transmissible from animals to people. The prevention of zoonoses in humans poses special challenges, and requires consideration of the role of animals in disease transmission. For example, domesticated animals such as dogs and cats can carry rabies, and wild exotic animals can carry a variety of known and emerging zoonotic pathogens. Under Section 361 of the Public Health Service Act (42 U.S.C. 264), HHS/CDC is responsible for regulations to prevent the introduction, transmission, and spread of communicable diseases from foreign countries into the United States, and from one U.S. State or possession into another. HHS/CDC recently published a Notice of Proposed Rulemaking to revise its foreign and interstate quarantine regulations in 42 CFR, Parts 70 and 71. Under its statutory authority, HHS/CDC may regulate the importation of animals into the United States that pose a health risk to humans. The Food and Drug Administration (FDA) within HHS also has regulatory authority under the Public Health Service Act to make and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases. Within the U.S. Department of Agriculture (USDA), the Animal and Plant Health Inspection Service (APHIS) has the authority to regulate the importation of animals; its focus is primarily on animal-welfare issues and diseases of veterinary and agricultural importance. In addition, the Office of Law Enforcement within the U.S. Fish and Wildlife Service (FWS) of the U.S. Department of the Interior (DOI) regulates the entry of some shipments of animals to ensure compliance with U.S. laws and international agreements that protect endangered species.

HHS/CDC currently regulates the importation of dogs and cats into the United States to prevent the entry of zoonotic diseases through 42 CFR 71.51. Dogs and cats are subject to inspection at ports of entry for evidence of infectious diseases transmissible to humans. If a dog or cat appears to be ill, inspectors may require further examination by a licensed veterinarian.

In addition, HHS/CDC provides additional restrictions on the importation of dogs to prevent the entry of rabies. Rabies is a virus that causes a fatal disease in humans and animals, especially dogs. In the United States, widespread mandatory vaccination of dogs has eliminated canine strains of rabies, and dramatically reduced the number of human cases in this country. However, canine strains of rabies remain a serious health threat in many other countries, and preventing the entry of animals infected with this strain of rabies into the United States is an important public-health priority. HHS/CDC currently regulates the importation of dogs into the United States by requiring rabies vaccination and the confinement of most dogs for up to 30 days after vaccination, principally to prevent the importation of rabies. Recently, HHS/CDC has received reports of large-volume shipments of puppies intended for immediate re-sale. These animals often appear younger than the age on their accompanying documents, and their vaccination status is questionable. Although a veterinary examination can assess many common zoonotic diseases of dogs, current regulations do not require dogs to be accompanied by a standard international health certificate signed by a licensed veterinary authority in the country of origin or means of unique identification for these animals. In addition, current regulations do not require rabies vaccination for cats, which are highly susceptible to canine strains of rabies virus, and can also transmit the infection to humans. Furthermore, current regulations do not require rabies vaccination or inspection for ferrets, which are domesticated pet

carnivores that are also highly susceptible to canine strains of rabies. Thus, the current regulations might not be sufficient to prevent the entry of canine strains of rabies into the United States.

Zoonotic pathogens are important not only because of the known illnesses they cause, which can move to new parts of the world, but also because of new human diseases that can arise from animal sources. In 2003, an outbreak of Severe Acute Respiratory Syndrome (SARS) in humans spread worldwide, and the initial transmission to humans was linked to civet cats sold for food in marketplaces in China. The emergence of SARS in humans following exposure to wild animals is an example of how a previously unrecognized zoonotic disease can quickly cause unexpected illness in human populations.

HHS/CDC believes many animals imported into the United States for the commercial pet trade represent a risk to human health. In 2003, an outbreak of monkeypox occurred in the United States, and involved 37 confirmed human cases. HHS/CDC ultimately traced back the outbreak of monkeypox, through infected prairie dogs, to the importation of African rodents. However, our investigators could not identify many potentially infected animals associated with this outbreak, because no accurate records were available to trace their movements. This outbreak eventually led to publication of 42 CFR 71.56, which prohibited the importation of all African rodents into the United States, except as approved by the Director of HHS/CDC for scientific, exhibition, or educational purposes. This outbreak illustrates the possibility of animals as sources of human infections, and the special risk associated with keeping wild animals as pets.

The importation of wild animals poses a health risk because most shipments involve a high volume of animals, most of which are wild-caught and not captive-raised. Many shipments also include different species co-mingled or kept in close proximity in confined spaces, conditions ideal for the transmission of disease. For most species, there is no screening for the presence of infectious diseases prior to shipment, and no holding or testing is required on entry into the United States, which creates an opportunity for the widespread exposure of humans to pathogens these animals could be harboring. High mortality rates among some animals, such as rodents, are common, and current U.S. statutes and regulations do not require importers to have diagnostic necropsies performed to determine whether the mortality is from a pathogen that could have an adverse effect on public health. Some imported animals are also known reservoirs or vectors of communicable diseases of public-health significance.

HHS/CDC has taken actions to prevent the introduction, transmission, and spread of specific communicable diseases into the United States, including monkeypox, SARS, and avian influenza. 42 CFR 71.56 prohibits the importation of African rodents, except as approved by the Director of HHS/CDC for scientific, exhibition, or educational purposes. HHS/CDC has issued an order to ban the importation of civets, because of concerns over the importation of SARS-coronavirus. HHS/CDC has also issued orders to ban the importation of birds and bird products from specific countries with highly pathogenic avian influenza H5N1; these orders mirror similar regulatory actions taken by USDA/APHIS to prevent the importation of birds with avian influenza H5N1. These actions might not be sufficient to fully prevent the introduction of zoonotic diseases into the United States, because they are limited to specific species and regions.

HHS/CDC believes a number of approaches could further limit the transmission of zoonotic diseases. Potential solutions to this problem include screening animals with reliable laboratory tests, treating the animals empirically for known diseases, or quarantining the animals upon entry into the United States for the duration of an incubation period or duration of transmissibility. Many of those solutions, however, are currently not feasible or practical to employ on the large volume of imported animals. In addition, the control measures cannot prevent new or emerging pathogens or infections for which no laboratory tests or no empiric treatments exist, when practical experiences regarding a species' susceptibility are lacking, when incubation periods are unknown, or when the infections are subclinical. In these instances, import restrictions of a wider range of species than currently regulated could be the only effective means of preventing the introduction of exotic infections into this country.

On May 18, 2006, HHS/CDC hosted a public meeting on the subject of infectious-disease threats associated with the importation and trade of exotic animals. Stakeholders submitted a variety of positions and views to the public meeting. Of the 22 statements received for consideration, seven indicated a measure of support for increased restrictions on the importation and sale of exotic species, while 15 expressed support for alternatives to regulatory or legal restrictions, or opposition to possible restrictions. HHS/CDC posted a summary of this meeting in the **Federal Register** of August 7, 2006 (71 FR 44,698).

Advance Notice of Proposed Rulemaking for Animal Importations

Before considering whether to engage in rulemaking, HHS/CDC is seeking input and background information from stakeholders, including pet owners, veterinarians, animal breeders and importers, retailers and distributors, U.S. State agricultural and public-health veterinarians, medical epidemiologists, infectious-disease internists, animal-welfare and conservation groups, research facilities, zoological societies, animal transporters, and other Federal, State, and local agencies on various issues relating to the potential application of revisions to the current rules. This process will allow HHS/CDC to consider the scope of any proposed changes.

HHS/CDC is requesting comments from stakeholders on the issues and questions below, pertaining to regulations on the importation into the United States of dogs, cats, and ferrets, as well as other animals. We request input on the economic, regulatory, management, social, health, and political impact any changes would have on the various stakeholder groups. We also request stakeholder groups to provide data to substantiate their claims of any positive or negative impact of any changes in the regulation. In addition, HHS/CDC solicits any additional comments from interested parties that could meaningfully inform the process of adjusting the current regulations.

Dog, Cat, and Ferret Regulations

Should HHS/CDC extend the regulations that currently cover dogs and cats to also cover domesticated ferrets?

Should HHS/CDC establish a minimum age for the importation of dogs, cats, and ferrets into the United States? If so, at what age and why? Should the minimum age differ for cats, dogs, and ferrets? Should HHS/CDC establish a requirement for the estimation of age by a licensed veterinarian?

Should rabies vaccination be a requirement for entry into the United States for all dogs, cats, and ferrets? What documentation would suffice as proof of vaccination? Should HHS/CDC require serologic evidence of immunity? What timeframe of vaccination would be appropriate? Should dogs, cats, and

ferrets imported for research purposes be considered exempt from rabies vaccination requirements if vaccination would interfere with the intended research?

Should HHS/CDC require each dog, cat, and ferret to have a valid international health certificate signed by a veterinary authority in the country of origin as a condition for entry into the United States? Are there particular international health certificates that should be used as a model? Would such a requirement be financially feasible for the importer? What diseases should a health examination and issuance of a health certificate cover? What are the perceived benefits or shortcomings of health certificates with respect to accurately reflecting a dog, cat, or ferret's true health status? How can these certificates be made difficult to falsify? Are there other methods that can demonstrate the health of the animal?

Would a requirement for all dogs, cats, and ferrets imported into the United States to have a unique identifier, such as a tattoo or microchip, as endorsed by the American Veterinary Medical Association, reduce the likelihood of fraudulent vaccination claims and health certificates? Would identifiers unique to each animal assist officials in locating and tracking dogs, cats, and ferrets during public-health investigations? How might the uniqueness of identifiers be assured if they are administered in other countries? What are some possible difficulties associated with requiring a unique identifier for each dog, cat, or ferret? Who would read the identifier? Should a database of identifiers for imported dogs, cats, and ferrets be maintained, and if so, who would maintain it? What is the impact of the cost of identification measures? Are there alternative identification methods?

To facilitate the implementation of these regulations, should HHS/CDC restrict the importation of dogs, cats, and ferrets to only those ports of entry staffed by HHS/CDC personnel? These quarantine stations are located in Atlanta, GA; Miami, FL; Chicago, IL; New York City, NY; Honolulu, HI; San Francisco, CA; Los Angeles, CA; Seattle, WA; Newark, NJ; Washington, DC; Dallas, TX; El Paso, TX; Houston, TX; Anchorage, AK; Boston, MA; Detroit, MI; Minneapolis, MN; San Diego, CA; Philadelphia, PA; and San Juan, PR. What impact would limiting the importation of dogs, cats, and ferrets to certain ports potentially have on pet owners and the pet industry?

Many countries allow dogs, cats, and ferrets with appropriate documentation and vaccination history to accompany travelers. Is there a need for possible exemptions to importation requirements for dogs, cats, and ferrets that are traveling with their owners abroad and returning to the United States? Is there a need for other types of exemptions for dogs, cats, and ferrets?

Should HHS/CDC consider additional requirements that might reduce the risk of importing communicable diseases from dogs, cats, and ferrets into the United States, and make the implementation of these regulations more feasible and effective at ports of entry?

For firms and other entities potentially affected by the options discussed in the ANPRM, what types of negative (or positive) impacts could occur? What types of businesses and other entities would the options affect? What provisions would have the greatest impact? How would the revenues and costs of affected businesses change under the various approaches discussed in the ANPRM? For example, what percent of revenues are these options likely to affect in the short, medium, and long term (*e.g.*, one year, 10 years, and 30 years)? How could HHS/CDC reduce or avoid the impact on small entities, and how would any changes to reduce impact on small entities affect the potential effectiveness of the rules?

Other Animal Regulations (Including African Rodents Currently Regulated Under 42 CFR 71.56)

HHS/CDC's current approach to controlling zoonotic disease threats has been to issue emergency orders or rules prohibiting importation of implicated animals. These actions are usually taken after an outbreak occurs, rather than to proactively prevent outbreaks from known high-risk animals. Given that this approach might not be sufficient to prevent fully the introduction of many zoonotic diseases, should HHS/CDC establish a regulation that maintains a list of species or categories of high-risk animals for which importation is restricted (*e.g.* either prohibited from entry, or subject to certain entry and permitting requirements)? If so, how would the types of animals included on such a list be determined? Should these regulations be based on broad taxonomic groupings (*e.g.*, all rodents), or should they list individual species? Should HHS/CDC consider issuing these restrictions on a limited geographical basis (*i.e.*, certain countries or regions), or more broadly?

If HHS/CDC were to prohibit certain subsets of animals from entry, how would personnel at ports of entry accurately identify animals, considering that many species of concern are difficult to identify or distinguish from each other?

Should the revised rules focus on restricting the importation of diseases not already present in the United States, or should they also cover enzootic diseases that may pose a health risk (ex. salmonellosis)? What data sources should HHS/CDC use to determine a prioritized list of covered diseases?

Should HHS/CDC require shipments of restricted animals to enter a port staffed with HHS/CDC personnel? These quarantine stations appear in the above section on the regulations that cover dogs, cats, and ferrets. What impact would limiting the importation of restricted animals to certain ports potentially have on pet owners, the pet industry, and the scientific research community?

What impact will changing these regulations to include other species of animals have on the U.S. market for rearing these animals domestically? What impact will changing the regulations have on the illegal trade of restricted animal species?

Should HHS/CDC subject restricted animals to a quarantine period to cover the risks of diseases that have established incubation periods, as well as to allow assessment of the animals' general health status? Should there be quarantine exemptions for laboratory animals certified as being free of pathogens of concern? If a quarantine period is permitted, should animals that become ill or die during quarantine be required to have diagnostic tests or necropsies conducted to rule out communicable diseases of human health concern? Should such a requirement be mandatory, or should diagnostic tests or necropsies be ordered at the discretion of HHS/CDC? Who should bear the costs of the required diagnostic tests or necropsies?

How might changes to these regulations affect current practices regarding the tracking and handling of animals? What are ways to improve record-keeping for these animals to allow more rapid tracking during public-health investigations?

For firms and other entities potentially affected by the options discussed in the ANPRM, what types of negative (or positive) impacts could occur? What types of businesses and other entities would the options affect? What provisions would have the greatest impact? How would their revenues and costs change under the various approaches discussed in the ANPRM? For example, what percent of revenues are these options likely to affect in the short, medium, and long

term (*e.g.*, one year, 10 years, and 30 years)? Please provide suggestions about how HHS/CDC could reduce or avoid the impact on small entities, and how those changes would affect the potential effectiveness of the rules.

References

1. Regulations on the importation of dogs and cats (42 CFR 71.51): *http://a257.g.akamaitech.net/7/257/2422/05dec20031700/edocket.access.gpo.gov/cfr_2003/octqtr/42cfr71.51.htm.*

2. Other animal-importation regulations (42 CFR 71.56) and orders:

a. *http://edocket.access.gpo.gov/2003/03-27557.htm*

b. *http://www.cdc.gov/ncidod/monkeypox/animals.htm*

c. *http://www.cdc.gov/flu/avian/outbreaks/embargo.htm*

d. *http://www.cdc.gov/ncidod/sars/civetembargo.htm*

Dated: April 16, 2007.

Michael Leavitt,

Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV25

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Devils River Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Devils River minnow (*Dionda diaboli*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 73.5 stream kilometers (km) (45.7 stream miles (mi)) are within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located along streams in Val Verde and Kinney Counties, Texas.

DATES: We will accept comments from all interested parties until October 1, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by September 14, 2007.

ADDRESSES: If you wish to comment on the proposed rule, you may submit your comments and materials by any one of several methods:

1. You may mail or hand-deliver written comments and information to Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758.

2. You may send comments by electronic mail (e-mail) to *fw2_drm@fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may fax your comments to the attention of Adam Zerrenner at 512–490–0974.

4. You may go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512–490–0057.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512–490–0057; facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 7 days a week and 24 hours a day.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons 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 any 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 Devils River minnow habitat, what areas should be included in the designation that were occupied at the time of listing that contain the features that are essential for the conservation of the species and why, and what areas that were not occupied at the listing are essential to the conservation of the species and why;

(3) Information on the status of the Devils River minnow in Sycamore Creek and Las Moras Creek watersheds and information that indicates whether or not these areas should be considered essential to the conservation of the species;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities and information about the benefits of including or excluding any areas that exhibit those impacts; and

(6) 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.

You may submit comments and materials concerning this proposal by one of several methods (see **ADDRESSES**). Please include ''Attn: Devils River minnow'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our Austin Ecological Services Field Office at 512–490–0057. Please note that comments must be received by the date specified in the **DATES** section in order to be considered and that the e-mail address *fw2_drm@fws.gov* will be closed out at the termination of the public comment period.

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

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on

the Devils River minnow, refer to the final listing rule published in the **Federal Register** on October 20, 1999 (64 FR 56596) or the 2005 Devils River Minnow Recovery Plan available online at *http://www.fws.gov/endangered/*. More detailed information on Devils River minnow biology and ecology that is directly relevant to designation of critical habitat is discussed under the Primary Constituent Elements section below.

Description and Taxonomy

The Devils River minnow (*Dionda diaboli* Hubbs and Brown) is a small fish first collected in 1951 (Hubbs and Brown 1956, p. 70). The Devils River minnow is recognized as a distinct species by the American Fisheries Society (Nelson *et al.* 2004, p. 70). Taxonomic validity is based on morphology (Hubbs and Brown 1956, p. 69), genetic markers (Mayden *et al.* 1992, p. 722), and chromosome differences (Gold *et al.* 1992, p. 221).

Adult Devils River minnows reach sizes of 25–53 millimeters (mm) (1.0–2.1 inches (in)) standard length. The fish has a wedge-shaped spot near the tail and a pronounced lateral stripe extending through the eye to the snout but without reaching the lower lip. The species has a narrow head and prominent dark markings on the scale pockets of the body above the lateral line, producing a crosshatched appearance when viewed from above (Hubbs and Brown 1956, pp. 69–70). The species occurs with other minnows, such as the closely related manantial roundnose minnow (*Dionda argentosa*).

Distribution and Habitat

The Devils River minnow is limited to short stretches of spring-fed stream tributaries of the Rio Grande in southwestern Texas and northeastern Mexico (Garrett *et al.* 1992, p. 259). In the United States, the fish has never been found outside of five streams in Val Verde and Kinney Counties, Texas. The Devils River minnow currently occurs in stretches of the Devils River, San Felipe Creek, and Pinto Creek. It has been extirpated from Las Moras Creek and has not been collected from Sycamore Creek since 1989 (Garrett *et al.* 1992, pp. 261–267; Garrett *et al.* 2004, p. 435). There is little information available on the status of the Devils River minnow in Mexico. Historically, it was known to occur in the Río San Carlos and several streams in the Río Salado Drainage, in the State of Coahuila. Regulations at 50 CFR 424.12(h) state that critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction. As such, geographical areas supporting the Devils River minnow in Mexico are not included in the proposed critical habitat designation.

The Devils River minnow is found only in spring-fed streams (Brune 1981, pp. 274–275, 450–454; Garrett *et al.* 1992, p. 259) with shallow to moderate depths and slow to moderate water velocity over gravel substrates. Within these streams, Devils River minnows are most often found within or nearby emergent aquatic plants (Garrett *et al.* 2004, p. 437) or near similar structures created by stream bank vegetation that extends into the water (Lopez-Fernandez and Winemiller 2005, p. 249).

Previous Federal Actions

The Devils River minnow was listed as threatened on October 20, 1999 (64 FR 56596). Critical habitat was not designated for this species at the time of listing (64 FR 56606). On October 5, 2005, the Forest Guardians, Center for Biological Diversity, and Save Our Springs Alliance filed suit against the Service for failure to designate critical habitat for this species (*Forest Guardians et al.* v. *Hall* 2005). On June 28, 2006, a settlement was reached that requires the Service to re-evaluate our original prudenct determination. The settlement stipulated that, if prudent, a proposed rule would be submitted to the **Federal Register** for publication on or before July 31, 2007, and a final rule by July 31, 2008. This proposed rule complies with the settlement agreement and with section 4(b)(2) of the Act. For more information on previous Federal actions concerning the Devils River minnow, refer to the final listing rule published in the **Federal Register** on October 20, 1999 (64 FR 56598).

Critical Habitat

Critical habitat is defined in section 3 of the Act 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. Conservation, as defined under section 3 of the Act means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.

Critical habitat receives protection under section 7(a)(2) of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7(a)(2) of the Act is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the geographical area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if the essential features thereon may require special management considerations or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2) of the Act.) Unoccupied areas can be designated as critical habitat. However, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, the Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.L. 106–554; H.R. 5658), and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that

decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we use the best scientific data available in determining areas occupied at the time of listing that contain the features essential to the conservation of the Devils River minnow, and areas unoccupied at the time of listing that are essential to the conservation of the Devils River minnow, or both. In designating critical habitat for the Devils River minnow, we reviewed the relevant information available, including peer-reviewed journal articles, unpublished reports, the Devils River Minnow Recovery Plan, the final listing rule, and unpublished materials (such as expert opinions). In February 2006, we sent information requests to a large number of experts and stakeholders (such as private landowners, Texas state government agencies, other Federal agencies, local governments, and nongovernmental organizations).

We have also reviewed available information that pertains to the habitat requirements of this species. We used a wide variety of sources of information, such as material included in reports submitted during section 7 consultations; research published in peer-reviewed articles and presented in academic theses; research proposals and correspondence from technical experts; data and reports from other State and Federal agencies; unpublished data such as field notes and personal observations from field biologists; and regional Geographic Information System (GIS) coverages, including geodatabases provided by partner organizations, such as the City of Del Rio and The Nature Conservancy.

We are proposing to designate critical habitat for the Devils River minnow in areas that were occupied at the time of listing, and that contain the physical and biological features essential to the conservation of the species arranged in the quantity and spatial characteristics necessary for conservation (see ''Criteria Used to Identify Critical Habitat'' section below). We are also proposing to designate critical habitat in areas unoccupied at the time of listing and determined to be essential to the conservation of the Devils River minnow.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific physical and biological features essential to the conservation of the Devils River minnow, primary constituent elements (PCEs), are derived from the biological needs of the species as understood from studies of its biology and ecology, including but not limited to, Edwards *et al.* (2004), Garrett *et al.* (1992), Garrett *et al.* (2004), Gibson *et al.* (2004), Harrell (1978), Hubbs (2001), Hubbs and Garrett (1990), Lopez-Fernandez and Winemiller (2005), Valdes Cantu and Winemiller (1997), and Winemiller (2003).

Space for Individual and Population Growth, Normal Behavior, and Cover

The Devils River minnow is a fish that occurs only in aquatic environments of small to mid-sized streams that are tributaries to the Rio Grande. The species spends its full life cycle within streams. The stream environment provides all of the space necessary to allow for individual and population growth, food, cover, and normal behaviors of the species. Quantitative studies of the specific micro-habitats used by any life stages of Devils River minnow in the wild have not been conducted. Studies of fish habitat within its range have found too few individuals of Devils River minnow to analyze specific habitat associations (Garrett *et al.* 1992, p. 266; Valdes Cantu and Winemiller 1997, p. 268; Robertson and Winemiller 2003, p. 119). However, observational studies have been conducted throughout its limited range that qualitatively defined stream conditions where Devils River minnows have been collected.

General habitat descriptions of areas where Devils River minnow have been found include the following: ''the area where spring runs enter the river'' (Hubbs and Garrett 1990, p. 448); ''channels of fast-flowing water over gravel bottoms'' (Garrett *et al.* 1992, p. 259); ''associated with water willow (*Justicia americana*) and other aquatic macrophytes over a gravel-cobble substrate'' (Garrett *et al.* 2004, p. 437) (macrophytes are plants large enough to be seen without a microscope); and ''stream seeps'' at sites that ''had abundant riparian vegetation overhanging the banks'' (Lopez-Fernandez and Winemiller 2005, p. 249). We based our determinations of the PCEs on the physical and biological features that have been measured in

streams where Devils River minnow occur.

a. Water Depth and Velocity. Flowing water within streams is critical to provide living space for the Devils River minnow. All of the streams where the Devils River minnow is found are supported by springs that derive their discharge from underground aquifers, either the Edwards Aquifer or the Edwards-Trinity Aquifer (Brune 1981, pp. 274–277, 449–456; Edwards *et al.* 2004, p. 256; Garrett *et al.* 1992, p. 261; Garrett *et al.* 2004, p. 439; Hubbs and Garrett 1990, p. 448; Lopez-Fernandez and Winemiller 2005, p. 249). The Devils River minnow has been associated within the stream channel with areas with slow to moderate velocities between 10 and 40 centimeters (cm)/second (4 and 16 inches (in)/second) (Winemiller 2003, p. 13). The Devils River minnow is usually found in areas with shallow to moderate water depths between about 10 cm (4 in) and 1.5 meters (4.9 feet (ft)) (Garrett *et al.* 2004, p. 436). Appropriate water depths and velocities are required physical features for Devils River minnows to complete all life history functions.

b. Cover. The presence of vegetative structure appears to be particularly important for the Devils River minnow. Garrett *et al.* (2004, p. 437) states that the species is most often found associated with emergent or submerged vegetation. Lopez-Fernandez and Winemiller (2005, p. 249) also found the Devils River minnow associated with stream banks having riparian vegetation that overhangs into the water column, presumably providing similar structure for the fish to use as cover. The structure provided by vegetation likely serves as cover for predator avoidance by the Devils River minnow and as a source of food where algae and other microorganisms may be attached. In controlled experiments in an artificial stream setting, minnows in the *Dionda* genus (the experiment did not distinguished between the Devils River minnow and the closely related manantial roundnose minnow) were found consistently associated with plants, and, in the presence of a predator, sought shelter in plant substrate habitat (Thomas 2001, p. 8). Also, laboratory observations by Gibson *et al.* (2004, p. 42) suggested that spawning only occurred when structure was provided in aquaria. Instream vegetative structure is an important biological feature for the Devils River minnow to avoid predation and complete other normal behaviors, such as feeding and spawning.

c. Substrates. The Devils River minnow is most often associated with substrates (stream bottom) described as gravel and cobble (Garrett *et al.* 2004, p. 436). Lopez-Fernandez and Winemiller (2005, p. 248) found the Devils River minnow associated with areas where the amounts of fine sediment on stream bottoms were low (less than 65 percent stream bottom coverage) (Winemiller 2003, p. 13) and where there was low or moderate amounts of substrate embeddedness. The term embeddedness is defined by Sylte and Fischenich (2003, p. 1) as the degree to which fine sediments surround coarse substrates on the surface of a streambed. Low levels of substrate embeddedness and low amounts of fine sediment are physical stream features that provide interstitial spaces where microorganisms grow. These microorganisms are a component of the diet of the Devils River minnow (Lopez-Fernandez and Winemiller 2005, p. 250). We estimate substrate sizes for gravel-cobble between 2 and 10 cm (0.8 and 4 in) in diameter (Cummins 1962, p. 495) are important for supporting food sources for the Devils River minnow.

d. Stream Channel. The Devils River minnow occurs in the waters of stream channels that flow out of the Edwards Plateau of Texas. The streams contain a variety of mesohabitats for fish that are temporally and spatially dynamic (Harrell 1978, p. 60–61; Robertson and Winemiller 2003, p. 115). Mesohabitat types are stream conditions with different combinations of depth, velocity, and substrate, such as pools (stream reaches with low velocity and deep water), riffles (stream reaches with moderate velocity and shallow depths and some turbulence due to high gradient), runs (stream reaches with moderate depths and moderate velocities and a uniformly, flat stream bottom), and backwaters (areas in streams with little or no velocities along stream margins) (Parasiewicz 2001, p. 7). These physical conditions in stream channels are mainly formed by large flood events that shape the banks and alter stream beds. Healthy stream ecosystems require intact natural stream banks (composed of sediments, rocks, and native vegetation) and stream beds (dynamically fluctuating from silt, sand, gravel, cobble, and bedrock). These physical features allow natural ecological processes in stream ecosystems to maintain habitat for Devils River minnow behaviors of feeding, breeding, and seeking shelter.

Devils River minnow may move up and downstream to use diverse mesohabitats during different seasons and life stages, which could partially explain the highly variable sampling results assessing abundance of the fish (Garrett *et al.* 2002, p. 478). However, it is unknown to what extent Devils River minnow may move within occupied stream segments because no research on movement has been conducted. Linear movement (upstream or downstream) within streams may be important to allow fishes to complete life history functions and adjust to resource abundance, but this linear movement may often be underestimated due to limited biological studies (Fausch *et al.* 2002, p. 490). The Devils River minnow occurs in relatively short stream segments and, therefore, needs to be able to move within the stream unimpeded to prevent population fragmentation.

Food

The Devils River minnow, like other minnows in the *Dionda* genus, has a long coiled gut for digesting algae and plants. Lopez-Fernandez and Winemiller (2005, p. 250) noted that Devils River minnow graze on algae attached to stream substrates (such as gravel, rocks, submerged plants, woody debris) and associated microorganisms. Thomas (2001, p. 13) observed minnows in the *Dionda* genus (the experiment did not distinguish between Devils River minnow and the closely related manatial roundnose minnow) feeding extensively on filamentous algae growing on rocks and plants in an artificial stream experiment. The specific components of the Devils River minnow diet have not been investigated, but a study is underway to identify stomach contents of the Devils River minnow in San Felipe Creek (Texas Parks and Wildlife Department (TPWD) 2006, p. 1). An abundant aquatic food base is an essential biological feature for conservation of Devils River minnow.

Water Quality

The Devils River minnow occurs in spring-fed streams originating from groundwater. The aquifers that support these streams are of high quality, free of pollution and most human-caused impacts (Plateau Water Planning Group (PWPG) 2006, p. 5–9). This region of Texas has limited human development that would compromise water quality of the streams where Devils River minnows occur (San Felipe Creek may be an exception, see ''Special Management Considerations or Protection'' below). The watersheds are largely rural and have been altered to some extent by livestock grazing (cattle, sheep, and goats) for many decades (Brune 1981, p. 449). As part of state-wide water planning efforts, the TPWD

proposed that all five streams within the range of the Devils River minnow (Devils River, San Felipe Creek, Sycamore Creek, Pinto Creek, and Las Moras Creek) be considered ''ecologically significant stream segments'' for their biological function, hydrological function, exceptional aquatic life, and high aesthetic value (El-Hage and Moulton 2001, pp. 28–36, 45–49).

No specific studies have been conducted to determine water quality preferences or tolerances for Devils River minnow. However, because the species now occurs in only three streams, observations of water quality conditions in these streams are used to evaluate the needed water quality parameters for critical habitat. In addition, laboratory studies by Gibson et al. (2004, pp. 44–46) and Gibson and Fries (2005, pp. 299–303) have also provided useful information for the water quality conditions in captivity for Devils River minnow.

a. Water temperature. Water temperatures from groundwater discharge at these springs are considered constant (Hubbs 2001, p. 324). However, water temperatures downstream from springs vary daily and seasonally (Hubbs 2001, p. 324). Water temperatures have been measured in these stream segments to range from about 17 °C (degrees Celsius) to 29 °C (63 °F (degrees Fahrenheit) to 85 °F). Temperatures in the Devils River ranged from 17 °C to 27 °C (63 °F to 81 °F) (Lopez-Fernandez and Winemiller 2005, p. 248; Hubbs 2001, p. 312). Measurements in San Felipe Creek have ranged from 19 °C to 24 °C (66 °F to 75 °F) (Hubbs 2001, p. 311; Winemiller 2003, p. 13). Gibson and Fries (2005, p. 296) had successful spawning by Devils River minnows at temperatures from about 18 °C to 24 °C (64 °F to 75 °F). Higher water temperatures are rare in Devils River minnow habitat, but temperatures up to 29 °C (84 °F) were recorded in Pinto Creek (Garrett *et al.* 2004, p. 437). This stream segment has the lowest flow of those known to contain the Devils River minnow, resulting in higher temperatures. Maintaining water temperatures within an acceptable range in small streams is an essential physical feature for the Devils River minnow to allow for survival and reproduction.

b. Water chemistry. Researchers have noted the need for high-quality water in habitats supporting the Devils River minnow (Garrett 2003, p. 155). Field studies at sites where Devils River minnow have been collected in conjunction with water quality measurements have documented that habitats contain the following water chemistry: dissolved oxygen levels are greater than 5.0 mg/l (milligrams per liter) (Hubbs 2001, p. 312; Winemiller 2003, p. 13; Gibson *et al.* 2004, p. 44); pH ranges between 7.0 and 8.2 (Garrett *et al.* 2004, p. 440; Hubbs 2001, p. 312; Winemiller 2003, p. 13); conductivity is less than 0.7 mS/cm (microseimens per centimeter) and salinity is less than 1 ppt (part per thousand) (Hubbs 2001, p. 312; Winemiller 2003, p. 13; Garrett *et al.* 2004, p. 440; Gibson *et al.* 2004, p. 45); and ammonia levels are less than 0.4 mg/l (Hubbs 2001, p. 312; Garrett *et al.* 2004, p. 440). Streams with water chemistry within the observed ranges are essential physical features to provide habitat for normal behaviors of Devils River minnow.

Garrett *et al.* (2004, pp. 439–440) highlighted the conservation implications of water quality when describing the distribution of Devils River minnow in Pinto Creek. The species is abundant in upstream portions of the creek and is abruptly absent at and downstream from the Highway 90 Bridge crossing. A different aquifer (Austin Chalk) feeds the lower portion of the creek (Ashworth and Stein 2005, p. 19), which results in changes in water quality (lower measurements of water temperature, pH, ammonia, and salinity). Garrett *et al.* (2004, p. 439) found that the change in water quality also coincided with the occurrence of different fish species that were more tolerant of lower values for these water quality parameters.

c. Pollution. The Devils River minnow occurs only in habitats that are generally free of human-caused pollution. Garrett *et al.* (1992, pp. 266–267) suspected that the addition of chlorine to Las Moras Creek for the maintenance of a recreational swimming pool may have played a role in the extirpation of Devils River minnow from that system. Unnatural addition of pollutants such as copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; suspended sediments; petroleum compounds and gasoline or diesel fuels will alter habitat functions and threaten the continued existence of Devils River minnow. Fish, particularly herbivores and bottom-feeders, such as the Devils River minnow, are susceptible to the detrimental effects of aquatic pollutants (Buzan 1997, p. 4). Areas with waters free of pollution are essential physical features to allow normal behaviors and growth of the Devils River minnow and to maintain healthy populations of its food sources.

Sites for Breeding, Reproduction, and Rearing of Offspring

The specific sites and habitat associated with Devils River minnow breeding and reproduction have not been documented in the wild. However, Gibson *et al.* (2004) studied preferred conditions for spawning by Devils River minnow in a laboratory setting. Gibson *et al.* (2004, pp. 45–46) documented that the species is a broadcast spawner (they release eggs and sperm into the open water), over unprepared substrates (they don't build nests), and males display some territorial behavior. Broadcast spawning is the most common reproductive method in minnows (Johnston 1999, p. 22; Johnston and Page 1992, p. 604). Fertilized eggs of Devils River minnow were slightly adhesive (or became more adhesive with time) and tended to stick to gravels just below the surface of the substrate (Gibson *et al.* 2004, p. 46). The eggs can hatch less than one week after deposition (Gibson 2007, p. 1). There was little seasonality in spawning periods observed (Gibson *et al.* 2004, p. 45–46), which is consistent with a species that lives in a relatively stable temperature environment, such as spring-fed streams with low seasonal temperature variations. Based on this information, it is likely the species can spawn during most of the year. This is supported by Garrett *et al.* (2004, p. 437), who observed distinct breeding coloration of Devils River minnow (blue sheen on the head and yellow tint on body) in Pinto Creek in December 2001, and Winemiller (2003, p. 16), who found juveniles from early spring to late fall in San Felipe Creek.

a. Substrate. Gibson and Fries (2005, p. 299) found that Devils River minnow preferred gravel for spawning substrate, with size ranging mostly from 2 to 3 cm in diameter (0.8 to 1.2 in). Gravel and rock substrates are required physical features for spawning (depositing, incubating, and hatching) of Devils River minnow eggs.

b. Cover. In laboratory experiments, Devils River minnow spawned in tanks with live potted plants (*Vallisnaria* spp. and *Justicia spp.*); however, eggs were never found on the plants or other parts of the tank (Gibson *et al.* 2004, pp. 42, 43, 46). The plants apparently served as cover for the fish and allowed favorable conditions for spawning to occur. This condition is supported by observations in the wild that associate Devils River minnow with aquatic habitats where vegetative structure is present. This vegetative structure is a biological feature that is important for reproduction of Devils River minnow.

Habitat Protected From Disturbance or Representative of the Historic Geographical and Ecological Distribution of a Species

a. Nonnative species. The introduction and spread of nonnative species have been identified as major factors in the continuing decline of native fishes throughout North America (Moyle *et al.* 1986, pp. 415–416) and particularly in the southwestern United States (Miller 1961, p. 397; Miller 1977, pp. 376–377). Williams *et al.* (1989, p. 1) concluded that nonnative species were a causal factor in 68 percent of the fish extinctions in North America in the last 100 years. For 70 percent of those fish still extant, but considered to be endangered or threatened, introduced nonnative species are a primary cause of the decline (Lassuy 1995, p. 392). Nonnative species have been referenced as a cause of decline in native Texas fishes as well (Anderson *et al.* 1995, p. 319; Hubbs 1990, p. 89; Hubbs *et al.* 1991, p. 2).

Aquatic nonnative species are introduced and spread into new areas through a variety of mechanisms, intentional and accidental, authorized and unauthorized. Mechanisms for nonnative fish dispersal in Texas include sport fish stocking (intentional and inadvertent, non-target species), aquaculture escapes, aquarium releases, and bait bucket releases (release of fish used as bait by anglers) (Howells 2001, p. 1).

Within the range of the Devils River minnow, nonnative aquatic species of potential concern include: armored (or suckermouth) catfish (*Hypostomus* sp.) in San Felipe Creek (Lopez-Fernandez and Winemiller 2005, pp. 246–251); smallmouth bass (*Micropterus dolomieu*) in the Devils River (Thomas 2001, p. 1); African cichlid (*Oreochromis aureus*) in San Felipe Creek (Lopez-Fernandez and Winemiller 2005, p. 249) and Devils River (Garrett *et al.* 1992, p. 266); Asian snail (*Melanoides tuberculata*) and associated parasites (McDermott 2000, pp. 13–14); and Asian bivalve mollusk (*Corbicula* sp.) (Winemiller 2003, p. 25) in San Felipe Creek. Effects from nonnative species can include predation, competition for resources, altering of habitat, changing of fish assemblages (combinations of species), or transmission of harmful diseases or parasites (Aquatic Nuisance Species Task Force 1994, pp. 51–59; Baxter *et al.* 2004, p. 2656; Howells 2001, pp. 17–18; Light and Marchetti 2007, pp. 442–444; Moyle *et al.* 1986, pp. 416–418). Studies have found effects from the armored catfish in San Felipe Creek, most likely due to competition for food (Lopez-Fernandez and Winemiller 2005, p. 250). The persistence of Devils River minnow in its natural range of habitats is dependent on areas that are devoid of harmful nonnative aquatic species or where nonnative aquatic species are at levels that allow healthy populations of the Devils River minnow. The absence of harmful nonnative species is an essential biological feature for conservation of the Devils River minnow.

b. Hydrology. Natural stream flow regimes (both quantity and timing) are vital components to maintain ecological integrity in stream ecosystems (Poff *et al.* 1997, p. 769; Resh *et al.* 1988, pp. 443–444). Aquatic organisms, like the Devils River minnow, have specific adaptations to use the environmental conditions provided by natural flowing systems and the highly variable stream flow patterns (Lytle and Poff 2004, p. 94). As with other streams in the arid southwestern United States, streams where the Devils River minnow occurs can have large fluctuations in stream flow levels. In Texas, streams are characterized by high variation between large flood flows and extended period of low flows (Jones 1991, p. 513). Base flows in streams containing Devils River minnow are generally maintained by constant spring flows (Ashworth and Stein 2005, p. 4), but in periods of drought, especially in combination with groundwater withdrawals, portions of stream segments can be periodically dewatered. The occurrence of intermittent stream segments within the range of the Devils River minnow is most common in Pinto Creek (Ashworth and Stein 2005, Figure 13; Uliana 2005, p. 4; Allan 2006, p. 1).

Although portions of stream segments included in this proposed designation may experience short periods of low or no flows (causing dry sections of stream), they are still important because the Devils River minnow is adapted to stream systems with some fluctuating water levels. Fish cannot persist in dewatered areas (Hubbs 1990, p. 89). However, Devils River minnows will use dewatered areas that are subsequently wetted as connective corridors between occupied or seasonally occupied habitat. Fausch *et al.* (2002, p. 490) notes in a review of movement of fishes related to metapopulation dynamics that, ''Even small fishes may move long distances to repopulate rewetted habitats.'' Preventing habitat fragmentation of fish populations is important in reducing extinction risks in rare species (Fagan 2002, p. 3255). Areas within stream courses that may be periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted are important physical features of Devils River minnow habitat.

Flooding is also a large part of the natural hydrology of streams within the range of Devils River minnow. Large floods have been shown to alter fish community structure and fish habitat use in the Devils River (Harrell 1978, p. 67) and in San Felipe Creek (Garrett and Edwards 2003, p. 787; Winemiller 2003, p. 12). Pearsons *et al.* (1992, p. 427) states that ''Flooding is one of the most important abiotic factors that structure biotic assemblages in streams.'' Floods provide flushing flows that remove fine sediments from gravel and provide spawning substrates for species like the Devils River minnow (Instream Flow Council 2002, p. 103; Poff *et al.* 1997, p. 775). Flooding is the physical mechanism that shapes stream channels by a process known as scour and fill, where some areas are scoured of fine sediments while fine sediments are redeposited in other areas (Gordon *et al.* 1992, pp. 304–305; Poff *et al.* 1997, pp. 771–772). This dynamic process is fundamental to maintaining habitat diversity in streams that ensure healthy ecosystem function (Lytle and Poff 2004, pp. 96–99; Poff *et al.* 1997, pp. 774–777). Allowing natural stream flows, particularly during flood events, is an essential physical feature to maintain stream habitats for Devils River minnow.

Primary Constituent Elements for the Devils River Minnow

Under the Act and its implementing regulations, we are required to identify the physical and biological features (PCEs) within the geographical area occupied by the species, which may require special management considerations or protections.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined that the Devils River minnow's PCEs are:

1. Streams characterized by:

a. Areas with slow to moderate water velocities between 10 and 40 cm/second (4 and 16 in/second) in shallow to moderate water depths between approximately 10 cm (4 in) and 1.5 m (4.9 ft), near vegetative structure, such as emergent or submerged vegetation or stream bank riparian vegetation that overhangs into the water column;

b. Gravel and cobble substrates ranging in size between 2 and 10 cm (0.8 and 4 in) with low or moderate amounts of fine sediment (less than 65

percent stream bottom coverage) and low or moderate amounts of substrate embeddedness; and

c. Pool, riffle, run, and backwater components free of artificial instream structures that would prevent movement of fish upstream or downstream.

2. High-quality water provided by permanent, natural flows from groundwater spring and seeps characterized by:

a. Temperature ranging between 17 °C and 29 °C (63 °F and 84 °F);

b. Dissolved oxygen levels greater than 5.0 mg/l;

c. Neutral pH ranging between 7.0 and 8.2;

d. Conductivity less than 0.7 mS/cm and salinity less than 1 ppt;

e. Ammonia levels less than 0.4 mg/l; and

f. No or minimal pollutant levels for copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; fertilizers; suspended sediments; petroleum compounds and gasoline or diesel fuels.

3. Abundant aquatic food base consisting of algae attached to stream substrates and other associated microorganisms.

4. Aquatic stream habitat either devoid of nonnative aquatic species (including fish, plants, and invertebrates) or in which such nonnative aquatic species are at levels that allow for healthy populations of Devils River minnows.

5. Areas within stream courses that may be periodically dewatered for short time periods, during seasonal droughts, but otherwise serve as connective corridors between occupied or seasonally occupied areas through which the species moves when the area is wetted.

This proposed designation is designed for the conservation of PCEs necessary to support the life history functions that were the basis for the proposal and the areas containing those PCEs. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the occupied areas contain the features essential to the conservation of the species that may require special management considerations or protections. We provide a summary discussion below of the special management needs for the stream segments we have identified as occupied at the time of listing (Devils River and San Felipe Creek) and the area considered to be essential for the conservation of the Devils River minnow (Pinto Creek). For additional information regarding the threats to the Devils River minnow and the needed management strategies to address those threats, see the Devils River Minnow Recovery Plan (Service 2005, pp. 1.7–1—1.7–7; 1.8–1—1.8–4; 2.5–1—2.5–5).

The following special management needs apply to all three stream segments, Devils River, San Felipe Creek, and Pinto Creek, and will be further discussed for each stream segment in the Proposed Critical Habitat Designation below.

a. Groundwater management. The waters that produce all three stream segments issue from springs that are supported by underground aquifers, generally some portion of the Edwards Trinity Aquifer (Ashworth and Stein 2005, pp.16–33; Barker and Ardis 1996, pp. B5–B6; Brune 1981, pp. 274–277, 449–456; Green *et al.* 2006, pp. 28–29; LBG-Guyton Associates 2001, pp. 5–6; PWPG 2006, pp. 3–5, 3–6, 3–30). Regional groundwater flow in this area is generally from north to south (Ashworth and Stein 2005, Figure 8). This aquifer is currently pumped to provide water for human uses including agricultural, municipal, and industrial (Ashworth and Stein 2005, p.1; Green *et al.* 2006, pp. 28–29; LBG-Guyton Associates 2001, pp. 22–27; PWPG 2006, pp. 3–14, 3–15). Some parts of this aquifer have already experienced large water level declines due to a combination of pumping withdrawals and regional drought (Barker and Ardis 1996, p. B50). There are a number of preliminary project plans to significantly increase the amount of groundwater pumped in this area to export it to other metropolitan centers (HDR Engineering Inc. 2001, p. 1–1; Khorzad 2002, p. 19; PWPG 2006, pp. 4–54). If the aquifers are pumped beyond their ability to sustain levels that support spring flows, these streams will no longer provide habitat for the Devils River minnow (Ashworth and Stein 2005, p.34; Edwards *et al.* 2004, p. 256; Garrett *et al.* 2004, pp. 439–440). Flow reductions can have indirect effects on fishes by impacting thermal regimes because higher water flow buffers against temperature oscillations (Hubbs 1990, p. 89).

Groundwater pumping that could affect stream flows within the Devils River minnow's range is subject to limited management control. State agencies do not control groundwater. Groundwater resources in Texas are under the ''Rule of Capture,'' and groundwater use is not regulated by any State agency (Holladay 2006, p. 2; Potter 2004, p. 9). The rule of capture essentially provides that groundwater is a privately owned resource and, absent malice or willful waste, landowners have the right to take all the water they can capture under their land without liability to neighboring landowners, even if in so doing they deprive their neighbors of the water's use (Holladay 2006, p. 2; Potter 2004, p. 1).

Local groundwater conservation districts are the method for groundwater management in Texas (Caroom and Maxwell 2004, pp. 41–42; Holladay 2006, p. 3). Most districts are created by action of the Texas Legislature (Lesikar *et al.* 2002, p. 13). The regulations adopted by local groundwater conservation districts vary across the State and often reflect local decisions based on regional preferences, geologic limitations, and the needs of citizens (Holladay 2006, p. 3). The Kinney County Groundwater Conservation District is a local authority with some regulatory control over the pumping and use of groundwater resources in Kinney County (Brock and Sanger 2003, p. 42–44). Currently, there is no groundwater district in Val Verde County. It is not known whether groundwater districts, such as the one in Kinney County, will limit groundwater use and exportation to allow for conservation of surface water flows for environmental needs (Brock and Sanger 2003, p. 42–44; Caroom and Maxwell 2004, p. 47–48; Marbury and Kelly 2005, p. 9). The regional water plan for this area recognizes that groundwater needs to be managed for the benefit of spring flows (PWPG 2006, p. 3–30) and that groundwater use should be limited so that ''base flows of rivers and streams are not significantly affected beyond a level that would be anticipated due to naturally occurring conditions'' (Ashworth and Stein 2005, p. 34; PWPG 2006, p. 3–8). Special management efforts are needed across the range of the Devils River minnow to ensure that aquifers are used in a manner that will sustain spring flows and provide water as an essential physical feature for the species.

b. Nonnative species. Controlling existing nonnative species and preventing the release of new nonnative species are special management actions needed across the range of the Devils River minnow. The best tool for preventing new releases is education of the public on the problems associated with nonnative species (Aquatic Nuisance Species Task Force 1994, pp. 16–17). Current nonnative species issues have been cited for possible impacts to the Devils River (smallmouth bass) and San Felipe Creek (armored

catfish) (Lopez-Fernandez and Winemiller 2005, p. 247; Thomas 2001, p. 1; Robertson and Winemiller 2001, p. 220). The armored catfish may already be impacting Devils River minnows in San Felipe Creek through competition for common food resources of attached algae and associated microorganisms (Lopez-Fernandez and Winemiller 2005, p. 250). Hoover *et al.* (2004, pp. 6–7) suggest that nonnative catfishes in the family Loricaridae, like armored catfish, will impact stream systems and native fishes by competing for food with other herbivores, changing plant communities, bank erosion due to burrowing in stream banks for spawning, and incidentally ingesting fish eggs. Problem nonnative species have not been documented in Pinto Creek. Please see the above discussion in ''Habitat Protected From Disturbance or Representative of the Historic Geographical and Ecological Distribution of a Species'' for additional discussion of nonnative species.

c. Pollution. Special management actions are needed to prevent point and nonpoint sources of pollution entering in the stream systems where the Devils River minnow occurs. Devils River and Pinto Creek are generally free of threats from obvious sources of pollution. San Felipe Creek is in an urban environment where threats from human-caused pollution are substantial. Potential for spill or discharge of toxic materials is an inherent threat in urban environments. In addition, there are little to few current controls in the City of Del Rio to minimize the pollutants that will run off into the creek during rainfall events from streets, parking lots, roof tops, and maintained lawns from private yards and the golf course (Winemiller 2003, p. 27). All of these surfaces will contribute pollutants (for example, fertilizers, pesticides, herbicides, petroleum products) to the creek and potentially impact biological functions of the Devils River minnow. In addition, trash is often dumped into or near the creek and can be a source of pollutants. Special management by the City of Del Rio is needed (City of Del Rio 2006, p. 13) to institute best management practices for controlling pollution sources that enter the creek and maintain the water quality at a level necessary to support Devils River minnow.

d. Stream channel alterations. The stream channels in the three streams where Devils River minnow occurs should be maintained in natural conditions, free of instream obstructions to fish movement and with intact stream banks of native vegetation. Devils River and Pinto Creek are generally free of stream channel alterations; however, San Felipe Creek has been altered by diversion dams, bridges, and armoring of stream banks (replacing native vegetation and soils with rock or concrete). Special management is needed in all three occupied streams to protect the integrity of the stream channels for the conservation of Devils River minnow habitat.

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat for the Devils River minnow in areas that were occupied at the time of listing and contain sufficient PCEs to support life history functions essential for the conservation of the species, which may require special management considerations or protection. Critical habitat is also being proposed for areas not considered occupied at the time of listing, but subsequently discovered to be occupied and essential for the conservation of the Devils River minnow.

Critical habitat is designated based on sufficient PCEs being present to support the life processes of the species. Some areas contain all PCEs and support multiple life processes. Some areas contain only a portion of the PCEs necessary to support the particular use of that habitat.

a. Range. We evaluated the geographical range of the Devils River minnow, as described in the Recovery Plan (Service 2005, p. 1.4.1.1.4.5). There are five stream segments in the United States (all in Texas) that have ever been known to have been occupied by the Devils River minnow: (1) The Devils River (Val Verde County) from Beaver Lake downstream to near the confluence with the Rio Grande; (2) San Felipe Creek (Val Verde County) from the headsprings on the Lowe Ranch to downstream of the City of Del Rio; (3) Sycamore Creek (Val Verde/Kinney county boundary), only documented from the Highway 277 Bridge crossing; (4) Pinto Creek (Kinney County) from Pinto Springs downstream to 0.5 stream km (0.3 stream mi) upstream of the Highway 90 Bridge crossing; and (5) Las Moras Creek (Kinney County), only documented from the Las Moras Spring in the City of Brackettville.

Each of these five stream segments has (or formerly had) isolated populations of Devils River minnow separated by long distances, unsuitable habitat, and/or large dams that prevent fish movements. Although each of these streams is a tributary to the Rio Grande, we do not expect any contemporary exchange of individuals between these stream segments. The Devils River minnow is generally associated with upstream reaches of these streams, and connectivity would require movement through downstream reaches, through the Rio Grande, and back upstream through uninhabited reaches. The Devils River minnow has not been documented in the Rio Grande, or any other of its tributaries in the United States in modern times (Contreras-Balderas *et al.* 2002, pp. 228–240; Edwards *et al.* 2002, p. 123; Garrett *et al.* 1992, pp. 261–265; Hoagstrom 2003, p. 95; Hubbs 1957, p. 93; Hubbs 1990, p. 90; Hubbs *et al.* 1991, p. 18; Treviño-Robinson 1959, p. 255). These stream reaches are considered unsuitable habitat (Garrett *et al.* 1992, p. 261) because the aquatic habitat is very different (larger volume, higher suspended sediments, different suite of native fishes) than the streams where the Devils River minnow is found. The presence of Amistad Reservoir and Dam has further isolated the Devils River stream segment from the other stream segments. While some exchange of individuals could have occurred across a geologic time scale, any natural exchange of individual Devils River minnows between currently occupied stream segments in modern times is unlikely because of habitat changes in the Rio Grande, nonnative species, and potential instream barriers.

Lack of access to private property can limit opportunities to sample for the presence of Devils River minnow (such as occurred on Pinto Creek, see Garrett *et al.* (2004), p. 436) and may limit our ability to accurately determine the full range of the species. However, we do not expect any additional streams outside of the geographical range of the species to be occupied. There could be additional stream segments within the known range that may be found to be occupied during future surveys, but the best available information at this time supports only these five stream segments known to be or to have been occupied by Devils River minnow in the United States.

b. Occupancy. For the purpose of this critical habitat designation, we consider a stream segment to be occupied if Devils River minnow has been found to be present by species experts within the last 10 years, or where the stream segment is directly connected to a segment with documented occupancy within the last 10 years (see Proposed Critical Habitat Designation for additional occupancy information). The life expectancy of Devils River minnow is assumed to be about 3 years, although individuals have lived 5 years in captivity (Gibson 2006, p. 1). Ten years is estimated to represent a time period that provides for at least three

generations and should allow for an adequate time to detect occupancy. Most stream segments have not been surveyed with a high degree of frequency, and this species can be difficult to detect, as even multiple samples within a short time in the same location by the same researcher can yield different results (Garrett *et al.* 2002, p. 478). We have assessed the occupancy of stream segments based on the best survey information available.

c. Areas occupied at the time of listing. At the time the Devils River minnow was listed as a threatened species, it was only confirmed to occur at two sites on the Devils River (small tributaries) and in San Felipe Creek in Del Rio, Texas (64 FR 56597). This species is reasonably expected to move throughout connected stream reaches, based on past and recent collection records from these streams (Garrett *et al.* 2002, p. 478). Therefore, we determine there are two stream segments that were occupied at the time of listing: (1) Devils River from Pecan Springs to downstream of Dolan Falls (Garrett 2006a, p. 4; Garrett 2007, p. 1); and (2) San Felipe Creek from the Head Spring to downstream through the City of Del Rio (Garrett 2006b, p. 1; Garrett 2007, p.1). The full extent of both stream segments is considered occupied, as surveys in the last 10 years have confirmed the species presence in the streams and the unit consists of contiguous habitat that allows fish movement throughout the stream.

d. Primary constituent elements. We are proposing to designate the stream segments that were occupied at the time of listing and contain sufficient PCEs to support life history functions essential for the conservation of the species. Both of the stream segments occupied at the time of listing (Devils River and San Felipe Creek) contain sufficient PCEs to support life history functions essential for the conservation of the Devils River minnow.

e. Areas not occupied at time of listing. Section 3(5)(A)(ii) of the Act allows for critical habitat to be designated in areas outside the geographical area occupied by the species at the time it is listed if those areas are essential for the conservation of the species. Three stream segments historically occupied by Devils River minnow but not considered occupied at the time of listing include Sycamore Creek, Pinto Creek, and Las Moras Creek.

Sycamore Creek and Las Moras Creek are not currently occupied by the Devils River minnow. The last known occurrence of the species in these stream segments was 1989 for Sycamore Creek (Garrett *et al.* 1992, p. 265) and 1955 for Las Moras Creek (Garrett *et al.* 1992, p. 266; Hubbs and Brown 1956, pp. 70–71). Although recent publications continue to list Sycamore Creek as a stream where Devils River minnow may still occur (Garrett *et al.* 2004, p. 435; Lopez-Fernandez and Winemiller, p. 247), we have a high degree of uncertainty as to the status of the fish in Sycamore Creek. Collections in 1999 and 2002 from the area of last known occurrence (in 1989) did not yield Devils River minnow (G. Garrett, TPWD, unpublished data 2002). In addition, Garrett *et al.* (1992) surveyed portions of Mud Creek (a tributary to Sycamore Creek) in 1989 but found no Devils River minnow. Additional surveys are needed to determine the current status of the fish in the Sycamore Creek watershed. Devils River minnow has not been collected from Las Moras Creek since the 1950s and is believed to be extirpated from the Las Moras Creek drainage. This conclusion is based on the absence of the species in sampling efforts from the late 1970s to 2002 (Smith and Miller 1986; Hubbs *et al.* 1991; Garrett *et al.* 1992; G. Garrett, unpublished data 2002).

Restoring Devils River minnow to Sycamore Creek and Las Moras Creek may be important to achieve recovery goals for the species and optimize the chances of long-term species conservation (Service 2005, pp. 2.1–1—2.2–3). Recovery criteria for Devils River minnow include having stable or increasing populations in both Sycamore Creek and Las Moras Creek, if reestablishment in Las Moras Creek is scientifically feasible. However, the feasibility of restoring populations in these areas is uncertain and the recovery plan advises additional assessment and landowner willingness will be necessary in both areas before restoration could occur. Therefore, based on the lack of information regarding the species status in Sycamore Creek, uncertainty of the potential for restoration in either stream segment, and the absence of data to demonstrate that the streams possess the PCEs, for the purposes of critical habitat designation, we have not included Sycamore Creek and Las Moras Creek in the proposed critical habitat designation.

Due to the importance of these stream segments to the recovery of Devils River minnow, we solicit additional information and comments from interested parties on the distribution of Devils River minnow, specifically in the Sycamore Creek and Las Moras Creek watersheds. Information received, as well as supporting documentation will be used in the consideration of Sycamore Creek and Las Moras Creek's inclusion in the final critical habitat designation. We may consider including Sycamore Creek and Las Moras Creek in our critical habitat designation if we receive additional information during the public comment period that leads to a determination that these stream segments are essential to the conservation of Devils River minnow.

At the time of listing in 1999, previous fish surveys in Pinto Creek were limited to the locations of public access at highway bridge crossings and did not find the species present (Garrett *et al.* 1992, p. 260). In 2001, fish surveys in upstream areas of Pinto Creek discovered the previously unknown population of Devils River minnow (Garrett *et al.* 2004, p. 436–439). The species has been confirmed to occur from just upstream of the Highway 90 Bridge crossing upstream to the origin of Pinto Creek at Pinto Springs (Garrett *et al.* 2004, p. 438–439). Since this stream segment is isolated from other occupied areas, this stream segment was likely occupied at the time of listing, but appropriate surveys had not been conducted to verify it. We find that the Pinto Creek stream segment is essential to the conservation of the Devils River minnow because preliminary analysis have shown significant genetic variation between Devils River minnow populations in Pinto Creek and the Devils River (Service 2006, p. 15). Also Pinto Creek provides the best source of Devils River minnows (due to proximity and habitat similarity) to implement possible future recovery actions if reestablishing the species into nearby Las Moras Creek proves feasible (Garrett *et al.* 2004, p. 440).

f. Lateral Extent. The areas designated as critical habitat are designed to provide sufficient areas for breeding, non-breeding adults and rearing of juvenile Devils River minnow. In general, the PCEs of critical habitat for Devils River minnow include the spring heads and the wetted channel during average flow conditions of the stream segments. The Devils River minnow evolved in streams maintained by consistent flows from groundwater springs that varied little seasonally. Episodic floods, sometimes very large floods, are important for maintenance of the natural stream channel and fish communities (Harrell 1978, p. 67; Valdes Cantu and Winemiller 1997, pp. 276–277); however, the streams do not have a regular seasonal pattern of flooding. As a result, the life history of the Devils River minnow is not dependent on high flow events and the inundation of overbank areas. Therefore, the floodplain is not known to contain

the features essential for the species' conservation and is not included in the proposed critical habitat designation.

We propose that this critical habitat designation include a lateral extent that is limited to the normal wetted channel of the streams proposed for inclusion. For the purposes of this proposal, the wetted channel is considered the width of the stream channel at bankfull stage. Bankfull stage is the height when stream flows just fill the stream to its banks before water spills out onto the adjacent floodplain (Gordon *et al.* 1992, pp. 305–307). The stream discharge that reaches bankfull stage occurs 1 or 2 days each year and has a recurrence interval that averages 1.5 years (Leopold 1994, pp. 129–141). This lateral extent will encompass the immediate streamside vegetation that can extend into the water column and provide vegetative structure, one of the PCEs.

Summary. We are proposing to designate critical habitat in areas that we have determined were occupied at the time of listing, and that contain sufficient PCEs to support life history functions essential for the conservation of the species. Stream segments are proposed for designation based on sufficient PCEs being present to support the life processes of the species. Some stream segments contain all PCEs and support multiple life processes. Some stream segments contain only a portion of the PCEs necessary to support the particular use of that habitat. For stream segments that were not occupied at the time of listing, we evaluated whether those areas were essential to the conservation of the Devils River minnow.

We find that two stream segments were occupied at the time of listing and contain sufficient PCEs to support life history functions essential for the conservation of the species: (1) Devils River from Pecan Springs to downstream of Dolan Falls, including short stretches of two tributaries, Phillips Creek and Dolan Creek, and (2) San Felipe Creek from the headsprings downstream through the City of Del Rio, include the outflow channels of East and West Sandia springs. We find that a third stream segment, Pinto Creek from Pinto Springs downstream to the Highway 90 Bridge crossing, was not known to be occupied at the time of listing, but was subsequently discovered to be occupied and is now considered to be essential for the conservation of the Devils River minnow for the reasons discussed above.

Within this proposed rule, the critical habitat boundary is limited to bankfull width of the stream segments proposed for inclusion, at the height in which stream flows just fill the stream to its banks before water spills out onto the adjacent floodplain. The scale of the critical habitat maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of developed areas such as buildings, paved areas, and other structures that lack PCEs for the Devils River minnow. Any such structures and the land under them inside critical habitat boundaries shown on the maps of this proposed rule are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or PCEs in adjacent critical habitat.

Proposed Critical Habitat Designation

We are proposing three units as critical habitat for the Devils River minnow. The three units are: (1) Devils River Unit; (2) San Felipe Creek Unit; and (3) Pinto Creek Unit. All three areas are currently occupied by the Devils River minnow and constitute our best assessment of areas that meet the definition of critical habitat for the species.

The proposed critical habitat areas include the stream channels up to bankfull width within the identified stream reaches. The stream beds of perennial streams and navigable waters (stream beds of at least 30 ft wide) in Texas are generally owned by the State, in trust for the public, while the lands alongside the streams can be privately owned (Riddell 1997, p. 7). We presume that the stream beds for all three stream segments being proposed for critical habitat are considered public.

All distances reported in this proposal are estimated stream lengths calculated using geographic information system computer software (ArcGIS) approximating the stream channel (reported in stream km and stream mi). Stream channel lines were based on the National Hydrography Dataset and 7.5' topographic quadrangle maps obtained from the U.S. Geological Survey. We made some minor adjustments using the 2004 National Agriculture Imagery Program digital orthophotos obtained from the Texas Natural Resources Information System. The approximate length of each stream segment for each proposed critical habitat unit is shown in Table 1.

TABLE 1.—PROPOSED CRITICAL HABITAT UNITS FOR THE DEVILS RIVER MINNOW

Critical habitat unit*	Total stream km (stream mi)
1. Devils River Unit (includes Philips and Dolan creeks)	47.0 (29.2)
2. San Felipe Creek Unit (includes outflow of East and West springs)	9.0 (5.6)
3. Pinto Creek Unit	17.5 (10.9)
Total	73.5 (45.7)

*The stream beds of all three units being proposed for critical habitat are considered public, and owned by the state of Texas.

The proposed critical habitat designation for Devils River minnow includes a total of 73.5 stream km (45.7 stream mi). Below, we provide brief descriptions of the three units, and reasons why each meets the definition of critical habitat for the Devils River minnow.

Unit 1: Devils River Unit

Proposed Unit 1 consists of approximately 43.6 stream km (27.1 stream mi) of the Devils River; 1.1 stream km (0.7 stream mi) of Phillips Creek; and 2.3 stream km (1.4 stream mi) of Dolan Creek. Phillips Creek and Dolan Creek are small tributaries to the Devils River that contain PCEs and are occupied by the Devils River minnow. The proposed upstream boundary on the Devils River is at Pecan Springs. The proposed downstream boundary on the Devils River is 3.6 stream km (2.2 stream mi) below Dolan Falls. Phillips Creek is included from the confluence with the Devils River to a point 1.1 stream km (0.7 stream mi) upstream. Dolan Creek is included from the confluence with the Devils River 2.3 stream km (1.4 stream mi) upstream to Dolan Springs. Including all three streams, the total distance in the proposed critical habitat in the Devils River Unit is approximately 47.0 stream km (29.2 stream mi). For specific coordinates of the boundaries for proposed critical habitat designation, please reference the unit descriptions in the Proposed Regulation Promulgation section below.

The Devils River minnow was originally described from this unit in the 1950s (Hubbs and Brown 1956, p. 70) and it has been continually occupied ever since (Harrell 1978, pp. 64, 67; Garrett *et al.* 1992, p. 261, Service 2005, Appendix A). The Devils River minnow occupied this unit at the time of listing, though at only a few locations. Subsequent surveys by TPWD

have established current occupancy of this entire unit (Service 2005, Appendix A). The proposed upstream boundary of critical habitat represents the beginning of the permanent flow of the river (De La Cruz 2004, p. 1). The proposed downstream boundary, 3.6 stream km (2.2 stream mi) downstream of Dolan Falls, represents the downstream extent of collections of the Devils River minnow by TPWD (Garrett 2007, p. 1).

The Devils River Unit contains one or more of the PCEs essential for conservation of the Devils River minnow. Special management in the Devils River Unit may be needed to control groundwater pumping to ensure spring flows are maintained and to prevent the introduction of nonnative species. See additional discussion above in the Special Management Considerations or Protections section.

Areas proposed as critical habitat for Devils River minnow do not include lands adjacent to the stream channels. However, land ownership adjacent to the streams in the Devils River Unit is primarily private. Private ownership of the area includes The Nature Conservancy's 1,943–ha (4,800–ac) Dolan Falls Preserve, which also includes river frontage on the Devils River and Dolan Creek. The Nature Conservancy has owned this area since 1991 (The Nature Conservancy 2004, 9). The Nature Conservancy also holds conservation easements on about 66,800 ha (about 165,000 ac) of private land along the Devils River or in the Devils River watershed (McWilliams 2006, p. 1). The only public land adjacent to the streams of this unit is the State-owned Devils River State Natural Area (DRSNA) managed by the TPWD. Proposed critical habitat within the DRSNA includes about 1.6 stream km (1.0 stream mi) along the east bank of the Devils River and about 1.9 stream km (1.17 stream mi) along both banks of a portion of Dolan Creek. Yet, these adjacent public lands are not included in the proposed critical habitat designation.

Unit 2: San Felipe Creek Unit

Proposed Unit 2 consists of approximately 7.9 stream km (4.9 stream mi) on San Felipe Creek; 0.8 stream km (0.5 stream mi) of the outflow of San Felipe Springs West; and 0.3 stream km (0.2 stream mi) of the outflow of San Felipe Springs East. The proposed upstream boundary on San Felipe Creek is the Head Springs located about 1.1 stream km (0.7 stream mi) upstream of the Jap Lowe Bridge crossing. The proposed downstream boundary on San Felipe Creek is in the City of Del Rio 0.8 stream km (0.5 stream mi) downstream of the Academy Street Bridge crossing. The proposed unit includes the outflow channels of two springs San Felipe Springs West and San Felipe Springs East. These channels are included in the proposed critical habitat from their spring origin downstream to the confluence with San Felipe Creek. Including all three streams, the total distance in the proposed critical habitat in the San Felipe Creek Unit is approximately 9.0 stream km (5.6 stream mi). For specific coordinates of the boundaries for proposed critical habitat designation, please reference the unit descriptions in the Proposed Regulation Promulgation section below.

San Felipe Creek was occupied by the Devils River minnow at the time of listing and is still occupied (Hubbs and Brown 1956, p. 70; Garrett *et al.* 1992, pp. 261, 265; Service 2005, Appendix A; Lopez-Fernandez and Winemiller 2005, p. 249). Although limited survey data is available, we consider the entire unit occupied as the habitat is contiguous, allowing fish to move throughout the unit (Garrett 2006b, p. 1). The proposed boundaries of critical habitat include all areas where TPWD has collected Devils River minnow within the San Felipe Creek Unit (Garrett 2007, p. 1).

The San Felipe Creek Unit contains one or more of the PCEs essential for conservation of the Devils River minnow. There are several unnatural barriers to fish movement that may currently segment the reaches within the City of Del Rio. Portions of the stream banks in the City have been significantly altered by arming with concrete and the invasion of an exotic cane (*Arundo donax*). However, much of the riparian area remains a functional part of the stream ecosystem, contributing to the physical and biological features of Devils River minnow habitat. Water quality in San Felipe Creek has been a concern due to the urban environment through which much of the creek flows. Potential for spill or discharge of toxic materials is an inherent threat in urban environments (City of Del Rio 2006, p. 13). The threats to the San Felipe Creek Unit that require special management include the potential for large-scale groundwater withdrawal and exportation that would impact spring flows, pollution from urban runoff, nonnative vegetation on stream banks, other nonnative species (such as the armored catfish), and potential new nonnative species introductions into the stream.

Land ownership adjacent to the streams banks being proposed as critical habitat within the San Felipe Creek Unit includes private ranch lands from the Head Springs downstream to the City of Del Rio. Within the city limits, the City owns various tracts of land along the stream. Some of these areas are developed as public use parks and others have been recently obtained through a buyout program from the Federal Emergency Management Agency following damages from the 1998 flood (City of Del Rio 2006, pp. 5–6). Most of the City-owned property along the river appears to be on the east bank of the creek, while the west bank is primarily private-owned residences. The San Felipe Springs East and West and their immediate outflow channels are on a golf course, privately owned by the San Felipe Country Club. In all, we estimate that the City of Del Rio owns about 1.1 stream km (0.7 stream mi) along both banks of the creek and spring outflow channels, mainly located downstream of the Highway 90 Bridge. Through the remainder of the City, we estimated the City owns about 2.2 stream km (1.4 stream mi) along the east bank of San Felipe Creek in parcels fragmented by private holdings. These private and city-owned lands are not included in the proposed critical habitat designation.

Unit 3: Pinto Creek Unit

Proposed Unit 3 consists of approximately 17.5 stream km (10.9 stream mi) on Pinto Creek. The proposed upstream boundary is Pinto Springs. The proposed downstream boundary is 100 m (330 ft) upstream of the Highway 90 Bridge crossing of Pinto Creek. For specific coordinates of the boundaries for proposed critical habitat designation, please reference the unit descriptions in the Proposed Regulation Promulgation section below.

Pinto Creek was not considered occupied by Devils River minnow at the time of listing; however, Devils River minnows were documented in 2001 in upstream reaches of the creek where fish surveys had not been previously conducted (Garrett *et al.* 2004, p. 437). The Pinto Creek Unit is essential for the conservation of the Devils River minnow because fish from this stream show significant genetic variation from other populations (Service 2006, p. 15). Because of it's proximity to Las Moras Creek and the genetic variation from the more western population, fish from Pinto Creek would be the likely source population for possible future reintroduction into formerly occupied areas (Garrett *et al.* 2004, p. 440). The proposed boundaries of critical habitat represent all the areas within Pinto Creek where Devils River minnow has been collected (Garrett *et al.* 2004, p. 437–438).

Further, the Pinto Creek Unit contains one or more of the PCEs essential for conservation of the Devils River minnow. The main threat to the Pinto Creek Unit that requires special management is the potential for large-scale groundwater withdrawal and exportation that would significantly impact spring flows. While nonnative species are not currently known to be a problem in Pinto Creek, preventing nonnative species from being introduced into the stream is an additional threat needing special management. Land ownership adjacent to the Pinto Creek unit is all private ranches; however, these private lands are not included in the proposed critical habitat designation.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under current national policy and the statutory provisions of the Act, we determine destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only, as any conservation recommendations in a conference report or opinion are strictly advisory. However, once a species proposed for listing becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any discretionary Federal action.

The primary utility of the conference procedures is to allow a Federal agency to maximize its opportunity to adequately consider species proposed for listing and proposed critical habitat and to avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, should we list those species or designate critical habitat. We may conduct conferences either informally or formally. We typically use informal conferences as a means of providing advisory conservation recommendations to assist the agency in eliminating conflicts that the proposed action may cause. We typically use formal conferences when we or the Federal agency believes the proposed action is likely to jeopardize the continued existence of the species proposed for listing or adversely modify proposed critical habitat.

We generally provide the results of an informal conference in a conference report, while we provide the results of a formal conference in a conference opinion. We typically prepare conference opinions on proposed species or critical habitat in accordance with procedures contained at 50 CFR 402.14, as if the proposed species were already listed or the proposed critical habitat was already designated. We may adopt the conference opinion as the biological opinion when the species is listed or the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Devils River minnow or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are also subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

There are no Federal lands in the areas being proposed for critical habitat for Devils River minnow. Laughlin Air Force Base is located east of the City of Del Rio and obtains its municipal water from the City (which ultimately is withdrawn from the two San Felipe Springs). The Amistad National

Recreation Area, located around Amistad Reservoir, is owned by the National Park Service and includes the downstream portions of the Devils River, but is not included in the proposed critical habitat designation.

Since the Devils River minnow was listed in 1999, two section 7 consultations have occurred, both of which were associated with San Felipe Creek. One informal consultation was completed in 2001 with the Environmental Protection Agency for funding through the Texas Water Development Board to the City of Del Rio to upgrade the City's water treatment and distribution facilities. The other (formal) consultation was completed in 2006 with the Federal Highway Administration, through the Texas Department of Transportation, to replace the Beddell Avenue Bridge over San Felipe Creek. Based on this consultation history, we anticipate few future Federal actions within the area proposed for critical habitat for Devils River minnow.

Application of the ''Adverse Modification'' Standard for Actions Involving Effects to the Critical Habitat of the Devils River Minnow

For the reasons described in the Director's December 9, 2004 memorandum, the key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Devils River minnow is appreciably reduced.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore would result in consultation for the Devils River minnow include, but are not limited to:

(1) Actions that would alter the natural flow regime, particularly the reduction of spring flows. These activities could include, but are not limited to, excessive groundwater pumping (significantly greater than current levels), water diversions from streams, and stream impoundments. These activities could reduce the amount of available habitat and space for normal behaviors of Devils River minnow, alter water quality as an indirect effect of reduced flows, alter the mesohabitat (pools, riffles, and runs) conditions necessary for Devils River minnow life history functions, and alter fish community dynamics to unnaturally favor species other than the Devils River minnow.

(2) Actions that would reduce native aquatic vegetation or native vegetation along stream banks. These activities could include, but are not limited to, channelization of the stream, armoring stream banks (replacing native vegetation and soils with rock or concrete), dredging the stream bottom, introducing nonnative plants that would replace native vegetation, or introducing herbivorous nonnative species. Loss of aquatic vegetation would eliminate an important structural component of Devils River minnow habitat and could reduce the amount of available habitat for reproduction, growth, and feeding.

(3) Actions that would significantly alter water quality or introduce pollutants into streams. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents (liquid waste products) into the surface water or connected groundwater at a point source or by dispersed release (non-point source). Sources of pollutants also include, but are not limited to, storm water runoff from urban development without adequate storm water controls; spill of hazardous chemicals into the creek or groundwater; or groundwater contamination by improperly drilled or maintained oil or gas wells. These activities could alter water conditions that are beyond the tolerances of the Devils River minnow or their food source and could result in direct or cumulative adverse effects to these individuals and their life cycles.

(4) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, brush clearing, off-road vehicle use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the reproduction of Devils River minnow and could reduce the availability of food sources by affecting light penetration into the water column, filling in of stream beds with silt, or increasing the embeddedness of stream bottoms that reduces algae availability.

(5) Actions that would significantly alter channel shape or geometry. Such activities could include, but are not limited to, channelization, impoundment, armoring stream banks, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may alter the natural pattern of available mesohabitats (pools, riffles, and runs). These actions can reduce the amount of habitat available for Devils River minnow to complete its normal life cycle and can give other species, especially nonnative species, competitive advantages. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the fish or their food sources.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Congressional record is clear that the Secretary is afforded broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and then determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered. In addition, the Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment when it is complete. Based on public comment on that document, the

proposed designation itself, and the information in the final economic analysis, additional areas beyond those identified in this assessment may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act and in our implementing regulations at 50 CFR 424.19.

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic ones. The Service considers a number of factors in its section 4(b)(2) analysis. For example, the Service considers whether there are lands owned or managed by the Department of Defense (DOD) where there might be a national security impact. We also consider whether the landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by an area being designated as, or excluded from critical habitat. We look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social or economic impacts that might occur because of the designation. In this instance, we have determined that the lands within the proposed designation of critical habitat for Devils River minnow are not owned or managed by the Department of Defense, and the proposed designation does not include any Tribal lands or trust resources.

At this time, we are not proposing any areas for exclusion from the final critical habitat designation under section 4(b)(2) of the Act; however, there are several ongoing conservation efforts related to habitat maintenance for the Devils River minnow (for example, see Garrett 2003, pp. 155–158; Karges 2003, pp. 147–148). Discussed below are conservation efforts and management plans that we may consider in our analysis of the benefits of inclusion and benefits of exclusion for certain proposed units from the final designation of critical habitat.

Ongoing Conservation Efforts for Consideration Under Section 4(b)(2) of the Act

(1) Conservation Area Plan and Conservation Easements by The Nature Conservancy in the Devils River watershed. The Nature Conservancy has a very active conservation program in the Devils River watershed (Karges 2003, pp. 147–148). The Nature Conservancy has developed a Conservation Area Plan for the Devils River with goals of the plan including balancing the relative abundance of native and nonnative fish species and maintaining or enhancing the condition and beauty of riparian gallery woodlands (The Nature Conservancy 2004, p. 6). Rivers, streams, and springs are recognized as viable conservation elements whose function can likely be sustained within natural variations, as long as large-scale groundwater mining does not occur (The Nature Conservancy 2004, pp. 18–19). The Nature Conservancy owns about 1,943 ha (4,800 ac) and holds conservation easements on about 66,800 ha (about 165,000 ac) of private land in the Devils River watershed (McWilliams 2006, p. 1).

(2) Management plans by the City of Del Rio and the San Felipe Creek Country Club. In 2003, the City of Del Rio and the San Felipe Creek Country Club each signed management plans for the protection of San Felipe Creek (Service 2005, Appendix C). The mission of the City's plan is to ''preserve and conserve the natural and cultural resources of the San Felipe Creek for the use and enjoyment of the present and future generations of Del Rio citizens and visitors.'' Proposed actions include: converting lands obtained along the creek following the 1998 flood into passive parks; minimizing use of pesticides and fertilizers on City-owned lands along the creek; discouraging commercial development along the creek; preserving the natural water flow to the greatest extent possible; preserving stream banks in a natural state with buffer zones of native vegetation; public education; litter removal; and removal of nonnative plants, such as the river cane. The City has recently drafted a San Felipe Creek Master Plan (City of Del Rio, 2006, p.1) and intends to complete development of the plan in 2007.

The Management Plan for San Felipe Country Club in Del Rio included objectives ''to use environmentally sensitive techniques for managing and maintaining a high quality golf course for the benefit of users while also promoting natural diversity, and to protect and enhance the quality of San Felipe Creek and San Felipe Springs for the benefit of the Devils River minnow and the entire creek and riparian ecosystem.'' Management actions included establishing no-mow buffer zones, using environmentally sensitive pest management solutions through an Integrated Pest Management Program, using fertilizers judiciously; removing noxious vegetation, maintaining out of play areas as native habitat, using irrigation water wisely, and retaining runoff from parking lots.

(3) Kinney County Groundwater Conservation District. The Kinney County Groundwater Conservation District exists for the management of groundwater resources in Kinney County. This District passed its initial rules in 2002 (and modified them in 2003) and is continuing to support groundwater research to determine aquifer boundaries and groundwater availability in Kinney County.

(4) Watershed management planning. TPWD has initiated development of a stakeholder-lead watershed management plan for the range of the Devils River minnow in Val Verde and Kinney Counties. The intent of the plan is to protect, enhance, or restore essential habitat throughout the range of the federally threatened Devils River minnow and other species of concern in this area, and will define actions that will result in maintaining or increasing populations of these fishes. The plan has not yet been completed.

Economics

An analysis of the economic impacts of proposing critical habitat for the Devils River minnow is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/southwest/es/Library/,* or by contacting the Austin Ecological Services Field Office directly (see **ADDRESSES**).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Under section 4(b)(5)(e) of the Act, requests for public hearings must be made in writing at least 45 days following the publication of the proposed rule. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Persons needing reasonable accommodations to attend and participate in the public hearings should contact Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office at (512) 490–0057 as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding the proposal is available in alternative formats upon request.

Clarity of the Rule

Executive Order 12866 (Regulatory Planning and Review) requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, Executive Order 12630, Executive Order 13211, and Executive Order 12875.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat provided that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis can be obtained from our Web site at *http://www.fws.gov/southwest/es/Library/*, or by contacting the Austin Ecological Services Field Office directly (see **ADDRESSES**).

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 (SBREFA) of 1996), 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 effects of the rule on small entities (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. The SBREFA amended the Regulatory Flexibility Act (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.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until we complete the draft economic analysis under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

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; AFDC 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 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. While 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, 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. We do not anticipate that the designation of critical habitat will impose obligations on State or local governments. As such, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule to designate critical habitat for the Devils River minnow is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Devils River minnow in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the Devils River minnow would not pose significant takings implications.

Federalism

In accordance with Executive Order 13132 (Federalism), the rule would not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Texas. The designation of critical habitat in areas currently occupied by the Devils River minnow imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than have these governments wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the Devils River minnow.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).]

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we

readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation of Devils River minnow, and no Tribal lands that are unoccupied areas that are essential for the conservation of the Devils River minnow. Therefore, we are not proposing to designate critical habitat for the Devils River minnow on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES**).

Author(s)

The primary author of this package is the Austin Ecological Services Field 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 amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Minnow, Devils River'' under ''FISHES'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special range
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Minnow, Devils River	*Dionda diaboli*	U.S.A., TX, Mexico	Entire	T	669	17.95(e)	NA
*	*	*	*	*	*		*

3. In § 17.95(e), add an entry for ''Devils River Minnow (*Dionda diaboli*)'' in the same alphabetical order that the species appears in the table at § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

Devils River Minnow (*Dionda diaboli*)

(1) Critical habitat units are depicted for Val Verde County and Kinney County, Texas, on the maps below.

(2) The primary constituent elements of critical habitat for the Devils River minnow are the following habitat components:

(i) Streams characterized by:

(A) Areas with slow to moderate water velocities between 10 and 40 cm/second (4 and 16 in/second) in shallow to moderate water depths between approximately 10 cm (4 in) and 1.5 m (4.9 ft), near vegetative structure, such as emergent or submerged vegetation or stream bank riparian vegetation that overhangs into the water column;

(B) Gravel and cobble substrates ranging in size between 2 and 10 cm (0.8 and 4 in) with low or moderate amounts of fine sediment (less than 65 percent stream bottom coverage) and low or moderate amounts of substrate embeddedness; and

(C) Pool, riffle, run, and backwater components free of artificial instream structures that would prevent movement of fish upstream or downstream.

(ii) High-quality water provided by permanent, natural flows from groundwater spring and seeps characterized by:

(A) Temperature ranging between 17 °C and 29 °C (63 °F and 84 °F);

(B) Dissolved oxygen levels greater than 5.0 mg/l;

(C) Neutral pH ranging between 7.0 and 8.2;

(D) Conductivity less than 0.7 mS/cm and salinity less than 1 ppt;

(E) Ammonia levels less than 0.4 mg/l; and

(F) No or minimal pollutant levels for copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; fertilizers; suspended sediments; petroleum compounds and gasoline or diesel fuels.

(iii) An abundant aquatic food base consisting of algae attached to stream substrates and other associated microorganisms.

(iv) An aquatic stream habitat either devoid of nonnative aquatic species (including fish, plants, and invertebrates) or in which such nonnative aquatic species are at levels that allow for healthy populations of Devils River minnows.

(v) Areas within stream courses that may be periodically dewatered for short time periods, during seasonal droughts, but otherwise as connective corridors between occupied or seasonally occupied areas through which the species moves when the area is wetted.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical habitat map units.* Data layers defining map units were created in ArcGIS using the National Hydrography Dataset and 7.5' topographic quadrangle maps obtained from U.S. Geological Survey to approximate stream channels and calculate distances (stream km and stream mi). We made some minor adjustments to stream channels using the 2004 National Agriculture Imagery Program digital orthophotos obtained from the Texas Natural Resources Information System. For each critical habitat unit, the upstream and downstream boundaries are described as paired geographic coordinates X, Y (meters E, meters N, UTM Zone 14, referenced to North American Horizontal Datum 1983). Additionally, critical habitat areas include the stream

channels within the identified stream reaches and areas within these reaches up to the bankfull width.

(5) Note: Overview of critical habitat units for the Devils River minnow (Map 1) follows:

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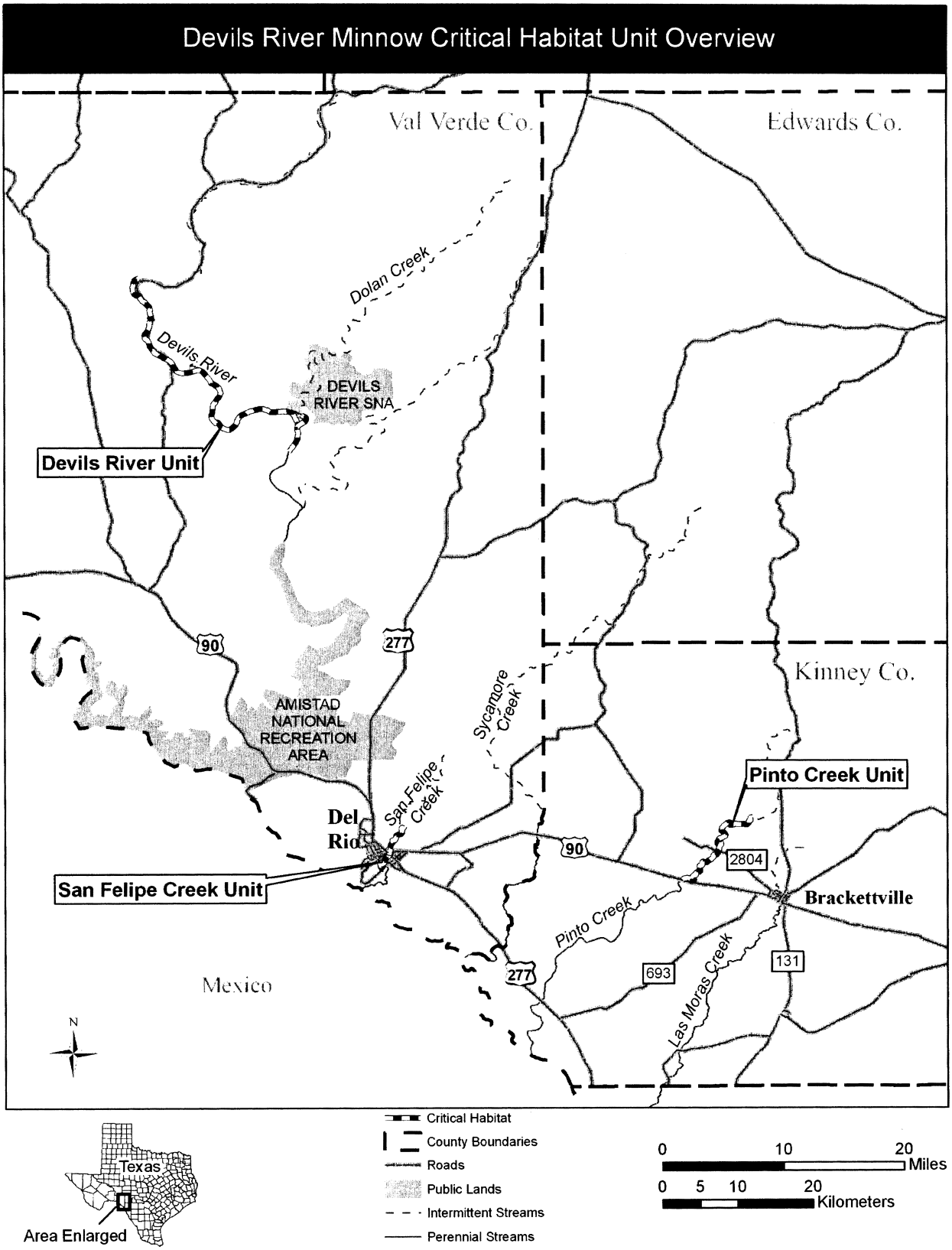
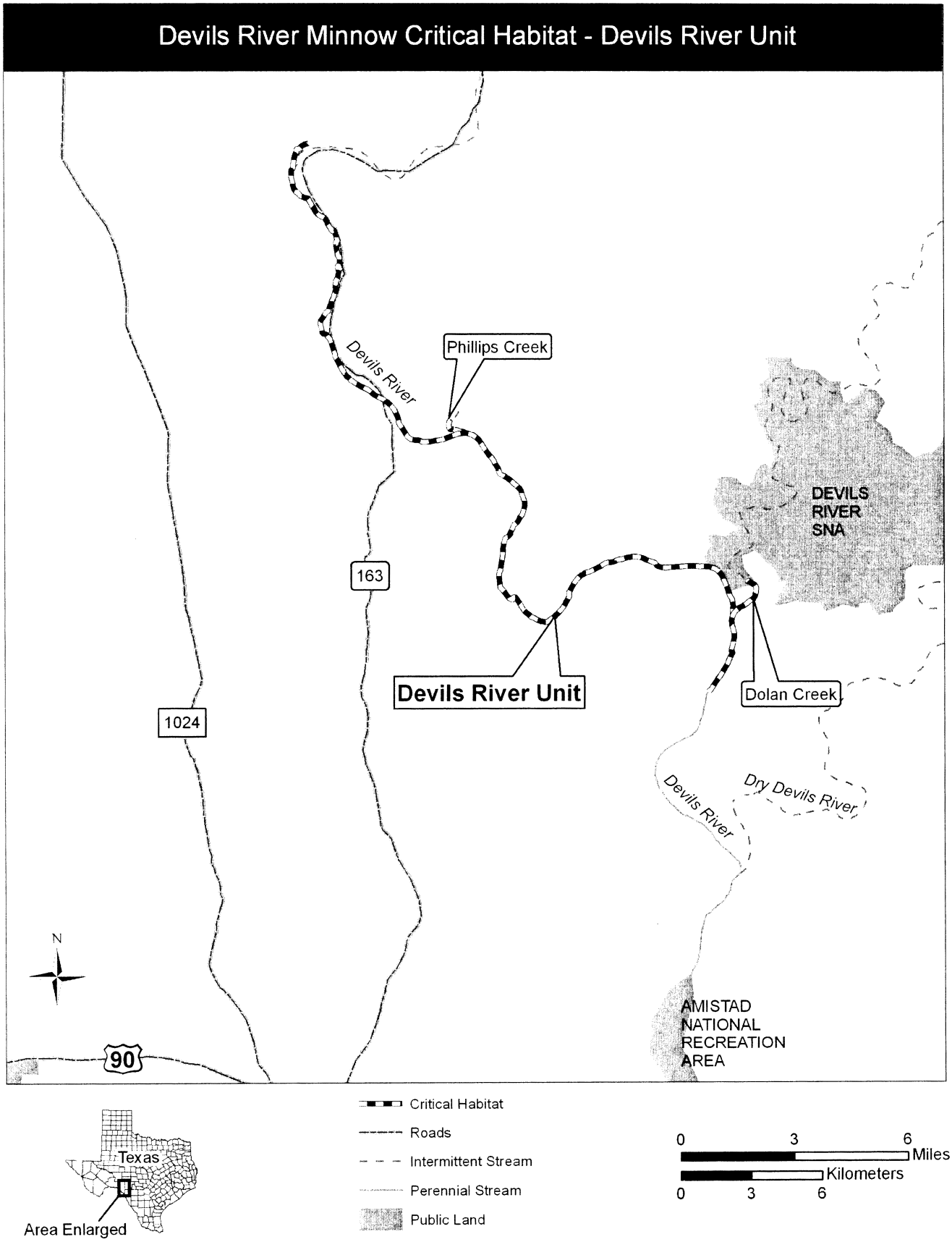


(6) Unit 1: Devils River Unit, Val Verde County, Texas.

(i) Unit 1 consists of approximately 43.6 stream km (27.1 stream mi) of the Devils River; 1.1 stream km (0.7 stream mi) of Phillips Creek; and 2.3 stream km (1.4 stream mi) of Dolan Creek. The upstream boundary on the Devils River is at Pecan Springs (UTM 289432E, 3327875W). The downstream boundary on the Devils River is 3.6 stream km (2.2 stream mi) below Dolan Falls (UTM 306454E, 3304426N). Phillips Creek is included from the confluence with the Devils River to a point 1.1 stream km (0.7 stream mi) upstream (UTM 295544E, 3316112N). Dolan Creek is included from the confluence with the Devils River to a point 2.3 stream km (1.4 stream mi) upstream to Dolan Springs (UTM 308084E, 3309223N). Including all three streams, the total distance in Unit 1 is approximately 47.0 stream km (29.2 stream mi).

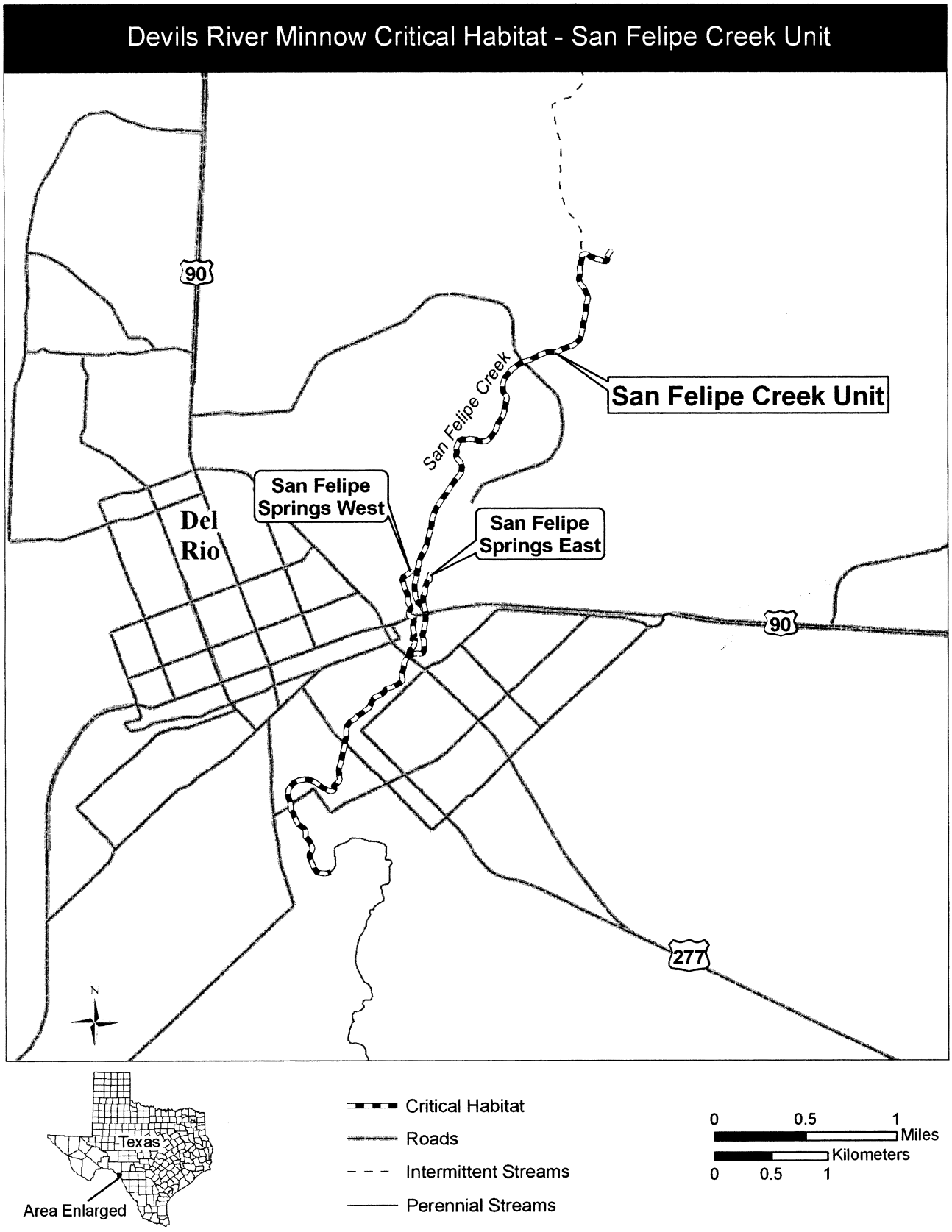
(ii) Note: Map of Unit 1, Devils River Unit, (Map 2) follows:


Devils River Minnow Critical Habitat - Devils River Unit
Devils River
Phillips Creek
DEVILS RIVER SNA
163
Devils River Unit
Dolan Creek
1024
Devils River
Dry Devils River
N
AMISTAD NATIONAL RECREATION AREA
90
Texas
Area Enlarged
Critical Habitat
Roads
Intermittent Stream
Perennial Stream
Public Land
0 3 6
Miles
Kilometers
0 3 6

(7) Unit 2: San Felipe Creek Unit, Val Verde County, Texas.

(i) Unit 2 consists of approximately 7.9 stream km (4.9 stream mi) on San Felipe Creek; 0.8 stream km (0.5 stream mi) of the outflow of San Felipe Springs West; and 0.3 stream km (0.2 stream mi) of the outflow of San Felipe Springs East. The upstream boundary on San Felipe Creek is the Head Springs (UTM 318813E, 3253702N) located about 1.1 stream km (0.7 stream mi) upstream of the Jap Lowe Bridge crossing. The downstream boundary on San Felipe Creek is in the City of Del Rio 0.8 stream km (0.5 stream mi) downstream of the Academy Street Bridge crossing (UTM 316317E, 3248147N). This unit includes the outflow channels from the origin of the two springs, San Felipe Springs West (UTM 317039E, 3250850N) and San Felipe Springs East (UTM 317212E, 250825N), downstream to the confluence with San Felipe Creek. Including all three streams, the total distance in Unit 2 is approximately 9.0 stream km (5.6 stream mi).

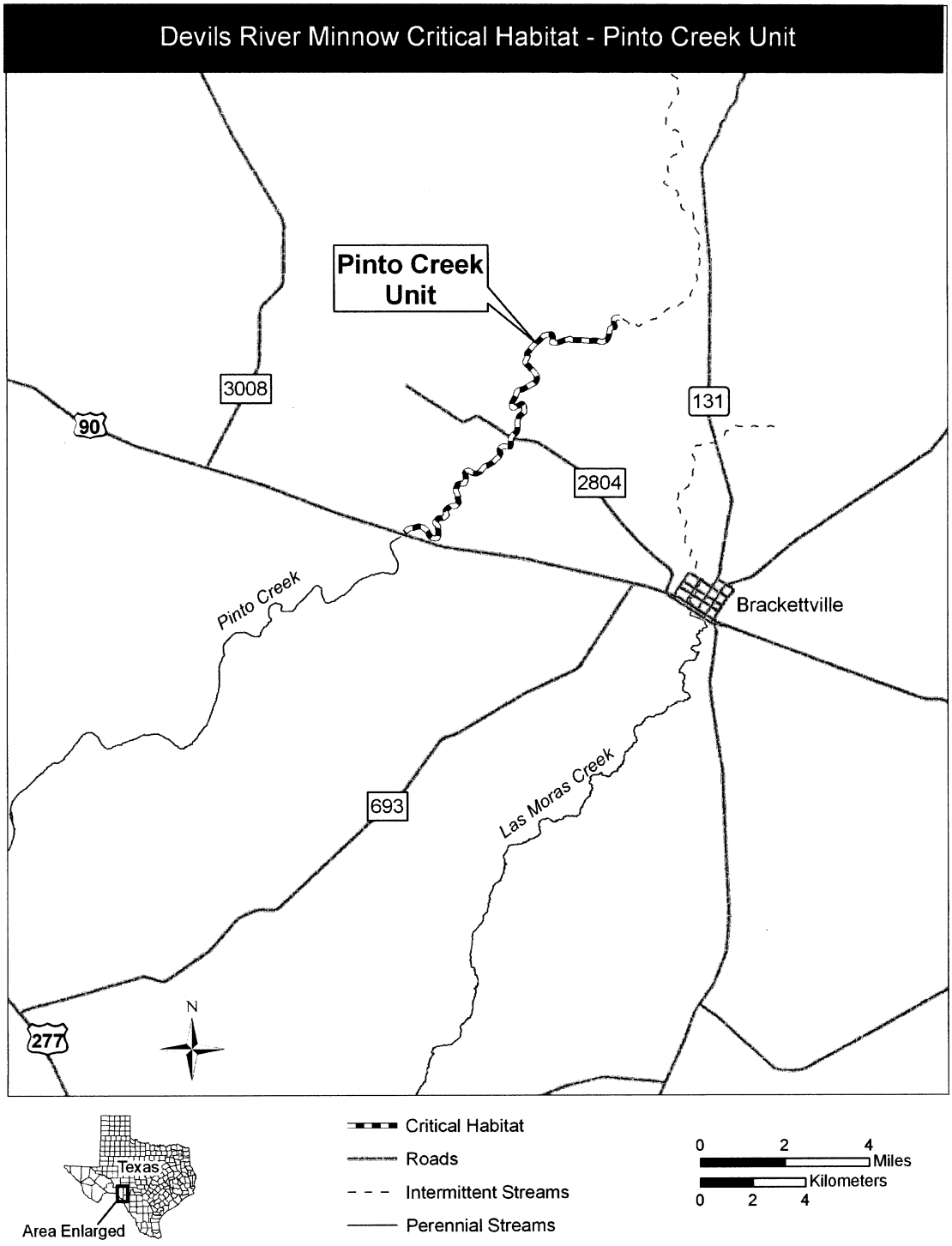
(ii) Note: Map of Unit 2, San Felipe Creek Unit, (Map 3) follows:


Devils River Minnow Critical Habitat - San Felipe Creek Unit
90
San Felipe Creek
San Felipe Creek Unit
San Felipe Springs West
San Felipe Springs East
Del Rio
90
277
N
Texas
Area Enlarged
Critical Habitat
Roads
Intermittent Streams
Perennial Streams
0 0.5 1
Miles
Kilometers
0 0.5 1

(8) Unit 3: Pinto Creek Unit, Kinney County, Texas.

(i) Unit 3 consists of approximately 17.5 stream km (10.9 stream mi) on Pinto Creek. The upstream boundary is Pinto Springs (UTM 359372E, 3254422N). The downstream boundary is 100 m (330 ft) upstream of the Highway 90 Bridge crossing of Pinto Creek (UTM 351163E, 3246179N).

(ii) Note: Map of Unit 3, Pinto Creek Unit, (Map 4) follows:



* * * * *

Dated: July 19, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–3678 Filed 7–30–07; 8:45 am]

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Notices

Federal Register
Vol. 72, No. 146
Tuesday, July 31, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0026]

Public Health Based Inspection System in Poultry Slaughter

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service will hold a public meeting to discuss public health based inspection in poultry slaughter to address *Campylobacter, Salmonella,* and other issues of public health concern. FSIS is seeking public input on the ideas, concepts, data, and analyses it will use to form the basis of a technical plan. The public meeting will afford FSIS and its stakeholders an opportunity to discuss the rationale and process for the Agency's enhanced approach, as well as the background leading up to its current thinking on the concept.

DATES: FSIS will hold the public meeting on Tuesday, August 7, 2007, 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at George Mason University, School of Public Policy, Arlington Original Building, Room 244, 3401 Fairfax Drive, Arlington, Virginia 22201. Directions to the site and the agenda will be posted on the FSIS Web site at *http://www.fsis.usda.gov/News_&_Events/Meetings_&_Events/index.asp.*

The meeting will be audio cast for those who cannot attend in person. Members of the public are encouraged to pre-register for the meeting. Online registration information and audio information will be located at: *http://www.fsis.usda.gov/News_&_Events/Meetings_&_Events/index.asp.*

FSIS welcomes comments on the topics to be discussed at the public meeting. The Agency's technical papers relating to the topic will be posted at: *http://www.fsis.usda.gov/News_&_Events/Meetings_&_Events/index.asp.*

Comments on these papers and questions may be submitted by any of the following methods:

Electronic mail: An electronic mail box has been established specifically for risk-based inspection (RBI) comments for the public meeting on August 7. Comments may be submitted to: *riskbasedinspection@fsis.usda.gov.*

Mail, including floppy disks or CD–ROMs: Send to Ellyn Blumberg, RBI Public Meeting, United States Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Avenue, SW., Mail Drop 405 Aerospace, Washington, DC 20250.

Hand- or courier-delivered items: Deliver to Ellyn Blumberg at 901 D Street, SW., Washington, DC. Have security guard call (202) 690–6520.

Facsimile: Fax documents to (202) 690–6519.

All submissions received must include the Agency name and docket number FSIS–2007–0026. The comments also will be posted on the Agency's Web site at: *http://www.fsis.usda.gov/regulations_&_policies/Risk_Based_Inspection/.*

FOR FURTHER INFORMATION CONTACT: Keith Payne for technical information at (202) 690–6522 or e-mail *keith.payne@fsis.usda.gov;* Sally Fernandez for meeting information at (202) 690–6524, Fax (202) 690–6519, or e-mail *sally.fernandez@fsis.usda.gov.* Persons requiring a sign language interpreter or other special accommodations should notify the Agency contacts no later than July 26, 2007, at the numbers above or by e-mail.

SUPPLEMENTARY INFORMATION:

Background

The Food Safety and Inspection Service (FSIS) is the public health regulatory agency in the U.S. Department of Agriculture responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged. FSIS is accountable for protecting the lives and well-being of 295 million U.S. citizens and millions more around the world.

To meet the realities of food safety and public health challenges, FSIS intends to enhance its inspection system and to develop and implement new, science-based policies. FSIS is considering proposing a new inspection system in poultry slaughter establishments that will improve public health. Although rulemaking is not expected immediately, FSIS is seeking public input on the ideas, concepts, data, and analyses that it will use to form the basis for a technical plan and in the development of a future proposed rule.

The Agency's thinking has evolved and benefited from its experience with the Hazard Analysis and Critical Control Point (HACCP)-based Inspection Models Project (HIMP). The new system will be designed to provide more time and more flexibility than the current systems for FSIS personnel to conduct focused, off-line verification activities according to risk factors at each establishment and at points in slaughter and processing where food safety hazards and associated risks may be introduced. The public meeting will afford FSIS and its stakeholders an opportunity to discuss the rationale and process for the Agency's enhanced approach, as well as for the Agency to present the background that has led the Agency to its current thinking on the concept. In addition, the Agency will present the scientific foundations for future decision-making, including how to address *Salmonella* and *Campylobacter* and the use of generic *E. coli* as an indicator of process control.

All interested parties are welcome to attend the meeting and to submit written comments and suggestions through September 7, 2007. The comments and the official transcript of the meeting, when they become available, will be posted on the Agency's Web site at: *http://www.fsis.usda.gov/regulations_&_policies/Risk_Based_Inspection/.* All comments received in response to this notice will be considered part of the public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web site located at:

http://www.fsis.usda.gov/regulations/2007_Notices_Index/.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The Update is available on the FSIS Web site. Through the Listserv and Web site, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service, which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Subscription service options include recalls and export information, as well as regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on: July 26, 2007.

Alfred V. Almanza,

Administrator.

[FR Doc. E7–14805 Filed 7–30–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Hell Canon Ranger District, Custer, South Dakota—Norbeck Wildlife Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This project proposes to implement wildlife habitat improvements on about 6,049 acres within the Norbeck Wildlife Preserve on the Hell Canyon Ranger District of the Black Hills National Forest. In addition, the project proposes to conduct prescribed burning on 7,391 acres of the Black Elk Wilderness. This project will analyze effects of these treatments within the constraints of the Black Hills National Forest Revised Land and Resource Management Plan (BHNF LRMP), as amended.

DATES: Comments concerning the scope of the analysis should be received within 30 days after publication of this notice in the **Federal Register.** The draft environmental impact statement is expected in March, 2008 and the final environmental impact statement is expected July, 2008.

ADDRESSES: Send writhen comments to Michael Lloyd, District Ranger, Hell Canyon Ranger District, 330 Mt. Rushmore Rod., Custer, South Dakota 57730. Comment may also be submitted by e-mail to: *comments-rocky-mountain-black-hills-hell-canyon@fs.fed.us.* with ''Norbeck'' as subject. Electronic comments must be submitted in word (.doc), RichText (.rtf), or Adobe Acrobat (.pdf) format.

FOR FURTHER INFORMATION CONTACT: Alice Allen, Project Coordinator, Blacks Hills National Forest, Hell Canyon Ranger District, at 330 Mt. Rushmore Rd., Custer, South Dakota 57730, phone (605) 673–4853.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The purpose for the proposed action is to benefit ''game animals and birds'' by improving habitat conditions in the Norbeck Wildlife Preserve. In addition, there is a need to protect these habitats for game animals and birds in Norbeck from a wildfire escaping from the Black Elk Wilderness. The EIS will determine current conditions, analyze environmental consequences of habitat improvements on those conditions, and assist the decision maker in selecting management/monitoring strategies consistent with meeting desired conditions in the BHNF LRMP, including the goals for ''Management Areas 5.4A—Norbeck Wildlife Preserve'' and ''Management Area 1.1A—Black Elk Wilderness''. The Forest Service seeks to provide high quality habitat for ''game animals and birds'' in accordance with the Norbeck Organic Act of June 5, 1920.

Proposed Action: The Norbeck Wildlife Project proposes to manage vegetation to benefit game animals and birds on about 6,049 acres within the Norbeck Wildlife Preserve. The project also proposes to use prescribed fire on 7,391 acres of the Black Elk Wilderness to help protect these habitats from wildfire escaping from the wilderness. The Forest Service will evaluate, analyze and determine the effects of the proposed treatments on Norbeck focus species (Griebel, Burns and Deisch 2007) including mountain goat, bighorn sheep, elk, white-tailed deer, turkey, bluebird, golden-crowned kinglet, brown creeper, ruffed grouse, song sparrow, northern goshawk and black-backed woodpecker.

Possible Alternatives: The No Action alternative would not authorize habitat improvements of any type on any portion of the project area at this time. Other alternatives may be developed in response to public comments.

Responsible Official: The Responsible Official for this project is Michael D. Lloyd, District Ranger, Hell Canyon Ranger District, Black Hills National Forest, 330 Mt. Rushmore Rd., Custer, South Dakota.

Nature of Decision to be Made: The Forest Service will evaluate the proposed action and alternatives. After reviewing the proposed action, the alternatives, the environmental analysis, and considering public comment, the District Ranger will reach a decision that is in accordance with the purpose and need for this project. The decision will include, but not be limited to:

(1) Whether or not to undertake vegetative treatments to improve habitat conditions for game animals and birds in Norbeck Wildlife Preserve,

(2) Whether or not to undertake prescribed burning in the Black Elk Wilderness to protect these habitats from fire escaping from the wilderness,

(3) If so, what actions are appropriate and under what conditions actions will take place.

Public Comment: This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The District desires to involve interested parties in identifying issues related to habitat management for game animals and birds. Comments will help the planning team identify key issues and opportunities to develop habitat improvements, monitoring strategies, and alternatives.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v.

NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 24, 2007.

Craig Bobzien,

Forest Supervisor,

[FR Doc. 07–3710 Filed 7–30–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 25–2007]

Foreign–Trade Zone 44 - Mount Olive, New Jersey, Application for Expansion of FTZ 44 and Expansion of Scope of Manufacturing Authority

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the New Jersey Commerce, Economic Growth & Tourism Commission, grantee of FTZ 44, requesting authority to expand FTZ 44 and to expand the scope of manufacturing authority for Givaudan Fragrances Corporation (Givaudan) within FTZ 44, in the Mt. Olive, New Jersey area, adjacent to the Newark/New York CBP port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 20, 2007.

FTZ 44 was approved on October 18, 1978 (Board Order No. 139, 43 FR 50234, 10/27/78) and expanded on May 29, 2001 (Board Order 1168, 66 FR 31611, 6/12/01). The zone project currently consists of the following sites: Site 1 (80 acres) - located within the 650–acre International Trade Center, 300 Waterloo Road in the Township of Mt. Olive (Morris County) (includes the Givaudan facility–228,000 sq. ft., of which 42,007 sq. ft. are approved on a temporary basis until April 1, 2009 (A(27f)-17–2007)); and, Site 2 (309 acres, 2 parcels) - within the Rockefeller Cranbury Industrial Park, located at Half Acre Road in Cranbury Township (Middlesex County).

The applicant is requesting authority to clarify the existing boundaries of Site 1, expand Site 1 to include additional acreage, delete two acres from Site 2, and to include four additional sites in the Mt. Olive, New Jersey, area: *Site 1*: clarify existing FTZ boundaries (80.03 acres) and expand the site to include an additional 0.5 acres in Mt. Olive which will include a 42,007 sq. ft. warehouse building on a permanent basis (new total acreage - 80.53 acres); *Site 2*: delete two acres due to changed circumstances (new total acreage - 307 acres); *Proposed Site 3* (177 acres) - Central Crossings Business Park, located on Bordertown–Hedding Road, Township of Bordertown (Burlington County); *Proposed Site 4* (57 acres) - Old York Office Park, located on Old York Road, Township of Bordertown (Burlington County); Proposed Site 5 (40 acres) - Rockefeller Group Foreign Trade Zone Meadowlands, located on County Road, Jersey City (Hudson County); and, *Proposed Site 6* (275 acres) - Norfolk Southern Rail Yard, off of County Road in Jersey City and Secaucus (Hudson County).

The applicant is also requesting an expansion of the scope of manufacturing authority for Givaudan located in Site 1. Givaudan's original manufacturing authority under zone procedures within FTZ 44 was granted for the manufacture of flavors and fragrances, which are used in cosmetics, perfumes and household products. Givaudan is now requesting authority to utilize a broader range of 6–digit input classifications for finished product classification 3302.90 (fragrance compounds). Materials sourced from abroad account for approximately seventy–five percent of all materials used in production. These are as follows: cereal groats and pellets, natural gums and resins, fish–liver oils, olive oil, sunflower–seed oil and other oils, other fixed vegetable fats and oils including linseed oil, corn oil, and sesame oil, extracts and other essences of coffee, tea or mate, undenatured ethyl alcohol, residues of starch manufacture and similar residues, petroleum oils, carboxylic acids, carboxyimide–function compounds, nitrogen function compounds, dextrins and other modified starches, wood tar, industrial monocarboxylic fatty acids, polymers of propylene, and polyacetals. The duy rates for these inputs and their final products range from duty–free to ten percent.

Zone procedures would exempt Givaudan from customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer customs duty payments on foreign materials, and to choose the duty rate that applies to the finished products instead of the rates otherwise applicable to the foreign input materials. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness. Approximately ten percent of production is exported.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 1, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to October 15, 2007).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: the Office of the New Jersey Commerce, Economic Growth & Tourism Commission, 20 West State Street, Trenton, NJ 08625–0820; and, the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

For further information, contact Kathleen Boyce at 202–482–1346 or Kathleen__Boyce@ita.doc.gov.

Dated: July 23, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–14790 Filed 7–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 26–2007]

Foreign–Trade Zone 107—Des Moines, Iowa, Expansion of Subzone and Manufacturing Authority—Subzone 107A, Winnebago Industries, Inc. (Motor Home Vehicles), Charles City, Iowa

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Iowa Foreign–Trade Zone Corporation, grantee of FTZ 107, requesting to expand the subzone and scope of manufacturing authority under zone procedures for Subzone 107A, at the Winnebago Industries, Inc. (Winnebago) facilities in Charles City, Iowa. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 23, 2007.

Subzone 107A was approved by the Board on September 4, 1984 (Board Order 273, 44 FR 50625, 9/13/84) at Winnebago's motor home manufacturing facility, located at 605 W. Crystal Lake Road in Forest City, Iowa. The facility (1600 employees, 240 acres, 25 buildings/2.2 million sq. ft.) is used to manufacture, test and warehouse recreational vehicles, with specific authority granted for the manufacture of motor home vehicles (HTSUS 8703.23 and 8703.24) under zone procedures (up to 10,000 units annually). The duty rate on the motor home vehicles is 2.5 percent, *ad valorem*.

The current request involves an expansion of the scope of manufacturing authority in terms of capacity and components as well as the expansion of the subzone to include an additional site in Charles City, Iowa. Proposed *Site 2* (495 employees, 55 acres, 5 buildings/352,000 sq. ft.) is located at 1200 Rove Avenue in Charles City, and is located approximately 65 miles southeast of the Forest City Site. The facilities will be used for the manufacture, testing and warehousing of the motor homes mentioned above (up to 3,000 additional units annually).

The primary foreign–sourced component used in manufacturing are chassis with engines installed - HTSUS numbers 8704.21, 8704.22, 8704.31 and 8704.32. Duty rates on the chassis range from 4 percent to 25 percent, *ad valorem*. Other dutiable components that may be sourced from abroad include the following: petroleum oil products; glues and adhesives; binders for foundry molds; plastic tubing, pipes and hoses; self–adhesive plastics; plastic fittings; compounded rubber products; tires; rubber floor coverings and mats; gaskets, washers and seals; safety glass; glass mirrors; wire cloth and grills; steel tubing and pipe fittings; screws, nuts, washers and bolts of iron and steel; springs and leaves for springs; articles of iron and steel wire; nails, tacks and drawing pins; copper products; aluminum products; hand tools; locks; hinges and castors; spark ignition internal combustion engines; compression ignition internal combustion engines; cast iron engine parts; pumps; fans; air and gas compressors; air conditioning machine parts; oil, fuel and air filters; check valves, taps and cocks; transmission shafts; bearings and bearing housings, gears, flywheels, clutches and pulleys; metal gaskets; electric motors; batteries; starter motors and generators; lighting and sound signaling equipment; windshield wipers and defrosters; microphones and speakers; television antennas; burglar and fire alarms; fuses, relays and switches; electrical filament or discharge lamps; ignition wiring sets; bumpers; safety belts; gear boxes; wheels; suspension components; mufflers and exhaust pipes; steering wheels; clutches; tractor parts; LCD displays; hydrometers, instruments and apparatus for checking flow and pressure of liquids; gas and smoke analysis equipment; speedometers, odometers and tachometers; voltage and voltage current regulators; and, electron–beam microscopes. These components have duty rates ranging from duty–free to 8.6 percent *ad valorem*.

Zone procedures on the increased production would exempt Winnebago from customs duty payments on the foreign components used in export production to non- NAFTA countries. Exports account for approximately 5 percent of production. On domestic sales and sales to NAFTA countries, Winnebago could defer duty until the products are entered for consumption or exported, and choose the lower duty that applies to the finished product (2.5 percent) for the foreign components listed above. The company would also realize certain logistical savings related to zone to zone transfers and direct delivery procedures as well as savings on materials that become scrap/waste during manufacturing. The application indicates that FTZ–related savings would help improve the Winnebago's international competitiveness.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 1, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to October 15, 2007).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 210 Walnut Street, Suite 749, Des Moines, Iowa 50309.

Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Christopher Kemp at Christopher__kemp@ita.doc.gov or (202) 482–0862.

Dated: July 23, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–14791 Filed 7–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 27–2007]

Foreign–Trade Zone 103 - Grand Forks, North Dakota, Expansion of Manufacturing Authority -- Subzone 103A, Imation Enterprise Corp., Wahpeton, North Dakota

An application has been submitted to the Foreign–Trade Zones Board (the Board) by Imation Enterprise Corp. (Imation), requesting authority to expand the scope of manufacturing activity conducted under zone procedures within Subzone 103A at the Imation facilities in Wahpeton, North Dakota. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 23, 2007.

Subzone 103A (400 employees) was approved by the Board in 2000 for the

manufacture of data storage products (Board Order 1099, 65 FR 37115, 6/13/00). The subzone consists of two sites (112 acres total): Site 1 (95 acres) is located at 2100 15th Street North, Wahpeton, North Dakota; Site 2 (17 acres) is located at 1205 North Tower Road, Route 2, Fergus Falls, Minnesota.

The current request involves the addition of imported RFID chips (HTSUS 8543.70, duty rate 2.6%) to the company's scope of authority for use in the production of data tape cartridges (duty free). No additional finished products have been requested. The scope otherwise would remain unchanged.

FTZ procedures would exempt Imation from customs duty payments on the RFID chips used in export production. The company anticipates that some 53 percent of the plant's shipments will be exported. On its domestic sales, Imation would be able to choose the duty rate during customs entry procedures that apply to finished data tape cartridges for the RFID chips. The application indicates that the savings from zone procedures help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 1, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period to October 15, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 51 Broadway, Suite 505, Fargo, ND 58102.

Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth__Whiteman@ita.doc.gov or (202) 482–0473.

Dated: July 23, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–14788 Filed 7–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Preliminary Results of Antidumping Duty New Shipper Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper administrative review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India manufactured by Micro Forge (India) (Micro Forge). The period of review (POR) covers February 1, 2006, through July 31, 2006. We preliminarily determine to apply an adverse facts available (AFA) rate to Micro Forge's U.S. sale. We invite interested parties to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues; and (2) a brief summary of the argument.

EFFECTIVE DATE: July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994) (*Amended Final Determination*). On August 31, 2006, the Department received requests for new shipper reviews for the period February 1, 2006, through July 31, 2006, from Micro Forge and Pradeep Metals Limited (Pradeep). On October 6, 2006, the Department published a notice initiating the requested reviews. *See Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 59081 (October 6, 2006). On March 23, 2007, we extended the time limit for the preliminary results of the new shipper reviews to July 26, 2007. *See Stainless Steel Flanges from India: Notice of Extension of Time Limit for Preliminary Results of Antidumping New Shipper Review*, 72 FR 13746 (March 23, 2007). On March 30, 2007, we rescinded the review with respect to Pradeep. *See Certain Forged Steel Flanges from India: Notice of Partial Rescission of New Shipper Review*, 72 FR 15104, (March 30, 2007).On October 13, 2006, the Department sent standard section A, B, C, and D questionnaires to Micro Forge. On October 28, 2006, Micro Forge filed its response to section A of our questionnaire. In its Section A response, Micro Forge indicated that it made no sales of the subject merchandise in either India (its home market) or in any third–country market. See Micro Forge October 28, 2006, Section A response at page 4. On November 15, 2006, Micro Forge filed its response to sections C and D of our questionnaire. Micro Forge indicated that it filed a response to Section D of our questionnaire because it had no sales of subject merchandise in either India or in third countries during the period of review.

In our analysis of Micro Forge's response to Sections A, C, and D of our questionnaire, the Department discovered serious deficiencies. Among other things, these deficiencies included Micro Forge's failing to 1) adequately describe how it produced flanges, 2) detail or explain the services that Micro Forge received from affiliated parties relating to the production and sale of flanges, 3) report the basis of its calculation for certain adjustments to the U.S. price, and to clarify whether these U.S. adjustments were reported in the original currency of transaction, 4) explain the basis for the calculation of direct materials (DIRMAT), labor (DIRLAB), variable overhead (VOH), fixed overhead (FOH), general and administrative expenses (GNA) and interest (INTEX) expenses that support its CV calculation. These deficiencies were such that the Department was unable to calculate a margin for Micro Forge. Therefore we sent a supplemental section A, C, and D questionnaire to Micro Forge on April 4, 2007, that requested the additional information necessary for us to complete our analysis. We established a due date of April 17, 2006, for Micro Forge to respond to our April 4, 2007, supplemental questionnaire.

On April 17, 2007, Micro Forge sent an e–mail to the Department attempting to secure a one-month extension in which to respond to our April 4, 2007, supplemental questionnaire. As required by 19 CFR 351.103, Micro Forge failed to file its April 17, 2007, request with the Department's Central Records Unit (CRU). Moreover, Micro

Forge's April 17, 2007, e–mail failed to meet the format, service, and certification requirements stipulated at 19 CFR 351.303. These deficiencies notwithstanding, we placed Micro Forge's e–mail and our April 17, 2007, e–mail response to Micro Forge on the record of this proceeding. *See* April 16, 2007, e–mail from Mayur Joshi to Robert James. Also on April 17, 2007, we issued a letter to Micro Forge, granting Micro Forge an extension until April 27, 2007, in which to respond to our April 4, 2007, supplemental questionnaire. However, in granting the extension to Mico Forge we informed Micro Forge that in future filings it must adhere to our filing requirements. *See* April 17, 2007, e–mail from Robert James to Mayur Joshi.

The April 27, 2007, deadline passed with no response from Micro Forge. On May 7, 2007, Micro Forge submitted another e–mail in which it attempted to submit a response to our April 4, 2007, supplemental questionnaire. On May 11, 2007, Micro Forge filed with our CRU an undated response to our April 4, 2007, supplemental questionnaire. On May 14, 2007, we sent Micro Forge a letter indicating that ''your electronic mail submission fails to meet the filing format, service, and certification requirements required by 19 CFR 351.303.'' We further informed Micro Forge in our May 14, 2007, letter that we were cancelling the sales and constructed value verification of Micro Forge due to begin on May 21, 2007. We informed Micro Forge that we were cancelling this verification because of the company's ''failure to provide complete and timely response to the Department's original and supplemental questionnaires.'' On May 17, 2007, we issued a letter to Micro Forge in which we rejected Micro Forge's May 11, 2007, response as untimely. (Micro Forge filed its response two weeks past the April 27, 2007, extended due date.) We further indicated in our May 17, 2007, letter that we were returning copies of Micro Forge's submission pursuant to section 351.302(d)(1) and (2) of the Department's regulations.

Scope of the order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

Use of Adverse Facts Available

In accordance with section 776(a)(2) of the Tariff Act of 1930, as amended (the Tariff Act), the Department has determined that the use of adverse facts available is appropriate for purposes of determining the preliminary dumping margin for the subject merchandise sold by Micro Forge. Pursuant to section 776(a)(2) of the Tariff Act the Department shall (with certain exceptions not applicable here) use the facts otherwise available in reaching applicable determinations under this subtitle if an interested party (A) withholds information that has been requested by the administrating authority; (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Tariff Act; (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(i). *See* Tariff Act section 776(a)(2). Moreover, section 776(b) of the Tariff Act provides, in relevant part, that:

> If the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.

The Department preliminarily determines that Mico Forge's questionnaire responses of October 28, 2006, and November 15, 2006, cannot serve as the basis for the calculation of Micro Forge's margin because we are unable to trust the reliability of the information conveyed in those questionnaire responses. The deficiencies identified in Micro Forge's October 28, 2006, section A response and in Micro Forge's November 15, 2006 section C and D responses are outlined in a July 24, 2007, Memorandum entitled ''Preliminary Results in the Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Total Adverse Facts Available and Corroboration Memorandum for Company Rate'' (*Corroboration Memorandum*). These deficiencies are so substantial that the Department has no reliable basis upon which it can conduct a margin analysis. See Section 782(e) of the Tariff Act. Furthermore, in failing to provide information within a timely manner, Micro Forge has withheld information that has been requested and has significantly impeded this proceeding within the meaning of section 776(a)(2)(A) and (C) of the Tariff Act. Moreover, Micro Forge failed to provide U.S. sales and CV information in a timely manner and this precluded us from proceeding with a planned verification of Micro Forge's sales and cost information. Therefore, we are basing Micro Forge's margin on the facts otherwise available, in accordance with sections 776(a)(2)(A) through (C) of the Tariff Act. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice From Brazil*, 71 FR 2183, 2184 (January 13, 2006). *See also Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (February 4, 2000); *Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8910 (February 23, 1998).

Further, we find that an adverse inference is warranted pursuant to section 776(b) of the Department's Regulations. Micro Forge submitted substantially deficient respnses to the Department's original questionnaires. As previously noted, Micro Forge failed to (1) adequately describe how it produced flanges, (2) detail or explain the services that Micro Forge received

from affiliated parties relating to the production and sale of flanges, (3) report the basis of its calculation for certain adjustments to the U.S. price, and to clarify whether these U.S. adjustments were reported in the original currency of transaction, (4) explain the basis for the calculation of DIRMAT, DIRLAB, VOH, FOH, GNA, and INTEX expenses that support its CV calculation. In addition, Micro Forge's attempted response to the Department's April 4, 2007, supplemental questionnaire did not adhere to the filing deadline, already extended. Micro Forge submitted its response two weeks past the extended deadline of April 27, 2007, and barely two weeks before the Department's scheduled verification. Micro Forge's belated and inadequate response to our April 4, 2007, letter thus left the Department inadequate time to analyze its response prior to conducting a verification of the information contained in Micro Forge's submissions. By declining to provide requested information in a timely fashion despite an extension, Micro Forge failed to cooperate to the best of its ability in that it did not put forth its maximum efforts to investigate and obtain the requested information from its records. Furthermore, despite repeated instructions and opportunities, Micro Forge failed to properly file its supplemental response with the Department. Consequently, the Department finds that an adverse inference is warranted in determining an antidumping duty margin for Micro Forge. As a result, we are basing Micro Forge's margin on the facts otherwise available, in accordance with section 776(a)(2)(A)(C) of the Act. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice From Brazil*, 71 FR 2183, 2184 (January 13, 2006). *See also Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000); *Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8910 (Feb. 23, 1998).

If the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. *See* section 776(b) of the Tariff Act. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action* (SAA) accompanying the Uruguay Round Agreement Act, H.R. Doc. No. 103–316 (1994) at 870. Under the statutory scheme, such adverse inferences may include reliance on information derived from 1) the petition; 2) a final determination in the investigation; 3) any previous review or determination; or 4) any other information placed on the record. *See* section 776(b) of the Tariff Act. The SAA authorizes the Department to consider the extent to which a party may benefit from its own lack of cooperation. *Id.* The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse to induce the respondents to provide the Department with complete and accurate information in a timely manner. *See Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55796 (August 30, 2002). Because Micro Forge currently has the ''All Others'' cash deposit rate of 162.14 percent, the Department determines that assigning the highest margin from the original petition and investigation in this case, 210.00 percent, will prevent Micro Forge from benefitting from its failure to cooperate with the Department's requests for information. *See Amended Final Determination* 59 FR at 5995.

The rate selected as the adverse facts available rate of 210.00 percent, as previously noted, originates from the final determination of the LTFV investigation and is based on secondary information (*i.e.* the petition). Section 776(c) of the Tariff Act requires the Department to corroborate secondary information, to the extent practicable. In order to corroberate secondary information, the Department will determine whether the information has probative value including whether the information is reliable and relevant. *See* 19 CFR 351.308(d).

To assess the reliability of the petition margin, in accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the calculations of export price and normal value upon which the petitioners based their margins for the petition. The U.S. prices in the petition were based on quotes to U.S. customers, most of which were obtained through market research. Petitioners calculation of FMV (the predecessor to NV) and U.S. price is described at pages 22–30 of the Petition. Those pages are attached as Exhibit 1 of the Corroboration Memorandum. (*See* Petition for the Imposition of Antidumping Duties, December 29, 1993, (Petitition) at page 26.) Petitioners calculated a margin of 210 percent for a 6–inch 150ι 304 weld neck flange. We were able to corroborate the U.S. prices in the petition, which were used as the basis of the 210.00 percent rate (based on the highest rate in the original petition and antidumping duty order) by comparing these prices to publicly available information based on IM–145 import statistics from the U.S. International Trade Commission's Web site via dataweb for HTS number 7307215000, *i.e.*, the HTS item numbers corresponding to all of Micro Forge's U.S. sales. *See* Corroboration Memorandum at Exhibit 2. We noted the weighted average reported Customs unit value for HTS number 7307215000 during the POR was $5.76/kg. *Id.* Moreover, the U.S. price per kilogram for the 6–inch 150ι 304 weld neck flange is $4.37. Based upon the foregoing, we determine that the U.S. Customs unit entered value of $5.76 per kilogram is proximate both to the range of prices outlined in the petition (which range from $4.01 to $7.76 per kilogram (*Id.* at 7–8) and to the $4.37 per kilogram price of the 6 inch 150ι 304 weld neck flange (*Id* at 8.). We thus conclude that the Customs unit entered value of $5.76 continues to evince the reliability of the Petition. The NVs in the petition were based on actual price quotations obtained through market research. *See* Petition at 22, (Exhibit 1 of the Corroboration Memorandum). The Department is not aware of other independent sources of information that would enable it to corroborate the margin calculations in the petition further.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin as in Flowers from Mexico, 61 FR at 6814. Further, in accordance with *F. LII De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir.

June 16, 2000), we also examine whether information on the record would support the selected rates as reasonable facts available.

We find that the 210.00 percent rate which we are using for these preliminary results is relevant as applied to Micro Forge. The 210.00 percent margin rate has been used recently in a prior administrative review of this proceeding. *See Certain Forged Stainless Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 11361, 11365 (March 10, 2003) (in which the Department applied the 210.00 percent rate to Snowdrop as the basis of adverse facts available). *See also, Certain Forged Stainless Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 11379, 11380 (March 7, 2006) (in which the Department applied the 210.00 percent rate to Paramount as the basis of adverse facts available). There is no evidence on the record of this proceeding which suggests that Micro Forge is sufficiently different from these producers such that the 210 percent rate should be inapplicable to Micro Forge. Furthermore, as discussed previously, the Indian imports under the HTS number corresponding to Micro Forge's U.S. sales have average unit values similar to those found in the petition. Thus, we conclude that we have corroborated the relevance of this rate as applied to Micro Forge to the extent practicable.

The implementing regulation for section 776 of the Act, codified at 19 CFR 351.308(d), states, ''(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.'' Additionally, the SAA at 870 states specifically that, where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on our efforts, described above, to corroborate information contained in the petition and in accordance with 776(c) of the Tariff Act, which discusses facts available and corroboration, we consider the margins in the petition to be corroborated to the extent practicable for purposes of this preliminary determination. *See Certain Cut–to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999).

Preliminary Results of Review

As a result of our review, the Department preliminarily finds the following weighted–average dumping margins exist for the period February 1, 2006, through July 31, 2006:

Manufacturer / Exporter	Margin (percent)
Micro Forge	210.00

Disclosure and Public Comment

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of the preliminary results. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d).

Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Parties may also submit rebuttal briefs or written comments. Pursuant to 19 CFR 309(d), rebuttal briefs and rebuttals to written comments are limited to issues raised in the case briefs, and may be filed no later than 5 days after the time limit for filing the case briefs. Parties who submit argument in these proceedings are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2). Further, the Department requests parties submitting written comments to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate instructions for Micro Forge directly to CBP within 15 days of publication of the final results of this review. The final results of this review shall be the basis for assessment of antidumping duties on entries of merchandise covered by the final results of this review, and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from Micro Forge of certain stainless steel flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review.The following deposit requirements will be effective upon completion of the final results of this new shipper review for all shipments of flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: 1) the cash deposit rate for the reviewed company will be the rate established in the final results of this new shipper review; if the rate for a particular company is zero or *de minimis (i.e.*, less than 0.50 percent), no cash deposit will be required for that company; 2) for manufacturers or exporters not covered in this review, but covered in the original less–than-fair–value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company–specific rate; 3) if the exporter is not a firm covered in this review, a prior review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for that manufacturer of the merchandise; and 4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 162.14 percent, the ''all others'' rate established in the LTFV investigation. *See Amended Final Determination* 59 FR at 5995. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections

751(a)(2)(B) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(b)(4) and 19 CFR 351.214.

Dated: July 24, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–14781 Filed 7–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review and Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the administrative and new shipper reviews of honey from the People's Republic of China (''PRC''). These reviews cover the period December 1, 2005, through November 30, 2006.

EFFECTIVE DATE: July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Anya Naschak, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–6375, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published in the **Federal Register** an antidumping duty order covering honey from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On February 2, 2007, the Department published a notice of initiation of the administrative review of the antidumping duty order on honey from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On February 5, 2007, the Department published a notice of initiation of the antidumping new shipper review of honey from the PRC. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 72 FR 5265 (February 5, 2007). On February 23, 2007, the Department aligned the new shipper review and the administrative review. *See* Letter from Christopher Riker: Antidumping Duty New Shipper Review of Honey from the People's Republic of China (''PRC''): Alignment with Administrative Review, dated February 23, 2007.

The preliminary results of these reviews are currently due no later than September 2, 2007.

Statutory Time Limits

In antidumping duty adminstrative reviews section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of these administrative and new shipper reviews within the original time limit because the Department requires additional time to analyze a large volume of pending U.S. Customs and Border Protection data, analyze questionnaire responses, issue supplemental questionnaires, conduct verification, as well as to evaluate what would be the most appropriate surrogate values to use during the period of review.

Therefore, the Department is extending the time limit for completion of the preliminary results of these aligned administrative and new shipper reviews by 90 days. The preliminary results will now be due no later than December 3, 2007, which is the first business day after the 90-day extension (the 90th day falls on the weekend). The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: July 24, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–14778 Filed 7–30–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–865]

Final Rescission of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from the People's Republic of China

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

EFFECTIVE DATE: July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2006, the Department of Commerce (''Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from the People's Republic of China (''PRC'') for the period November 1, 2005, through October 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 64240 (November 1, 2006). On November 30, 2006, United States Steel (''Petitioner''), a domestic producer of certain hot–rolled carbon steel flat products, requested that the Department conduct an administrative review of Anshan Iron& Steel Group Corp., Angang Group International Trade Corporation, Angang New Iron and Steel Co., Angang New Steel Co., Ltd., and Angang Group Hong Kong Co., Ltd. (collectively ''Angang'') and Baosteel Group Corporation, Shanghai Baosteel International Economic & Trading Co., Ltd., and Baoshan Iron and Steel Co., Ltd. (collectively ''Baosteel''). On December 27, 2006, the Department published a notice of initiation of an antidumping duty administrative review on certain hot–rolled carbon steel flat products from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for*

Revocation in Part (''Notice of Initiation''), 71 FR 77720 (December 27, 2006). On June 11, 2007, we preliminarily rescinded this review based on evidence on the record indicating that there were no entries into the United States of subject merchandise during the period of review (''POR'') by Angang or Baosteel. *See Preliminary Rescission of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products From the People's Republic of China*, 72 FR 32072 (June 11, 2007) (''*Preliminary Rescission*''). We invited interested parties to submit comments on our *Preliminary Rescission*. We did not receive any comments on our *Preliminary Rescission*. The POR is November 1, 2005, through October 31, 2006.

Scope of the Review

For purposes of this review, the products covered are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and, iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under review is dispositive.

Final Rescission of Review

Because neither Angang nor Baosteel made shipments to the United States of subject merchandise during the POR, and because we did not receive any comments on our *Preliminary Rescission*, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review of the antidumping duty order on certain hot–rolled carbon steel flat products from the PRC for the period of November 1, 2005, to October 31, 2006. *See, e.g., Polychloroprene Rubber from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 66 FR 45005 (August 27, 2001). The cash deposit rate for Angang and Baosteel will continue to be the rate established in the most recently completed segment of this proceeding.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 24, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–14780 Filed 7–30–07; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/ Overseas Environmental Impact Statement for Navy Training Operations in the Northwest Training Range Complex and Notice of Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and Executive Order 12114, the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS)/ Overseas EIS to evaluate the potential environmental effects of maintaining Fleet readiness through the use of the Northwest Training Range Complex (NWTRC) to support current, emerging, and future training activities. The proposed action serves to implement range enhancements to upgrade and modernize range capabilities within the NWTRC thereby ensuring critical Fleet requirements are met. The Navy will invite the U.S. Fish and Wildlife Service and National Marine Fisheries Service to be cooperating agencies in preparation of this EIS/OEIS.

DATES AND ADDRESSES: Five public scoping meetings will be held in Washington, Oregon and California to receive oral and written comments on environmental concerns that should be addressed in the EIS/OEIS. Public scoping meetings will be held at the following dates, times and locations: September 10, 2007, from 6 p.m. to 9 p.m. at Coachman Inn, 32959 State Route 20, Oak Harbor, Washington, September 11, 2007, from 6 p.m. to 9 p.m., at Pacific Beach Fire Hall, 4586 State Route 109, Pacific Beach, Washington, September 12, 2007, from 6 p.m. to 9 p.m., at Grays Harbor College Cafeteria, 1620 Edward P. Smith Drive, Aberdeen, Washington, September 13, 2007, from 6 p.m. to 9 p.m., at Spouting Horn Restaurant, 110 Southeast Highway 101, Depoe Bay, Oregon, and September 15, 2007, from 6 p.m. to 9 p.m., at Eureka's Women's Club, 1531 J Street, Eureka, California.

Each of the five scoping meetings will consist of an informal, open house session with information stations staffed by Navy representatives. Details of the meeting locations and time will be announced in local newspapers. Additional information concerning meeting times will be available on the EIS/OEIS web page located at: *http://www.NWTRangeComplexEIS.com.*

FOR FURTHER INFORMATION CONTACT: Kimberly Kler, Naval Facilities Engineering Command, Northwest, Attention: NWTRC EIS/OEIS, 1101 Tautog Circle Suite 203, Silverdale, Washington, 98315–1101.

SUPPLEMENTARY INFORMATION: The NWTRC consists of airspace, surface operating areas, and land range facilities in the Pacific Northwest. Components of the NWTRC encompass 126,630 nm^2 of surface/subsurface ocean operating area, 33,997 nm^2 of special use airspace, and 22 nm^2 of restricted airspace. The EIS/OEIS study area lies within the NWTRC, and encompasses surface and subsurface ocean operating areas, land training areas and special use airspace in Washington, and over-ocean special use airspace offshore of Washington, Oregon and northern California. These ranges and operating areas are used to conduct training involving military hardware, personnel, tactics, munitions, explosives, and electronic combat systems. The NWTRC serves as a backyard range for those units homeported in the Pacific Northwest area including those aviation, surface ship, submarine, and Explosive Ordnance Disposal units homeported at Naval Air Station Whidbey Island, Naval Station Everett, Naval Base Kitsap—Bremerton, Naval Base Kitsap—Bangor, and Puget Sound Naval Shipyard.

The purpose of the Proposed Action is to: (1) Achieve and maintain Fleet readiness using the NWTRC to support and conduct current, emerging, and future training activities and research, development, test, and evaluation (RDT&E) events (primarily unmanned aerial vehicles); (2) expand warfare missions supported by the NWTRC, consistent with the requirements of the Fleet Readiness Training Plan (FRTP) and other transformation initiatives; and (3) upgrade and modernize existing range capabilities to enhance and sustain Navy training and RDT&E.

The need for the Proposed Action is to: (1) Maintain current levels of military readiness by training in the NWTRC; (2) accommodate future increases in operational training tempo in the NWTRC and support the rapid deployment of naval units or strike groups; (3) achieve and sustain readiness of ships, submarines, and aviation squadrons using the NWTRC so that they can quickly surge significant combat power in the event of a national crisis or contingency operation and consistent with the FRTP; (4) support the acquisition and implementation of advance military technology into the Fleet; (5) identify shortfalls in range capabilities, particularly training infrastructure and instrumentation, and address through range investments and enhancements; and (6) maintain the long-term viability of the NWTRC while protecting human health and the environment and enhancing the quality and communication capability and safety of the range complex.

The No Action Alternative is the continuation of training and RDT&E. Alternative 1 consists of an increase in the number of training activities from baseline levels and force structure changes associated with the introduction of new weapon systems, vessels, and aircraft into the Fleet. Alternative 2 consists of all elements of Alternative 1. In addition, Alternative 2 includes an increase in the number of training activities over Alternative 1 levels and implementation of range enhancements.

Environmental issues that will be addressed in the EIS/OEIS, as applicable, include but are not limited to: air quality; airspace; biological resources, including threatened and endangered species; cultural resources; geology and soils; hazardous materials and waste; health and safety; land use; noise; socioeconomics; transportation; and water resources.

The Navy is initiating the scoping process to identify community concerns and local issues that will be addressed in the EIS/OEIS. Federal agencies, state agencies, and local agencies, Native American Indian Tribes and Nations, the public, and interested persons are encouraged to provide oral and/or written comments to the Navy to identify specific issues or topics of environmental concern that the commenter believes the Navy should consider. All comments, written or provided orally at the scoping meetings, will receive the same consideration during EIS/OEIS preparation. Written comments must be postmarked no later than September 29, 2007, and should be mailed to: Naval Facilities Engineering Command, Northwest, 1101 Tautog Circle, Suite 203, Silverdale, Washington, 98315–1101, Attention: Ms. Kimberly Kler—NWTRC EIS/OEIS.

Dated: July 25, 2007.

M.C. Holley,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Administrative Law Division, Alternate Federal Register Liaison Officer.

[FR Doc. E7–14784 Filed 7–30–07; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive License; SurTec International, GmbH

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to SurTec International, GmbH, of 9 Skyline Drive, West Orange, NJ 07052 and SurTec International, GmbH, Stuckerstrasse 18, D–64673, Zwingenberg, Germany, a revocable, nonassignable, exclusive license to practice in Brazil, China, India, Japan, Korea and all member countries of the European Patent Convention, the Government-owned inventions described in U.S. Patent *No. 6,669,764:* Pretreatment for Aluminum and Aluminum Alloys, Navy Case No. 8,4379.//U.S. Patent Application. *Serial No. 11/058,533:* Process for Sealing Phosphoric Acid Anodized Aluminums, Navy Case No. 95892.//U.S. Patent. *Application Serial No. 11/116,166:* Composition and Process for Preparing Chromium-Zirconium Coatings on Metal Substrates, Navy Case No. 96343. //U.S. Patent Application. *Serial No. 11/116,165:* Composition and Process for Preparing Protective Coatings on Metal Substrates, Navy Case No. 97039 in the field of corrosion prevention.

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than August 15, 2007.

ADDRESSES: Written objections are to be filed with Naval Air Warfare Center Aircraft Division, Business Office, Office of Research and Technology Applications, Building 505, Room 116, 22473 Millstone Road, Patuxent River, Maryland 20670.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Office, Office of Research and Technology Applications, Building 505, Room 116, 22473 Millstone Road, Patuxent River, Maryland 20670, telephone 301–342–5586, fax 301–342–1134, e-mail: *paul.fritz@navy.mil*.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: 24 July 2007.

L. R. Almand,

Federal Register Liaison Officer, Office of the Navy Judge Advocate General, Administrative Law Division.

[FR Doc. E7–14713 Filed 7–30–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP07–499–001 and RP07–498–001 (Not Consolidated)]

Central Kentucky Transmission Company; Notice of Request To Change Effective Date

July 24, 2007.

Take notice that on July 18, 2007, Central Kentucky Transmission Company (Central Kentucky) tendered for filing a request that the Commission approve a change in the effective date of certain tariff sheets that have either been approved or are pending in the above-referenced proceedings to coincide with the revised September 1, 2007 launch date of Central Kentucky's new Electronic Bulletin Board.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 July 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14755 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–531–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 24, 2007.

Take notice that on July 18, 2007, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 380H and First Revised Sheet No. 380H.01, effective May 28, 2007.

CIG states that the tariff sheets are being filed to incorporate a provision previously accepted by the Commission in Docket Nos. RP07–76–001, *et al.*

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14750 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–419–000]

Columbia Gas Transmission Corporation; Notice of Application

July 20, 2007.

Take notice that on July 13, 2007, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP07–419–000, an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for authorization of the realignment of the protective boundary surrounding Greenwood and North Greenwood Storage Fields, located in Steuben County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Specifically, Columbia proposes to reduce the current protective boundary from 3,000 feet in width at all points to a 1,000 foot width area for the protection of the Greenwood and North Greenwood Storage Fields' reservoir integrity.

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 fax (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 comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 10, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14739 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP07–509–001, RP07–507–001, RP07–414–001, RP07–413–002 (Not Consolidated)]

Columbia Gas Transmission Corporation; Notice of Request To Change Effective Date

July 24, 2007.

Take notice that on July 18, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing a request that the Commission approve a change in the effective date of certain tariff sheets that have either been approved or are pending in the above-referenced proceedings to coincide with the revised September 1, 2007 launch date of Columbia's new Electronic Bulletin Board.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 July 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14753 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP07–508–001, RP07–500–001, RP07–415–001, and RP07–412–002 (Not Consolidated)]

Columbia Gulf Transmission Company; Notice of Request To Change Effective Date

July 24, 2007.

Take notice that on July 18, 2007, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing a request that the Commission approve a change in the effective date of certain tariff sheets that have either been approved or are pending in the above-referenced proceedings to coincide with the revised September 1, 2007 launch date of Columbia Gulf's new Electronic Bulletin Board.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 July 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14754 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP07–515–001 and RP07–497–001 (Not Consolidated)]

Crossroads Pipeline Company; Notice of Request To Change Effective Date

July 24, 2007.

Take notice that on July 18, 2007, Crossroads Pipeline Company (Crossroads) tendered for filing a request that the Commission approve a change in the effective date of certain tariff sheets that have either been approved or are pending in the above-referenced proceedings to coincide with the revised September 1, 2007 launch date of Crossroads' new Electronic Bulletin Board.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 July 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14752 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–027]

Dauphin Island Gathering Partners; Notice of Negotiated Rate

July 20, 2007.

Take notice that on July 18, 2007, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed below to become effective August 17, 2007:

Thirty-Third Revised Sheet No. 9
Twenty-Seventh Sheet No. 10

Dauphin Island states that these tariff sheets reflect changes to its statement of negotiated rates tariff sheets.

Dauphin Island states that copies of the filing are being served contemporaneously on its customers and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at: *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at: *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14736 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–534–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 24, 2007.

Take notice that on July 19, 2007, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 20, 2007:

Second Revised Sheet No. 1130
Second Revised Sheet No. 1131

DTI states that the purpose of this filing is to provide for an alternative method in which it may distribute purchased gas-related refunds from its gas suppliers for service provided prior to October 1, 1993.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14747 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–532–000]

Dominion Transmission, Inc.; Notice of Tariff Filing

July 24, 2007.

Take notice that on July 19, 2007, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 153 and Third Revised Sheet No. 204, to become effective August 20, 2007.

DTI states that the purpose of the filing is to add missing sheet references to Rate Schedules FT and FTNN. No substantive changes have been made to the above-referenced tariff sheets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14749 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ07–5–000]

East Kentucky Power Cooperative, Inc.; Notice of Filing

July 24, 2007.

Take notice that on July 13, 2007, pursuant to Order No. 890, 18 CFR 35.28(e) and Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, East Kentucky Power Cooperative, Inc. filed revision to its ''safe harbor'' Open Access Transmission Tariff, to be effective on July 13, 2007.

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 August 3, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14763 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–533–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 24, 2007.

Take notice that on July 19, 2007 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing revised tariff sheets, proposed to be effective August 1, 2007:

Sixty-Fifth Revised Sheet No. 7
Sixty-Fifth Revised Sheet No. 8

Eastern Shore states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under their Rate Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

Eastern Shore states that copies of the filing has been mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14748 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–418–000]

Encinal Gathering, Ltd.; Notice of Application

July 25, 2007.

Take notice that on July 12, 2007, Encinal Gathering, Ltd. (EGL), 10101 Reunion Place, Suite 1000, San Antonio, TX 78216, filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations, for an order authorizing the siting, construction, and operation of pipeline and appurtenant facilities for the import and export of natural gas at the International Boundary between the United States and Mexico in Webb County, Texas, and for a Presidential Permit for such facilities. EGL proposes to construct two parallel 12-inch pipelines, each approximately 1435 feet in length (683 feet of which will be in the U.S.), which would connect to EGL's Big Reef Gathering System, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing also 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 Brandon Seale, Encinal Gathering, Ltd.,

at (telephone) (210) 313–3441or (fax) (210) 340–5882.

Pursuant to section 157.9 of the Commission's rules, 18 C.F.R. 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at: *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically. 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.

Comment Date: 5 p.m. Eastern Time on August 15, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14800 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–12–000]

Giant Pipeline Company and Giant Industries Arizona, Inc.; Notice of Request for Temporary Waiver of Tariff Filing and Reporting Requirements

July 19, 2007.

Take notice that on July 2, 2007, Giant Pipeline Company (GPL) and Giant Industries Arizona, Inc. (GIA) pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.204 (2007), tendered for filing an application for temporary waiver of the Interstate Commerce Act (ICA) Section 6 and Section 20 tariff filing and reporting requirements applicable to interstate common carrier pipelines.

GPL and GIA state that as a result of leasing arrangements with TEPPCO Crude Pipeline, L.P., their pipeline facilities will be used exclusively for the transportation of crude oil to refineries owned by direct or indirect wholly-owned subsidiaries of Western Refining, Inc., the parent company of GPL and GIA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time July 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14730 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–10–001]

Kinder Morgan Texas Pipeline LLC; Notice of Compliance Filing

July 24, 2007.

Take notice that on July 12, 2007, Kinder Morgan Texas Pipeline LLC filed a revised Statement of Operating Conditions in compliance with the Commission's letter order issued on June 21, 2007, in Docket No. PR07–10–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 July 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14756 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–79–000]

Midwestern Independent Transmission System Operator, Inc.; Notice of Institution of Proceeding and Refund Effective Date

July 24, 2007.

On July 19, 2007, the Commission issued an order that instituted a proceeding in the above-referenced docket, pursuant to Section 206 of the Federal Power Act (FPA) 16 U.S.C. 824e, concerning the justness and reasonableness of the ''cost cap'' in the Interconnection Agreement discussed in the July 19, 2007 Order. *Midwestern Independent Transmission System Operator, Inc.*, 120 FERC ¶ 61,006 (2007).

The refund effective date in the above-docketed proceeding, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14766 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–527–001]

MIGC, Inc.; Notice of Tariff Filing

July 24, 2007.

Take notice that on July 20, 2007, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of August 15, 2007:

Tenth Revised Sheet No. 4,
Thirteenth Revised Sheet No. 6,
Original Sheet No. 52C.

MIGC states that copies of the filing have been served upon all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14751 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–535–000]

Northern Natural Gas Company; Notice of Petition for Limited Waiver of Tariff Provisions

July 24, 2007.

Take notice that on July 20, 2007, Northern Natural Gas Company (Northern) tendered for filing a petition to the Commission for a limited waiver of its FERC Gas Tariff in order to allow Northern to resolve prior-period imbalance trading errors by retroactively adjustment imbalance levels for Tenaska Marketing Ventures, Northwestern Energy Corporation, and Wisconsin Power and Light Company to reflect imbalance trades which were agreed to but erroneously not communicated.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time August 3, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14746 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ07–6–000]

Orlando Utilities Commission; Notice of Filing

July 24, 2007.

Take notice that on July 13, 2007, pursuant to Order No. 890, 18 CFR 35.28(e) and Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, Orlando Utilities Commission filed revision to its ''safe harbor'' Open Access Transmission Tariff.

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 August 3, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14761 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1088–000]

RBC Energy Services, L P; Notice of Issuance of Order

July 24, 2007.

RBC Energy Services, LP (RBC) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. RBC also requested waivers of various Commission regulations. In particular, RBC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by RBC.

On July 18, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by RBC should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is August 17, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, RBC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of RBC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of RBC's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14765 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–030]

Rockies Express Pipeline LLC; Notice of Tariff Filing and Negotiated Rate

July 20, 2007.

Take notice that on July 18, 2007, Rockies Express Pipeline LLC (REX) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective July 19, 2007:

Twenty-Fifth Revised Sheet No. 22
Twelfth Revised Sheet No. 24
Second Revised Sheet No. 24A

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14735 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–417–000]

Texas Gas Transmission, LLC; Notice of Application

July 20, 2007.

Take notice that on July 11, 2007, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct, own, operate and maintain approximately 262.6 miles of 36-inch diameter pipeline consisting of two laterals, one primarily in Arkansas (Fayetteville Lateral) and the other in Mississippi (Greenville Lateral); one 10,650 horsepower compressor station; certain piping modifications; and certain ancillary facilities. In addition, Texas Gas is seeking authority to implement initial separate incremental rates for the Fayetteville Lateral and the Greenville Lateral, all as more fully set forth in the application which is on file with the Commission and open for public inspection. 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 Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, 3800 Frederica Street, Owensboro, Kentucky 42301 or by telephone at 270–688–6825 or fax at 270–688–5871.

On December 28, 2006, the Commission staff granted Texas Gas's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF07–2–000 to staff activities involving the Texas Gas's expansion project. Now, as of the filing of Texas Gas's application on July 11, 2007, the NEPA Pre-Filing Process for this project has ended. From this time forward, Texas Gas's proceeding will be conducted in Docket No. CP07–417–000, as noted in the caption of this Notice.

Pursuant to § 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: August 13, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14732 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–936–000, Docket No. ER07–958–000]

Tiverton Power, LLC, Rumford Power, LLC; Notice of Issuance of Order

July 24, 2007.

Tiverton Power, LLC (Tiverton Power) and Rumford Power, LLC (Rumford Power) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Tiverton Power and Rumford Power also requested waivers of various Commission regulations. In particular, Tiverton Power and Rumford Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Tiverton Power and Rumford Power.

On July 18, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Tiverton Power and Rumford Power should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is August 17, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Tiverton Power and Rumford Power are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Tiverton Power and Rumford Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Tiverton Power's and Rumford Power's Rissuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14764 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–530–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 20, 2007.

Take notice that on July 17, 2007, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on August 17, 2007:

Eighth Revised Sheet No. 97A
First Revised Sheet No. 97B

Viking states that the purpose of this filing is to modify the pro forma Firm Transportation Agreement Exhibits to standardize documentation of discounted rate agreements and negotiated rate agreements. The proposed changes to Rate Schedule FT–A's form of Firm Transportation Agreement will enhance efficiency and make more routine the memorialization of agreements including negotiated rate agreements and discount rate agreements within the parameters established by the companion provisions of Viking's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at: *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at: *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14740 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. RP07–529–000

Wyoming Interstate Company, Ltd; Notice of Proposed Changes In FERC Gas Tariff

July 20, 2007.

Take notice that on July 17, 2007, Wyoming Interstate Company, LTD (WIC) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective August 17, 2007:

Second Revised Volume No. 2
Second Revised Sheet No. 11A
Seventh Revised Sheet No. 28
Fourth Revised Sheet No. 61
Tenth Revised Sheet No. 63
Fourth Revised Sheet No. 63A

WIC states that the tariff sheets are being revised to update provisions related to off-system capacity.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at: *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at: *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14733 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–528–000]

Young Gas Storage Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

July 20, 2007.

Take notice that on July 17, 2007, Young Gas Storage Company, Ltd. (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Seventh Revised Sheet No. 11, to become effective August 17, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14734 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

July 19, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2887–005; ER01–542–002; ER06–703–001; ER05–1218–002; ER05–1219–002; ER00–2887–005.

Applicants: STI Capital Company; Pedricktown Cogeneration Company, LP; Camden Plant Holding, L.L.C.; Bayonne Plant Holding, LLC; Newark Bay Cogeneration Partnership, L.P.

Description: STI Capital Company et al submit a notice of non-material change in status in compliance with reporting requirements adopted by FERC in Order 652.

Filed Date: 07/16/2007.

Accession Number: 20070718–0153.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER03–1284–004; ER05–1202–003; ER05–1262–008; ER06–1093–004; ER07–407–002; ER06–1122–001; ER07–522–001; ER07–342–001.

Applicants: Blue Canyon Windpower, LLC; Blue Canyon Windpower II LLC; Flat Rock Windpower LLC; Flat Rock Windpower II LLC; High Prairie Wind Farm II, LLC; High Trail Wind Farm, LLC; Old Trial Wind Farm, LLC; Telocast Wind Power Partners, LLC.

Description: Notice of Change in Status of EDP—Energias De Portugal, S.A.

Filed Date: 07/17/2007.
Accession Number: 20070717–5044.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 07, 2007.

Docket Numbers: ER05–69–003.
Applicants: Boston Edison Company.

Description: NSTAR Electric Company submits its annual informational report for the Commission updating the FERC on the status of the its long-term transmission projects and providing certain accounting information etc.

Filed Date: 07/16/2007.
Accession Number: 20070717–0180.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER07–371–003.
Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits its compliance filing containing modifications to Schedule 2 to its Open Access Transmission Tariff which provides for compensation of generators.

Filed Date: 07/16/2007.
Accession Number: 20070718–0152.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER07–478–003.
Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission and Energy Markets Tariff to comply with the 60-day compliance filing directives.

Filed Date: 07/16/2007.
Accession Number: 20070718–0116.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER07–762–001.
Applicants: Illinois Power Company.

Description: Illinois Power Company's response to Questions 1–4, 7 and 11 posed in FERC's letter dated 6/15/07.

Filed Date: 07/16/2007.
Accession Number: 20070718–0120.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER07–993–001.
Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc. re-submits a clean coversheet and the redlined coversheet of the Fifth Revised Amended Interconnection Agreement.

Filed Date: 07/16/2007.
Accession Number: 20070718–0117.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER07–1102–001.
Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection LLC submits an amendment to its 6/29/07 filing and two substitute Network Integration Transmission Service Agreement under PJM Open Access Transmission Tariff.

Filed Date: 07/16/2007.
Accession Number: 20070718–0151.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER07–1105–001.
Applicants: Cedar Creek Wind Energy, LLC.

Description: Cedar Creek Wind Energy, LLC notifies FERC of a non-material error in the application for authority to make wholesale sales of energy, capacity and ancillary services.

Filed Date: 07/16/2007.
Accession Number: 20070718–0121.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER07–1150–000.
Applicants: Dynegy South Bay, LLC.

Description: Dynegy South Bay, LLC submits First Revised Sheet 131 to its Reliability Must-Run Agreement w/ California Independent System Operator Corporation to correct a typographical error.

Filed Date: 07/17/2007.
Accession Number: 20070718–0118.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 07, 2007.

Docket Numbers: ER07–1151–000.
Applicants: NSTAR Electric Company.

Description: NSTAR Electric Company submits a Wholesale Distribution Service Agreement for service to its affiliate, MATEP LLC.

Filed Date: 07/17/2007.
Accession Number: 20070718–0119.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 7, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14726 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

July 20, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–1146–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits proposed changes to its open access transmission tariff, FERC Electric Tariff, Fifth Revised Volume 4 in accordance w/ FERC's Order 890.
Filed Date: July 11, 2007.
Accession Number: 20070713–0058.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 01, 2007.

Docket Numbers: ER07–1148–000.
Applicants: PurEnergy Caledonia, LLC.
Description: PurEnergy Caledonia LLC submits a notice of cancellation of its Rate Schedule 1 effective September 11, 2007.
Filed Date: July 13, 2007.
Accession Number: 20070717–0183.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1149–000.
Applicants: Idaho Power Company.
Description: Informational Filing of Idaho Power Company.
Filed Date: July 13, 2007.
Accession Number: 20070713–5065.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1162–000.
Applicants: Avista Corporation.
Description: Avista Corp submits revised tariff sheets for its pending FERC Electric Tariff, Revised Volume 4 pursuant to 18 CFR, Part 35, section 205 of the Federal Power Act.
Filed Date: July 16, 2007.
Accession Number: 20070718–0122.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER07–1163–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc submits proposed revisions to its Open Access Transmission Tariff, FERC Electric Tariff, Eighth Revised Volume 7.
Filed Date: July 16, 2007.
Accession Number: 20070718–0115.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER07–1164–000.
Applicants: Avista Corporation.
Description: Avista Corp et al submits revised sections 30.3 to their respective Open Access Transmission Tariffs with an effective date of July 13, 2007.
Filed Date: July 13, 2007.
Accession Number: 20070717–0175.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1165–000.
Applicants: Idaho Power Corporation.
Description: Avista Corp et al submits revised sections 30.3 to their respective Open Access Transmission Tariffs with an effective date of July 13, 2007.
Filed Date: July 13, 2007.
Accession Number: 20070717–0175.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1166–000.
Applicants: NorthWestern Corporation.
Description: Avista Corp et al submits revised sections 30.3 to their respective Open Access Transmission Tariffs with an effective date of July 13, 2007.
Filed Date: July 13, 2007.
Accession Number: 20070717–0175.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1167–000.
Applicants: PacifiCorp.
Description: Avista Corp et al submits revised sections 30.3 to their respective Open Access Transmission Tariffs with an effective date of July 13, 2007.
Filed Date: July 13, 2007.
Accession Number: 20070717–0175.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1168–000.
Applicants: Portland General Electric Company.
Description: Avista Corp et al submits revised sections 30.3 to their respective Open Access Transmission Tariffs with an effective date of July 13, 2007.
Filed Date: July 13, 2007.
Accession Number: 20070717–0175.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1169–000.
Applicants: Puget Sound Energy, Inc.
Description: Avista Corp et al submits revised sections 30.3 to their respective Open Access Transmission Tariffs with an effective date of July 13, 2007.
Filed Date: July 13, 2007.
Accession Number: 20070717–0175.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1170–000.
Applicants: Maine Public Service Company.
Description: Maine Public Service Company submits revisions to its open access transmission tariff.
Filed Date: July 13, 2007.
Accession Number: 20070717–0174.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1171–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits amendments to its Open Access Transmission Tariff to reflect clarifications and modifications of the requirements implemented under Order 890 with an effective date of July 13, 2007.
Filed Date: July 13, 2007.
Accession Number: 20070717–0178.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1172–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits certain modifications to non-rate terms and conditions in its Order 590 pro forma Open Access Transmission Tariff with an effective date of July 13, 2007.
Filed Date: July 13, 2007.
Accession Number: 20070717–0179.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1173–000.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power Inc, on behalf of itself and Basin Electric Power Cooperative et al submits revised Sheets 130 et al of the Transmission Providers' joint open access transmission tariff.
Filed Date: July 13, 2007.
Accession Number: 20070717–0176.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1174–000.
Applicants: MATL, LLP.
Description: Montana Alberta Tie Ltd. submits a revised Open Access Transmission Tariff in compliance with the Commission's Order 890 pursuant to section 206 of the Federal Power Act.
Filed Date: July 13, 2007.
Accession Number: 20070717–0191.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on

or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

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Kimberly D. Bose,

Secretary.

[FR Doc. E7–14727 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 20, 2007.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–25–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits its Open Access Transmission Tariff (OATT) compliance filing pursuant to Order No. 890.

Filed Date: 07/11/2007.

Accession Number: 20070710–5095.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 1, 2007.

Docket Numbers: OA07–26–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/12/2007.

Accession Number: 20070712–5025.

Comment Date: 5 p.m. Eastern Time on Thursday, August 2, 2007.

Docket Numbers: OA07–27–000.

Applicants: E ON U.S. LLC.

Description: LG&E/KU on behalf of LG&E submits its Capacity of Benefit Margin (CBM) compliance filing pursuant to Order No. 890.

Filed Date: 07/12/2007.

Accession Number: 20070712–5047.

Comment Date: 5 p.m. Eastern Time on Thursday, August 2, 2007.

Docket Numbers: OA07–28–000.

Applicants: Avista Corporation.

Description: Avista Corporation submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070712–5069.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–29–000.

Applicants: NewCorp Resources Electric Cooperative, Inc.

Description: NewCorp Resources Electric Cooperative, Inc submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5003.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–30–000.

Applicants: Ohio Valley Electric Corporation.

Description: Ohio Valley Electric Corp submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5006.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–31–000.

Applicants: Aquila, Inc.

Description: Aquila, Inc. submits its OATT compliance filing pursuant to Order 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5017.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–32–000.

Applicants: Entergy Services Inc.

Description: Entergy Services, Inc submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5027.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–33–000; OA07–11–001.

Applicants: Deseret Generation & Transmission Co-op.

Description: Deseret Generation & Transmission Co-operative, Inc submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5026.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–34–000.

Applicants: Sierra Pacific Resources Operating Company.

Description: Sierra Pacific Resources Operating Companies submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5030.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–35–000.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5032.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–36–000.

Applicants: South Carolina Electric & Gas Company.

Description: South Carolina Electric & Gas Company submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5035.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–37–000.

Applicants: Kentucky Utilities Company; Louisville Gas and Electric Company; E.ON U.S. LLC.

Description: E.ON U.S., LLC on behalf of Louisville Gas & Electric and Kentucky Utilities submits its OATT compliance filing pursuant to Order 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5034.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–38–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5036.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–39–000.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services Inc. submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5037.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–40–000; OA07–15–001.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5041.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–41–000.

Applicants: Allegheny Power.

Description: Allegheny Power submits its Request for waiver of Order 890.

Filed Date: 07/13/2007.

Accession Number: 20070716–0187.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–42–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc. submits its CBM compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5039.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–43–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5045.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–44–000.

Applicants: El Paso Electric Company.

Description: El Paso Electric Co submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5046.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–45–000.

Applicants: El Paso Electric Company.

Description: El Paso Electric Company submits its CBM compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5050.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–46–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5042.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–47–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5056.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–48–000.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Company submits its OATT compliance filing pursuant Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5064.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–49–000.

Applicants: UNS Electric, Inc.

Description: UNS Electric, Inc. submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5066.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–50–000.

Applicants: Alcoa Power Generating Inc.—Yadkin.

Description: Alcoa Power Generating Inc.—Yadkin Division submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5067.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–51–000.

Applicants: Mid-Continent Area Power Pool.

Description: Mid-Continent Area Power Pool submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5071.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–52–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5072.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–53–000.

Applicants: Progress Energy, Inc.

Description: Progress Energy, Inc. submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5076.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–54–000; OA07–18–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5078.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–55–000.

Applicants: Black Hills Power, Inc.

Description: Black Hills Power, Inc. on behalf of Basin Electric Power Cooperative, and Powder River Energy Corp submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5088.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–56–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5087.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–57–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent System Operator, Inc submits its CBM compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5092.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–58–000.

Applicants: Northwestern Corp.

Description: Northwestern Corporation submits its compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.

Accession Number: 20070713–5093.

Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–59–000; OA07–13–001.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation South Dakota submits its OATT compliance filing pursuant to Order No. 890.

Filed Date: 07/13/2007.
Accession Number: 20070713–5096.
Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–60–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits its OATT compliance filing pursuant to Order No. 890.
Filed Date: 07/13/2007.
Accession Number: 20070713–5099.
Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–61–000.
Applicants: Maine Public Service Company.
Description: Maine Public Service Company submits its OATT compliance filing pursuant to Order No. 890.
Filed Date: 07/13/2007.
Accession Number: 20070713–5108.
Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–70–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits its CBM compliance filing pursuant to Order 890.
Filed Date: 07/13/2007.
Accession Number: 20070717–0173.
Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–74–000.
Applicants: MATL LLP.
Description: Montana Alberta Tie Ltd submits its OATT compliance filing pursuant to Order No. 890.
Filed Date: 07/13/2007.
Accession Number: 20070717–0191.
Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Docket Numbers: OA07–76–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator Inc. submits a request for temporary waivers, request for expedited action, and request for waiver of notice and comment procedures.
Filed Date: 07/13/2007.
Accession Number: 20070717–0177.
Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,
Secretary.
[FR Doc. E7–14728 Filed 7–30–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 24, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–115–000.
Applicants: Iberdrola Energias Renovables S.A.U.
Description: Iberdrola Energias Renovables SAU submits a supplement to its application submitted on 7/13/07 and seeks to clarify transfers of facilities.
Filed Date: 07/17/2007.
Accession Number: 20070720–0011.
Comment Date: 5 p.m. Eastern Time on Friday, August 3, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–73–000.
Applicants: Airtricity Munnsville Wind Farm, LLC.
Description: Airtricity Munnsville Wind Farm, LLC submits a Notice of Self-Certification of Exempt Wholesale Generator Status pursuant to Section 366.7(a) of FERC's Regulations.
Filed Date: 07/17/2007.
Accession Number: 20070719–0069.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 7, 2007.

Docket Numbers: EG07–74–000.
Applicants: CPV Liberty, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of CPV Liberty, LLC.
Filed Date: 07/23/2007.
Accession Number: 20070723–5022.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–3001–018; ER03–647–010.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits its report pursuant to the Commission's 5/18/07 Order.
Filed Date: 07/18/2007.
Accession Number: 20070717–5061.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 8, 2007.

Docket Numbers: ER05–163–006.
Applicants: Milford Power Company, LLC; ISO New England Inc.; Connecticut Office of Consumer Counsel.
Description: Compliance filing pursuant to Commission's 5/18/07, 4/19/06, and 10/27/06 Orders.
Filed Date: 07/18/2007.
Accession Number: 20070719–0052.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 8, 2007.

Docket Numbers: ER07–879–001.
Applicants: Louisville Gas & Electric Company; Kentucky Utilities Company.
Description: Compliance Refund Report of Louisville Gas and Electric Co. and Kentucky Utilities Company.
Filed Date: 07/23/2007.
Accession Number: 20070723–5004.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–1150–000.
Applicants: Dynegy South Bay, LLC.

Description: Dynegy South Bay, LLC submits First Revised Sheet 131 to its Reliability Must-Run Agreement w/ California Independent System Operator Corporation to correct a typographical error.

Filed Date: 07/17/2007.

Accession Number: 20070718–0118.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 7, 2007.

Docket Numbers: ER07–1151–000.

Applicants: NSTAR Electric Company.

Description: NSTAR Electric Company submits a Wholesale Distribution Service Agreement for service to its affiliate, MATEP LLC.

Filed Date: 07/17/2007.

Accession Number: 20070718–0119.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 7, 2007.

Docket Numbers: ER07–1152–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corp submits Service Agreement—Rate Schedule 51, dated 7/16/07 with the City of Marshfield, WI.

Filed Date: 07/17/2007.

Accession Number: 20070719–0071.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 7, 2007.

Docket Numbers: ER07–1153–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation on behalf of Ohio Power Company submits a Notice of Cancellation of Original Service Agreement 327 under its Open Access Transmission Tariff etc.

Filed Date: 07/17/2007.

Accession Number: 20070719–0053.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 7, 2007.

Docket Numbers: ER07–1154–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits its Notice of Termination of the Dynamic Scheduling Agreement for Scheduling Coordinators with Mirant Energy Trading LLC.

Filed Date: 07/17/2007.

Accession Number: 20070719–0054.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 7, 2007.

Docket Numbers: ER07–1155–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits a Large Generator Interconnection Agreement with Benton County Wind Farm LLC *et al.*, as Service Agreement 1849 to FERC Electric Tariff, 3rd Rev Vol 1.

Filed Date: 07/18/2007.

Accession Number: 20070719–0068.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 8, 2007.

Docket Numbers: ER07–1156–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits jurisdictional agreements re Long-Term Firm Point-to-Point Transmission Service et ac with Weyerhaeuser Co *et al.*

Filed Date: 07/18/2007.

Accession Number: 20070719–0084.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 8, 2007.

Docket Numbers: ER07–1157–000.

Applicants: Logan Wind Energy LLC.

Description: Request for authorization to sell energy and capacity at market-based rates and waiver of the 60 day notice requirement.

Filed Date: 07/18/2007.

Accession Number: 20070719–0085.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 8, 2007.

Docket Numbers: ER07–1158–000.

Applicants: American Electric Power Service Corporation.

Description: AEP Texas North Company submits a fully executed Amended and Restated Interconnection Agreement with Buffalo Gap Wind Farm 3 LLC.

Filed Date: 07/18/2007.

Accession Number: 20070719–0086.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 8, 2007.

Docket Numbers: ER07–1159–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp on behalf of the AEP Operating Companies submits an Interconnection and Local Delivery Service Agreement with the City of St Mary's, Ohio.

Filed Date: 07/18/2007.

Accession Number: 20070719–0087.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 8, 2007.

Docket Numbers: ER07–1160–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits the First Amended and Restated Partial Requirements Service Agreement with Rutherford Electric Membership Corp, dated as of 5/1/07 pursuant to Section 205 of the Federal Power Act.

Filed Date: 07/18/2007.

Accession Number: 20070720–0018.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 8, 2007.

Docket Numbers: ER07–1161–000.

Applicants: Public Power & Utility, Inc.

Description: Public Power & Utility, Inc submits a petition for acceptance of initial tariff, waivers & blanket authority pursuant to Section 205 of the Federal Power Act.

Filed Date: 07/18/2007.

Accession Number: 20070720–0037.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 8, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–46–000; ES07–47–000; ES07–48–000.

Applicants: PSEG Nuclear LLC; PSEG Fossil LLC; PSEG Energy Resources & Trade LLC.

Description: Application of PSEG Fossil LLC, PSEG Nuclear LLC and PSEG Energy Resources & Trade LLC for Approval of Corporate Guarantees.

Filed Date: 07/19/2007.

Accession Number: 20070719–5048.

Comment Date: 5 p.m. Eastern Time on Thursday, August 9, 2007.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–19–001; OA07–43–001.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits an errata to the Section 206 compliance filing, containing Substitute Original Sheets 8–9, 102–104 in compliance with FERC's 7/13/07 Order.

Filed Date: 07/18/2007.

Accession Number: 20070720–0036.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 8, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the

FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14796 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–390–000]

Enstor Houston Hub Storage and Transportation, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Houston Hub Project and Request for Comments on Environmental Issues

July 20, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Houston Hub Project involving construction and operation of a new salt dome cavern gas storage project and pipelines by Enstor Houston Hub Storage and Transportation, L.P. (Enstor) at the North Dayton Salt Dome in Liberty County, Texas.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Enstor provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Enstor is proposing to construct four solution-mined caverns with an initial total storage capacity of 16 billion cubic feet (Bcf) of working gas, supported by 8.7 Bcf of pad gas. Upon completion of solution mining, the caverns would be taken out of service one at a time for additional solution mining to increase the capacity of each of the four storage caverns by 7.5 Bcf for a total volume of 30 Bcf of working gas and 16.3 Bcf of pad gas. The project would be capable of injecting about 600 MMcf per day and provide a nominal withdrawal of 1 Bcf per day. Enstor seeks authority to construct and operate in Liberty County, Texas:

- Four solution-mined gas storage salt caverns;
- Five brine disposal wells and associated 20-inch-diameter brine disposal pipeline;
- Five raw water wells and associated 20-inch-diameter raw water pipeline;
- 31,600 horse-power compressor station;
- Two interconnects and meter stations;
- 2.3 miles of dual 24-inch-diameter pipeline;
- Ancillary facilities including dehydration equipment, pressure reducing station, withdrawal separator with slug catcher; and
- 138-kilo-volt (kv):34-kv power drop substation, 24-kv power drop and associated electric power lines.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 238.4 acres of land. Following construction, about 180.2 acres would be maintained as new aboveground facility sites and permanent rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils.
- land use.
- water resources, fisheries, and wetlands.
- cultural resources.
- vegetation and wildlife.
- endangered and threatened species.
- air quality and noise.
- hazardous waste.
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or

[1] Enstor's application was filed with the Commission under Section 7 of the Natural Gas Act.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission(s Public Reference Room, 888 First Street, N.E., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A. Washington, DC 20426
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP07–390–000.
- Mail your comments so that they will be received in Washington, DC on or before August 22, 2007.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14767 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–8–001 and CP07–8–002]

Guardian Pipeline, L.L.C; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Guardian Pipeline, L.L.C.'s Amended Guardian Expansion/Extension Project and Request for Comments on Environmental Issues

July 20, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is in the process of preparing an environmental impact statement (EIS) that will address the environmental impacts of the Guardian Expansion/Extension Project (G–II) proposed by Guardian Pipeline, L.L.C (Guardian). The Commission will use the EIS in its decision-making process to determine whether or not to authorize the project. A Draft EIS (DEIS) for the G–II Project was issued on April 13, 2007.

This notice announces the opening of a comment period to gather input from the public and interested agencies on amendments that Guardian has made to its proposed G–II Project in filings with the Commission dated April 25, 2007 and July 2, 2007. Each of these

amendments were filed in response to various environmental and stakeholder concerns and are discussed in further detail below.

On May 19, 2006, the Commission issued a Notice of Intent (NOI) which announced FERC's initiation of preparing the EIS for the G–II Project. The May 19, 2006 NOI provided information about the proposed Project, the FERC's environmental review process, and requested comments on the scope of issues to be addressed in the EIS. The comment period for the May 19, 2006 NOI closed on June 26, 2006. Comments filed during the scoping period were addressed in the DEIS.

April 25, 2007 Amendment

The April 25, 2007, amendment (Amendment 1) consisted of a pipeline reroute between mileposts (MPs) 95.3 and 118.2 around the Oneida Nation of Wisconsin (Oneida) Reservation in Brown and Outagamie Counties, Wisconsin; modifications to the locations of the West Green Bay, Rubicon, and Sheboygan Meter Stations in Outagamie, Dodge, and Fond du Lac Counties, Wisconsin, respectively; modifications to the location of the Sycamore Compressor Station in De Kalb County, Illinois; and three minor route variations between MPs 71.9 and 72.1 in Calumet County, Wisconsin, MPs 4.1 and 4.6 in Dodge County, Wisconsin, and MPs 41.1 and 41.4 in Fond du Lac County, Wisconsin.

Guardian is proposing the reroute around the Oneida Reservation because it has been unable to negotiate an easement agreement with Oneida Tribe. The 23-mile reroute would consist of a new 23-mile route that would begin at MP 95.3 of the originally proposed route and end at a new Pipeline terminus at MP 118.2 in Outagamie County, Wisconsin. The reroute would add an additional 8.74 miles of 20-inch-diameter pipeline to the total project length of pipe. This proposed reroute would also include moving the location of the proposed West Green Bay Meter Station to a site approximately one mile west of the location evaluated in the April 13, 2007 DEIS, and about a 0.8 mile pipeline to interconnect the new meter station location with the proposed Wisconsin Public Service Corporation delivery point in West Green Bay.

The proposed modification to the Sycamore Compressor Station in DeKalb County, Illinois would result in relocating the compressor station to a site approximately 0.25 mile north of the location evaluated in the April 13, 2007 DEIS.

Modifications to the Rubicon Meter Station would consist of locating the facility to a new site at MP 13.8 in Dodge County, Wisconsin about 0.5 mile from the originally proposed site. Moving the site would increase the distance between the facility and existing farm and residential buildings, as well as avoid impacts on a planned structure at MP 13.3. The change in facility location would result in approximately 0.3 acre of additional permanent impacts to agricultural land. Modifications to the Sheboygan Meter Station would consist of relocating the meter station to a new site approximately 150 feet west of the location evaluated in the April 13, 2007 DEIS. The new site was selected to allow safer operation of the meter station by increasing the overall distance between the meter station and the power line.

Minor route variations were also proposed by Guardian in Amendment 1 to minimize environmental impacts and address additional landowner concerns. The modification between MP 71.9 and 72.1 would avoid a wooded area located at MP 72.0, and increase the amount of pipeline to be collocated within a power line easement. The minor route variations proposed between MPs 4.1 and 4.6 in Dodge County and MPs 41.1 and 41.4 in Fond du Lac County, Wisconsin, would avoid the diagonal crossings of private property and minimize the number of landowners crossed. These variations would result in an additional 0.5 and 0.4 miles of pipeline, respectively.

A map depicting the G–II Pipeline as amended by Guardian on April 25, 2007 is included in appendix 1.[1]

July 2, 2007 Amendment

The July 2, 2007 amendment (Amendment 2) modified part of the proposed reroute presented in Amendment 1 between MPs 88.0 and 98.2, including the relocation of the Fox River crossing, and proposed new locations for the Denmark and Southwest Green Bay Meter Stations in Brown County, Wisconsin. Guardian also proposed the construction of two branch lines (a 16-inch-diameter and a 20-inch-diameter branch lines) in Brown and Outagamie Counties, Wisconsin to interconnect with the Denmark and Southwest Green Bay delivery points currently proposed by the Wisconsin Public Service Company (WPS). The proposed branch lines would add an additional 1.4 miles of 16-inch-diameter pipe and 1.8 miles of 20-inch-diameter pipe. Guardian also proposes to move the Fox Valley Meter Station location from MP 83.7 to MP 81.4.

A map depicting the G–II Pipeline route as amended by Guardian between MP 88.0 and 98.2 on July 2, 2007 is also in appendix 1. Appendix 2 contains a general map of the entire amended pipeline route.

The total length of the proposed pipeline facilities, as amended (including the mainline and branch lines) is now 119.2 miles.

Public Participation

We[2] are specifically requesting comments on the revised facility locations. Your input will help identify the issues that need to be evaluated in the EIS. Comments on the project may be submitted in written form. Further details on how to submit written comments are provided in the Public Participation section of this NOI. Please note that comments for this NOI are requested by August 20, 2007.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

You can make a difference by providing us with your specific comments or concerns about the proposed project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects of the revised facility sites and pipeline routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 1.

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site (excluding maps) at the ''e-Library'' link or from the Commission's Public Reference Room, or call (202) 502–8371. For instructions on connecting to the e-Library refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

• Reference Docket Nos. CP07–8–001 and CP07–8–002 on the original and both copies.

• Mail your comments so that they will be received in Washington, DC on or before August 20, 2007.

The Commission strongly encourages electronic filing of any comments in response to this Notice of Intent. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide, as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can submit comments you will need to create a free account, which can be created on-line.

You may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain above-ground facilities.

If you received this notice, you are on the environmental mailing list for this project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary link.'' Click on the eLibrary link, select ''General Search'' and enter the project docket number excluding the last three digits (i.e., CP07–8) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Guardian has established an Internet Web site for this project at *http://www.guardianpipeline.com/*. The Web site includes a description of the project, a map of the proposed pipeline route, and answers to frequently asked questions. You can also request additional information or provide comments directly to Guardian at 1–866–608–7300 or *mjames@landservicecompany.com*.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14738 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–406–000]

Monroe Gas Storage Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Monroe Gas Storage Project and Request for Comments on Environmental Issues

July 23, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Monroe Gas Storage Project involving construction and operation of facilities by Monroe Gas Storage Company, LLC (MGSC) in Monroe County, Mississippi and Lamar County, Alabama.[1] MGSC proposes to convert an existing, but depleted, natural gas well field, the Four Mile Creek Field originally developed by Grace Petroleum, to natural gas storage service in Monroe County, Mississippi. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice MGSC provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

MGSC proposes to expand the capacity of its natural gas facilities in Mississippi and Alabama to provide approximately 12.0 billion cubic feet of working gas capacity, for the purpose of receiving, injecting, withdrawing and redelivering natural gas to its system. MGSC seeks authority to:

• Develop nine new natural gas injection/withdrawal wells;

• Convert five existing natural gas production wells to observation wells;

• Install approximately 2.0 miles of gathering pipelines of 12- and 18-inch diameters;

• Build an integrated compressor station/control facility consisting of three 4,735 brake horsepower (bhp) natural gas fueled engines driving reciprocating compressors equipped with air intake filters/silencers, critical grade exhaust silencer/catalyst, a glycol

[1] On June 26, 2007, MGSC filed its application with the Commission under section 7(c) of the Natural Gas Act, 15 United States Code section 717(b)(a), and Parts 157 and 284 of the Commission's regulations. The Commission filed its notice of application on July 3, 2007.

dehydration system, control and safety systems, and associated facilities;

- Install approximately 5.7 miles of 24-inch diameter lateral pipeline connecting the proposed compressor station with the Texas Eastern Transmission Corporation (TETCO) pipeline (TETCO lateral);
- Install approximately 17.2 miles of 24-inch diameter lateral pipeline connecting the compressor station with the Tennessee Gas Pipeline Company (TGP) pipeline (TGP lateral), including two isolation block valves within the pipeline right-of-way; and
- Build two metering and regulation stations, one at each interconnection point of the TETCO and TGP laterals with the TETCO and TGP pipeline systems.

MGSC states that the only nonjurisdictional facility associated with the Monroe Gas Storage Project consists of the local electric distribution line that will supply power to the facility. This facility would be constructed and operated by local electric utility companies.

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 262.8 acres of land. Following construction, about 149.1 acres would be maintained as new aboveground facility sites or pipeline right-of-way. MGSC has proposed to locate the storage facilities within a depleted natural gas reservoir originally developed by Grace Petroleum. Land requirements for meter stations would be purchased, and the remainder of pipeline rights-of-way would be acquired by easement.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA, we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and Soils
- Land Use
- Water Resources, Fisheries, and Wetlands
- Cultural Resources
- Vegetation and Wildlife
- Threatened and Endangered Species
- Air Quality and Noise

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by MGSC. This preliminary list of issues may be changed based on your comments and our analysis.

- A total of 118.7 acres of forested land would be cleared during construction.
- Air and noise quality may be affected by added facilities.
- Aboveground facilities would be located in wetlands.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facility. We will briefly describe its location and summarize the status of state and local environmental reviews in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of OEP/DG2E, Gas Branch 3.
- Reference Docket No. CP07–406–000.
- Mail your comments so that they will be received in Washington, DC on or before August 24, 2007.

We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Site Visit

On August 10, 2007, the OEP staff will conduct a site visit of the planned MGSC Gas Storage Project. We will view the proposed facility locations and pipeline route. Examination will be by automobile and on foot. Representatives of MGSC will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

their own transportation and should meet at 9 a.m. (CST) at the Amory City Hall, 109 South Front Street, Amory, MS on August 10, 2007.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov*. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14743 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–405–000]

Texas Gas Transmission, LLC; Notice of Intent To Prepare An Environmental Assessment For the Proposed Texas Gas Storage Expansion Project Phase 3 and Request For Comments on Environmental Issues

July 23, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Texas Gas Storage Expansion Project, involving construction and operation of facilities by Texas Gas Transmission L.L.C. (Texas Gas) in Hopkins, Muhlenberg, and Webster Counties, Kentucky. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on August 23, 2007.

With this notice, we [1] are asking other federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

If you are a landowner receiving this notice, you may be contacted by a Texas Gas representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need to Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Texas Gas seeks authorization to install one 5,488 horsepower (hp) compressor and retire in place two existing 2,000 hp compressor units at its existing Midland III Compressor Station in Muhlenberg County, Kentucky. Texas Gas also proposes minor modifications at its existing Slaughter's Compressor Station in Webster County, Kentucky. No change in horsepower is proposed at the Slaughter's Compressor Station at this time. Further, Texas Gas would: construct about 11 miles of 30-inch-diameter looping pipeline in Hopkins and Muhlenberg Counties, Kentucky; construct 2,900 feet of extension to its existing 16-inch-diameter storage lateral

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

(E–9 pipeline); drill seven new horizontal injection/withdrawal wells at its existing Midland Storage Field; and add related piping to connect these wells with its lateral system (ranging from 8 to 12 inches in diameter and 150 to 3,000 feet in length). A general project location map is included in Appendix A.

In addition, Texas Gas would construct new pig launcher/receiver facilities: within its existing Hanson Compressor Station; to the west of its Midland III Compressor Station; and at each end of its modified E–9 pipeline.

Land Requirements for Construction

Construction of the proposed Texas Gas Storage Expansion Project Phase 3 would affect a total of about 202.5 acres during construction. Following construction, about 108.8 acres would be allowed to revert to its previous conditions. Disturbance associated with aboveground facilities would permanently disturb 4.1 acres of land.

Texas Gas proposes to construct its 30-inch-diameter pipeline in a 90-foot-wide construction right-of-way and well lines within a 75-foot-wide construction right-of-way. Texas Gas would maintain a 50-foot-wide permanent right-of-way for operation and maintenance of the pipelines.

The EA Process

We are preparing the EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies; public interest groups; interested individuals; affected landowners; newspapers and libraries in the project area; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1;
- Reference Docket No. CP07–405–000;
- Mail your comments so that they will be received in Washington, DC on or before August 23, 2007.

Please note that the Commission strongly encourages electronic filing of comments. See 18 Code of Federal Regulations (CFR) 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern. If you do not return the attached form (Appendix B), you will be removed from the Commission's environmental mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (i.e., CP07–405), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to

the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14744 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12606–000; Project No. 2545–091]

Post Falls Hydroelectric Project Spokane River Developments Project, Avista Corporation Spokane, WA; Notice of Availability of the Final Enivironmental Impact Statement for the Spokane River Developments and Post Falls Hydroelectric Projects

July 20, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]) the Office of Energy Projects staff (staff) reviewed the applications for New Major Licenses for the Spokane River Hydroelectric Project and Post Falls Project. Staff prepared a final environmental impact statement (FEIS) for the projects which are located on the Spokane River, Washington.

The FEIS contains staff's analysis of the potential environmental effects of the projects and concludes that licensing the projects, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the FEIS have been sent to federal, state, and local agencies; public interest groups; and individuals on the Commission's mailing list.

A copy of the FEIS is available for review at the Commission's Public Reference Room or may be viewed on the Commission's Web site at: *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number (P–2545) or (P–12606), to access the document. For assistance, contact FERC Online Support at: *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–2376, or for TTY, contact (202) 502–8659.

For further information, please contact: John Blair at (202) 502–6092 or at: *john.blair@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14737 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 925–010]

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions; City of Ottumwa, IA

July 24, 2007.

Take notice that the following hydroelectric license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* P–925–010.

c. *Date Filed:* April 26, 2006.

d. *Applicant:* City of Ottumwa, Iowa.

e. *Name of Project:* Ottumwa Hydroelectric Project.

f. *Location:* On the Des Moines River in the City of Ottumwa, Wapello County, Iowa. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Richard Wilcox, Ottumwa Water and Hydro, 230 Turner Drive, Ottumwa, Iowa 52501, (641) 684–4606.

i. *FERC Contact:* Tim Konnert, (202) 502–6359 or *timothy.konnert@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. *The existing Ottumwa Project consists of:* (1) A 18-foot-high dam with a 641-foot-long spillway section equipped with eight tainter gates and one bascule gate; (2) a reservoir with a normal water surface elevation of 638.5 feet msl; (3) a powerhouse integral to the dam containing three generating units with a combined installed capacity of 3,250 kW; (4) two 100-foot-long 2.4 kV generator leads routed underground to transformers in the nearby substation; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 10,261,920 kilowatt hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscribenow.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:* The Commission staff proposes to issue an Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of the EA: November 2007.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14757 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–12778–000]

Fall Creek Hydro, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping, Solicitation of Comments on the Pad and Scoping Document, and Identification Issues and Associated Study Requests

July 24, 2007.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* P–12778–000.

c. *Dated Filed:* February 16, 2007 and amended May 18, 2007.

d. *Submitted By:* Fall Creek Hydro, LLC (Fall Creek Hydro).

e. *Name of Project:* Fall Creek Dam Hydroelectric Project.

f. *Location:* On Fall Creek, in Lane County, Oregon. The project will be located within the Willamette National Forest.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Applicant Contact:* Brent Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442.

i. *FERC Contact:* Kim Nguyen at (202) 502–6105 or e-mail at *kim.nguyen@ferc.gov.*

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph n below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Fall Creek Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations. Fall Creek Hydro also filed an addendum to the PAD pursuant to the Commission's Additional Information request dated February 28, 2007.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Fall Creek Dam Hydroelectric Project) and number (P–12778–000), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by September 17, 2007.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

o. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

p. *Scoping Meetings:* Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times

and locations of these meetings are as follows:

Daytime Scoping Meeting:

Date: Thursday, August 16, 2007.

Time: 9 a.m.

Location: Lane Community College—Center for Meeting and Learning, 4000 East 30th Avenue, Room 202, Eugene, Oregon.

Phone: (541) 463–3500.

Evening Scoping Meeting:

Date: Thursday, August 16, 2007.

Time: 7 p.m.

Location: Lane Community College—Center for Meeting and Learning, 4000 East 30th Avenue, Room 202, Eugene, Oregon.

Phone: (541) 463–3500.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph m. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Meeting Objectives: At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in paragraph m of this document.

Meeting Procedures: The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

q. *Site Visit:* The applicant and Commission staff will conduct a site visit of the project on Friday, August 17, 2007, starting at 9 a.m. All participants should meet at the base of Fall Creek Dam. All participants are responsible for their own transportation. Those individuals planning to participate in the site visit should notify Kim Nguyen of Commission staff at (202) 502–6105, or Mr. Eric Steimle of Fall River Hydro at (503) 219–3750 on or before August 9, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14758 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–12492–001]

Ha-Best Inc.; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

July 24, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* P–12492–001.

c. *Date Filed:* July 3, 2007.

d. *Applicant:* Ha-Best Inc.

e. *Name of Project:* Miner Shoal Waterpower Project.

f. *Location:* The proposed project is located on the Soque River, near the Town of Demorest, Habersham County, Georgia. The proposed project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Don Ferguson, 34 West Jarrard Street, Cleveland, GA 30528; Telephone (706) 865–3999.

i. *FERC Contact:* Janet Hutzel, Telephone (202) 502–8675, or by e-mail at *janet.hutzel@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* September 1, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The proposed Minor Shoal Project would consist of the following: (1) An existing 30-foot-high, 540-foot-long dam; (2) an existing reservoir with a normal water with a surface area of 265 acres and a storage capacity of 1,960 acre-feet; (3) an existing 92-foot-long, 7-foot-diameter steel penstock; (4) two existing powerhouses containing a total of three turbines with a total installed capacity of 1,400 kilowatts; and (5) appurtenant facilities. The project would have an annual generation of 4.943 megawatt-hours.

o. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings

and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Georgia State Historic Preservation Officer, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural Schedule:* At this time we do not anticipate the need for preparing a draft environmental assessment (EA). Recipients will have 30 days to provide the Commission with any written comments on the EA. All comments filed with the Commission will be considered in the Order taking final action on the license application. However, should substantive comments requiring re-analysis be received on the EA document, we would consider preparing a subsequent EA document. The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Acceptance or Deficiency Letter.	October 2007.
Request Additional Information.	October 2007.
Issue Scoping Document 1 for Comments.	February 2008.
Issue Scoping Document 2 (if necessary).	April 2008.
Notice that application is ready for environmental analysis.	April 2008.
Notice of the Availability of the EA.	December 2008.

r. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14759 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11547–013]

Summit Hydro, LLC; Putnam Green Power, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

July 24, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 11547–013.

c. *Date Filed:* July 16, 2007.

d. *Applicants:* Summit Hydro, LLC (Transferor) and Putnam Green Power, LLC (Transferee).

e. *Name and Location of Project:* The Hale Hydroelectric Project is located on the Quinebaug River, in Windham County, Connecticut.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For Transferor and Transferee: Duncan S. Broatch, Summit Hydro, LLC, 6 Far Hills Drive, Avon, CT 06001, (806) 255–7744.

h. *FERC Contact:* Etta L. Foster (202) 502–8769.

i. *Deadline for filing comments, protests, and motions to intervene:* August 23, 2007.

All documents (original and eight copies) should be filed with Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–11547–013) on any comments, protests, or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants request approval, under Section 8 of the Federal Power Act, of a transfer of license for the Hale Hydroelectric Project No. 11547 from Summit Hydro, LLC to Putnam Green Power, LLC.

k. 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 ''e-Library'' link. Enter the project number excluding the last three digits (P–11547) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

l. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filling comments, it will be assumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14760 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 405–074]

Susquehanna Electric Company and PECO Energy Power Company; Notice of Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

July 25, 2007.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission (Commission) and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance of Minimum Flow Requirement.

b. *Project No.:* 405–074.

c. *Date Filed:* July 23, 2007.

d. *Applicant:* Susquehanna Electric Company and PECO Energy Power Company.

e. *Name of Project:* Conowingo Project.

f. *Location:* On the Susquehanna River, in Harford and Cecil Counties, Maryland and York and Lancaster Counties, Pennsylvania. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* A. Karen Hill, Attorney for Exelon Corporation, 101 Constitution Avenue, NW., Washington, DC 20001, (202) 347–7501.

i. *FERC Contact:* Robert H. Grieve, *robert.grieve@ferc.gov,* (202) 502–8752.

j. *Deadline for filing comments, motions to intervene and protest:* August 25, 2007.

Please include the project number (P–405–074) on any comments or motions filed. All documents (original and seven copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–405–074) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Susquehanna Electric Company (SEC) and PECO Energy Power Company (PECO) request Commission approval for a variance of the minimum flow requirement of the project license. Due to drought conditions and low river flows in the Susquehanna River, SEC and PECO request that they be allowed immediately to include plant leakage of about 800 cubic feet per second (cfs) in the required minimum flow discharge until September 14, 2007, or until flow conditions improve where the Conowingo Project no longer requires leakage be included as part of the minimum flow requirement. According to the license, for the period June 1 through September 14, annually, SEC and PECO must provide a minimum flow release (not including leakage) below the dam of 5,000 cfs, or inflow (as measured at the USGS gage at Marietta, PA), whichever is less. During the fall period, September 15 through November 30, SEC and PECO are required to release a minimum flow of 3,500 cfs not including leakage, or inflow to the project whichever is less, as measured at the Marietta gage.

The SEC and PECO are concerned about the ability of the Conowingo Project to maintain an adequate pond level and storage capacity during the current low flow period. Maintaining storage is necessary for generation and to ensure an adequate water supply for recreational and consumptive uses of the Conowingo Reservoir to include operation of Peach Bottom Atomic Power Station and Muddy Run Pumped Storage Project. Including plant leakage in the minimum flow discharge will contribute to the maintenance of these project water uses during this low flow period. During the period of the minimum flow variance, SEC and PECO will conduct daily monitoring of the Susquehanna River below the project for potential environmental effects. If any abnormal or adverse conditions are observed, SEC and PECO will promptly notify the Maryland Department of Natural Resources.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection and reproduction at the Commission's Public Reference Room, located at 888 First St., NE, Room 2A, Washington, DC 20426. This filing 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* or for TTY (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210. 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14798 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2413–092]

Georgia Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 25, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

Application Type: Non-Project Use of Project Lands and Waters.

Project No.: P–2413–092.

Date Filed: July 11, 2007.

Applicant: Georgia Power Company.

Name and Location of Project: Wallace Dam Project is located on the Lake Oconee in Greene County, Georgia. The proposed project does not occupy federal lands.

Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

Applicant Contact: Lee Glenn, Georgia Power Company, 125 Wallace Dam Road NE., Eatonton, GA 31024, (706) 485–8704.

FERC Contact: Gina Krump, Telephone (202) 502–6704, or by e-mail at gina.krump@ferc.gov.

Deadline for Filing Comments, Protests, and Motions to Intervene: August 27, 2007.

All documents (original and eight copies) should be filed with Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001 (a) (1) (iii) and the instructions on the Commission's web-site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–2413–092) on any comments, protests, or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

Description of Application: The licensee is seeking Commission approval to issue a permit for the construction of four boat docks, totaling 26 slips, and an approximately 200 foot walkway on approximately 0.2 acres of project land to Zachary Farms Development Company, LLC. Minimal dredging would be permitted by the licensee in wetland areas consistent with current permitting limitations. The marina is being proposed in conjunction with a residential development and will for the use by the community residents.

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 ''e-Library'' link. Enter the project number excluding the last three digits (P–11547) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g.

Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be assumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14799 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD07–14–000]

Hydrokinetic Pilot Project Workshop; Notice of Technical Conference and Soliciting Comments

July 19, 2007.

A technical conference, led by Commissioner Philip D. Moeller, will be held on October 2, 2007, in Portland, Oregon. Specific information on time and location will be noticed a month prior to the conference. All interested persons may attend, and there is no fee. Registration is not required, but is appreciated for planning purposes; please register at: *https://www.ferc.gov/whats-new/registration/hydrokinetic-10-07-form.asp*. Following the conference there will be a 30-day written comment period.

The purpose of the conference will be to present Commission staff's proposed licensing process for hydrokinetic energy pilot projects and to seek feedback from representatives from industry, state and federal agencies, NGOs, Native American tribes, and members of the public.

The goal of the proposed program is to complete licensing in as few as six months, to provide for Commission oversight and agency input, and to allow developers to generate while testing. This process will be available for projects that are: (1) Small (5 MW or less), (2) removable or able to shut down on relatively short notice, (3) not located in waters with sensitive designations, and (4) for the purpose of testing new hydro technologies or determining appropriate sites for ocean wave and tidal energy projects.

We envision the license having the following characteristics:

- A short license term (5 years);
- A standard license condition requiring project alteration or shutdown in the event that monitoring reveals an unacceptable level of environmental effect;
- The option of applying for a 30–50 year license at the end of the license term; and

• A standard license condition requiring decommissioning and site restoration at the time of license expiration if the option is not exercised.

A flowchart describing Commission staff's proposed licensing process for pilot projects is attached to this notice.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available to the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

All comments (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

FERC 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 866–208–3372 (voice) or 202-502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Additional details regarding the agenda for this conference will be included in a subsequent notice.

For more information about the conference, please contact Kristen Murphy at 202–502–6236 (*kristen.murphy@ferc.gov*), or Tim Welch at 202–502–8760 (*timothy.welch@ferc.gov*).

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14729 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. RM05–17–002; RM05–25–002]

Preventing Undue Discrimination and Preference in Transmission Service; Notice of Agenda and Procedures for Staff Technical Conference

July 23, 2007.

This notice establishes the agenda and procedures for the staff technical conference to be held on July 30, 2007,[1] to discuss issues raised in requests for clarification and rehearing to Order No. 890 with regard to (1) the minimum lead-time for undesignating network resources in order to make firm third-party sales and (2) the eligibility of on-system seller's choice and system sales to be designated as network resources.[2] The technical conference will be held from 9 a.m. to 3 p.m. (EDT) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room. All interested persons are invited to attend, and registration is not required.

The agenda for this conference is attached. In order to allot sufficient time for questions and responses, each speaker will be provided with ten minutes for prepared remarks. Presenters who want to distribute copies of their prepared remarks or handouts should bring 100 double-sided copies to the technical conference. Equipment will also be available for computer presentations, if requested.[3] Presenters who wish to include comments, presentations, or handouts in the record for this proceeding should file their comments with the Commission. Comments may either be filed on paper or electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*.

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 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.

FERC 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 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For further information about this conference, please contact:

Tom Dautel, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6196, *Thomas.Dautel@ferc.gov*.

W. Mason Emnett, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6540, *Mason.Emnett@ferc.gov*.

Kimberly E. Bose,

Secretary.

Attachment A—Agenda for Order No. 890 Staff Technical Conference

Federal Energy Regulatory Commission

July 30, 2007.

9 a.m. Opening remarks and introductions.

9:15 a.m. Panel I—Eligibility of on-system seller's choice and system sales to be designated as network resources.

Barry Bennett, Attorney, Bonneville Power Administration.

Charlotte Glassman, Transmission Contracts Manager, Duke Energy Carolinas, LLC.

Jeff Guldner, Director, Federal Regulation and Compliance, Arizona Public Service Company.

Tom Haymaker, Vice President, Power Supply, PNGC Power.

Robert Lafferty, Manager, Wholesale Marketing & Contracts, Avista Corporation.

Jim Sheffield, Vice President, Morgan Stanley.

11:45 a.m. Lunch.

12:30 p.m. Panel II—Minimum lead-time for undesignating network resources in order to make firm third-party sales.

Jeff Atkinson, Manager of Power Planning and Marketing, Grant County PUD.

Michael Beer, Vice President, Federal Regulation and Policy, E.ON U.S.

Jeff Guldner, Director, Federal Regulation and Compliance, Arizona Public Service Company.

Tom Haymaker, Vice President, Power Supply, PNGC Power.

Robert Lafferty, Manager, Wholesale Marketing & Contracts, Avista Corporation.

Jim Sheffield, Vice President, Morgan Stanley.

3 p.m. Adjourn.

[1] The initial notice establishing the date of this technical conference was issued on July 12, 2007. The technical conference was directed in the Commission Order Establishing Technical Conference and Providing Guidance issued June 26, 2007, in this proceeding.

[2] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 at PP 1483 and 1557–59 (2007), *reh'g pending*.

[3] In order to facilitate discussion, we ask panelists to limit their use of electronic presentation equipment during the conference to the display of graphics, charts or other materials aside from outlines of their comments.

Note: all times are local.

[FR Doc. E7–14742 Filed 7–30–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL07–2–000]

Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity

July 19, 2007.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed Policy Statement.

SUMMARY: The Federal Energy Regulatory Commission is proposing to modify its current policy regarding the composition of proxy groups used to determine return on equity for natural gas and oil pipelines under the Discounted Cash Flow Methodology. Under the proposed policy statement, the Commission would permit Master Limited Partnerships (MLPs) to be included in the proxy group, subject to certain conditions. The Commission proposes to leave to individual cases the determination of the specific MLPs to be included in the proxy group used to determine return on equity in that case.

DATES: Initial comments are due August 30, 2007. Reply comments are due August 30, 2007.

ADDRESSES: You may submit comments, identified in Docket No. PL07–2–000, by any of the following methods:

1. Agency Web Site: *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commentors may attach additional filed with supporting information in certain other file formats. Commentors filing electronically do not need to make a paper filing.

2. Mail/Hand Delivery: Commentors unable to file comments electronically must mail or hand-deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: John M. Robinson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–6808, *John.Robinson@ferc.gov.*

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

1. In this proposed Policy Statement, the Commission is proposing to update its standards concerning the composition of the proxy groups used to decide the return on equity (ROE) of natural gas and oil pipelines. Firms engaged in the pipeline business are increasingly organized as master limited partnerships (MLPs). Therefore, the Commission proposes to modify its current policy regarding the composition of proxy groups to allow MLPs to be included in the proxy group. This proposed Policy Statement explains the standards that the Commission would require to be met in order for an MLP to be included in the proxy group. The Commission proposes to apply its final Policy Statement to all gas and oil pipeline rate cases that have not completed the hearing phase as of the date the Commission issues its final Policy Statement. The Commission intends to decide on a case-by-case basis whether to apply the final Policy Statement in cases that have completed the hearing phase. Finally, the Commission is requesting comments on this proposed Policy Statement. Initial comments are due 30 days after publication of this order in the **Federal Register**, with reply comments due 50 days after publication in the **Federal Register**.

I. Background

2. Since the 1980s, the Commission has used a Discounted Cash Flow (DCF) model to develop a range of returns earned on investments in companies with corresponding risks for determining the ROE for natural gas and oil pipelines. The DCF model was originally developed as a method for investors to estimate the value of securities, including common stocks. It is based on ''the premise that a stock is worth the present value of its future cash flows, discounted at a market rate commensurate with the stock's risk.'' [1] Unlike investors, the Commission uses the DCF model to determine the ROE to be included in the pipeline's rates, rather than to estimate a stock's value. Therefore, the Commission solves the DCF formula for the discount rate, which represents the rate of return that an investor requires in order to invest in a firm. Under the resulting DCF formula, ROE equals current dividend yield (dividends divided by share price) plus the projected future growth rate of dividends.

3. The Commission uses a two-step procedure for determining the constant growth of dividends: averaging short-term and long-term growth estimates.[2] Security analysts' five-year forecasts for each company in the proxy group, as published by Institutional Brokers Estimate System (IBES), are used for determining growth for the short term; long-term growth is based on forecasts of long-term growth of the economy as a whole, as reflected in the Gross Domestic Product. The short-term forecast receives a ⅔ weighting and the long-term forecast receives a ⅓ weighting in calculating the growth rate in the DCF model.[3]

4. Most gas pipelines are wholly-owned subsidiaries and their common stock is not publicly traded, and this is also true for some jurisdictional oil pipelines. Therefore, the Commission uses a proxy group of firms with corresponding risks to set a range of reasonable returns for both natural gas and oil pipelines. The Commission then assigns the pipeline a rate within that range or zone, to reflect specific risks of that pipeline as compared to the proxy group companies.[4]

5. The Commission historically required that each company included in the proxy group satisfy the following three standards.[5] First, the company's stock must be publicly traded. Second, the company must be recognized as a natural gas or oil pipeline company and its stock must be recognized and tracked by an investment information service such as Value Line. Third, pipeline operations must constitute a high proportion of the company's business. Until the Commission's 2003 decision in *Williston Basin Interstate Pipeline Co.*,[6] the third standard could only be satisfied if a company's pipeline business accounted for, on average, at least 50 percent of a company's assets or operating income over the most recent three-year period.

[1] *Ozark Gas Transmission System*, 68 FERC ¶ 61,032 at 61,104, n. 16 (1994).

[2] *Northwest Pipeline Co.,* 71 FERC ¶ 61,309 at 61,989–92 (1995) (Opinion No. 396), 76 FERC ¶ 61,068 (1996) (Opinion No. 396–A), 79 FERC ¶ 61,309 (1997) (Opinion No. 396–B), *reh'g denied,* 81 FERC ¶ 61,036 (1997) (Opinion No. 396–C); *Williston Basin Interstate Pipeline Co.*, 79 FERC ¶ 61,311, *order on reh'g,* 81 FERC ¶ 61,033 (1997), *aff'd in relevant part, Williston Basin Interstate Pipeline Co.,* 165 F.3d 54 (D.C. Cir. 1999) (*Williston Basin*).

[3] The Commission presumes that existing pipelines fall within a broad range of average risk, and thus generally sets pipelines' return at the median of the range. *Transcontinental Gas Pipe Line Corp.,* 84 FERC ¶ 61,084 at 61,423–4 (1998) Opinion No. 414–A, *reh'g,* 85 FERC ¶ 61,323 (1998) (Opinion No. 414–B), *aff'd North Carolina Utilities Commission* v. *FERC,* 340 U.S. App. D.C. 183 (D.C. Cir) (unpublished opinion).

[4] *Williston Basin* at 57 (*citation omitted*).

[5] *Transcontinental Gas Pipe Line Corp.,* 90 FERC ¶ 61,279 at 61,933 (2000).

[6] *Williston Basin Interstate Pipeline Company,* 104 FERC ¶ 61,036 at P 35, n. 46 (2003).

6. As a result of mergers, acquisitions, and other changes in the natural gas industry, fewer and fewer interstate natural gas companies have satisfied the third requirement. Thus, in *Williston*, the Commission relaxed this requirement for the natural gas proxy group. Instead, the Commission approved a pipeline's proposal to use a proxy group based on the corporations listed in the Value Line Investment Survey's list of diversified natural gas firms that own Commission-regulated natural gas pipelines, without regard to what portion of the company's business comprises pipeline operations.

7. In *HIOS*[7] and *Kern River,* the only fully litigated section 4 rate cases decided since *Williston*, the Commission again drew the proxy group companies from the same Value Line list. When those cases were litigated, there were six such companies: Kinder Morgan Inc., the Williams Companies (Williams), El Paso Natural Gas Company (El Paso), Equitable Resources, Inc., Questar Corporation, and National Fuel Gas Corporation. The Commission excluded Williams and El Paso on the ground that their financial difficulties had lowered their ROEs to a level only slightly above the level of public utility debt, and the Commission stated that investors cannot be expected to purchase stock if lower risk debt has essentially the same return. This left a four-company proxy group, three of whose members derived more revenue from the distribution business, rather than the pipeline business. In *Kern River,* the Commission adjusted the pipeline's return on equity 50 basis points above the median in order to account for the generally higher risk profile of natural gas pipeline operations as compared to distribution operations.

8. In both *Kern River* and *HIOS,* the Commission rejected pipeline proposals to include MLPs in the proxy group. The pipelines contended that MLPs have a much higher percentage of their business devoted to pipeline operations, than most of the corporations that the Commission currently includes in the proxy group.

9. Unlike corporations, MLPs generally distribute most available cash flow to the general and limited partners in the form of quarterly distributions. Most MLP agreements define ''available cash flow'' as (1) Net income (gross revenues minus operating expenses) plus (2) depreciation and amortization, minus (3) capital investments the partnership must make to maintain its current asset base and cash flow stream.[8] Depreciation and amortization may be considered a part of ''available cash flow,'' because depreciation is an accounting charge against current income, rather than an actual cash expense. As a result, the MLP's cash distributions normally include not only the net income component of ''available cash flow,'' but also the depreciation component. This means that, in contrast to a corporation's dividends, an MLP's cash distributions generally exceed the MLP's reported earnings. Moreover, because of their high cash distributions, MLPs usually finance capital investments required to significantly expand operations or to make acquisitions through debt or by issuing additional units rather than through retained cash, although the general partner has the discretion to do so.

10. In rejecting the pipelines' proposals in *HIOS* and *Kern River* to include MLPs in the proxy group, the Commission made clear that it was not making a generic finding that MLPs cannot be considered for inclusion in the proxy group if a proper evidentiary showing is made.[9] However, the Commission pointed out that data concerning dividends paid by the proxy group members is a key component in any DCF analysis, and expressed concern that an MLP's cash distributions to its unit holders may not be comparable to the corporate dividends the Commission uses in its DCF analysis. In *Kern River*, the Commission explained its concern as follows:

Corporations pay dividends in order to distribute a share of their earnings to stockholders. As such, dividends do not include any return of invested capital to the stockholders. Rather, dividends represent solely a return on invested capital. Put another way, dividends represent profit that the stockholder is making on its investment. Moreover, corporations typically reinvest some earnings to provide for future growth of earnings and thus dividends. Since the return on equity which the Commission awards in a rate case is intended to permit the pipeline's investors to earn a profit on their investment and provides funds to finance future growth, the use of dividends in the DCF analysis is entirely consistent with the purpose for which the Commission uses that analysis. By contrast, as Kern River concedes, the cash distributions of the MLPs it seeks to add to the proxy group in this case include a return of invested capital through an allocation of the partnership's net income. While the level of an MLP's cash distributions may be a significant factor in the unit holder's decision to invest in the MLP, the Commission uses the DCF analysis solely to determine the pipeline's return on equity. The Commission provides for the return of invested capital through a separate depreciation allowance. For this reason, to the extent an MLP's distributions include a significant return of invested capital, a DCF analysis based on those distributions, without any adjustment, will tend to overstate the estimated return on equity, because the 'dividend' would be inflated by cash flow representing return of equity, thereby overstating the earnings the dividend stream purports to reflect.[10]

11. The Commission stated that it could nevertheless consider including MLPs in the proxy group in a future case, if the pipeline presented evidence addressing these concerns. The order suggested that such evidence might include some method of adjusting the MLPs' distributions to make them comparable to dividends, a showing that the higher ''dividend'' yield of the MLP was offset by a lower long-term growth projection, or some other explanation why distributions in excess of earnings do not distort the DCF results for the MLP in question. However, the Commission concluded that Kern River had not presented sufficient evidence to address these issues, and that the record in that case did not support including MLPs in the proxy group.

12. In addition, *Kern River* pointed out that the traditional DCF model only incorporates growth resulting from the reinvestment of earnings, not growth arising from external sources of capital.[11] Therefore, the Commission stated that if growth forecasted for an MLP comes from external capital, it is necessary either (1) to explain why the external sources of capital do not distort the DCF results for that MLP or (2) propose an adjustment to the DCF analysis to eliminate any distortion. The Commission's orders in *HIOS* reached the same conclusions.

13. In some oil pipeline rate cases decided before *HIOS* and *Kern River,* the Commission included MLPs in the proxy group used to determine oil pipeline return on equity on the ground that there were no corporations available for use in the oil proxy

[7] *High Island Offshore System, L.L.C.,* 110 FERC ¶ 61,043, *reh'g denied,* 112 FERC ¶ 61,050 (2005), *appeal pending.*

[8] The definition of available cash may also net out short term working capital borrowings, the repayment of capital expenditures, and other internal items.

[9] *Kern River Gas Transmission Company,* 117 FERC ¶ 61,077 (2006) (Opinion No. 486) at P 147, *reh'g pending.*

[10] *Id.* at P 149–50.

[11] *Id.* at P 152.

group.[12] In those cases, no party raised any issue concerning the comparability of an MLP's cash distribution to a corporation's dividend. However, that issue did arise in the first oil pipeline case decided after *HIOS* and *Kern River*, involving SFPP's Sepulveda Line.[13] The Commission approved inclusion of MLPs in the proxy group in that case on the grounds that the MLPs in question had not made distributions in excess of earnings. The Sepulveda Line order therefore analyzed the five MLPs that have been used to determine SFPP's ROE: Buckeye Partners, L.P., Enbridge Energy Partners, L.P., Enron Gas Liquids (Enron),[14] TEPPCO Partners, L.P., and Kaneb Partners, L.P. (later Valero Partners), now NuStar Energy, L.P. The order reviewed each entity for the year 1996 and the previous four years, and held that four of the firms had had income (earnings) in excess of distributions and that their incomes (earnings) were stable over that period with minor exceptions. The order found these facts sufficient to address the concerns expressed in *HIOS* and *Kern River*. The fifth firm, Enron, had distributions in excess of income (earnings) in four of the five years. While the Commission did not preclude use of such MLPs, Enron did not meet the *HIOS* test and was excluded as unrepresentative.

II. Discussion

14. As discussed below, the Commission proposes to permit inclusion of MLPs in a proxy group. However, the Commission proposes to cap the ''dividend'' used in the DCF analysis at the pipeline's reported earnings, thus adjusting the amount of the distribution to be included in the DCF model. The Commission would leave to individual cases the determination of which MLPs and corporations should actually be included in the natural gas or oil proxy group. However, participants in these cases should include as much information as possible regarding the business profile of the firms they propose to include in the proxy group, for example, based on gross income, net income, or assets.

15. The Supreme Court has stated that ''the return to the equity owner should be commensurate with the return on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.'' [15] The Commission is concerned that its current approach to determining the composition of the proxy group for determining gas and oil pipeline return on equity is, or will, require the use of firms which are less and less representative of either natural gas or oil pipeline business risk.

16. As has been discussed, there are fewer and fewer publicly traded diversified natural gas corporations that have interstate gas pipelines as their predominant business line, whether this is measured on a revenue, income, or asset basis. As such, there are fewer diversified natural gas companies available for inclusion in a natural gas pipeline proxy group which may reasonably be considered representative of the risk profile of a natural gas pipeline firm. Moreover, at this point the only publicly traded oil pipeline firms are controlled by MLPs, which makes the issue of a representative proxy group more acute.

17. Cost of service ratemaking requires that the firms in the proxy group be of comparable risk to the firm whose equity cost of capital is at issue in a particular rate proceeding. If the proxy group is less than clearly representative, this may require the Commission to adjust for the difference in risk by adjusting the equity cost-of-capital, a difficult undertaking requiring detailed support from the contending parties and detailed case-by-case analysis by the Commission. Expanding a proxy group to include MLPs whose business is more narrowly focused on pipeline activities would help ameliorate this problem. Thus, including MLP natural gas pipelines in the equity proxy group should reduce the need to make adjustments since the proxy group is more likely to contain firms that are representative of the regulated firm whose rates are at issue. Including MLPs will also recognize the trend to greater use of MLPs in the natural gas pipeline industry and address the reality of the oil pipeline industry structure.

18. The Commission's primary concern about including MLPs in the proxy group has arisen from the interaction between use of the DCF analysis to determine return on capital while relying on a depreciation allowance for return of capital. The Commission permits a pipeline to recover through its rates both a return on equity and a return of invested capital. The Commission uses the DCF analysis solely to determine the return on equity component of the cost-of-service. The Commission provides for the return of invested capital through a separate depreciation allowance. Given the purpose for which the Commission uses the DCF analysis, the cash flows included in that analysis must be limited to cash flows which may reasonably be considered to reflect a return on equity. Such cash flows include that portion of an MLP's cash distribution derived from net income, or earnings.

19. To the extent an MLP makes distributions in excess of earnings, it is able to do so because partnership agreements define ''cash available for distribution'' to include depreciation. This enables the MLP to make cash distributions that include return of equity, in addition to return on equity. However, because the Commission includes a separate depreciation allowance in the pipeline's cost-of-service, a DCF analysis including cash flows attributable to depreciation would permit the pipeline to double recover its depreciation expense, once through the depreciation allowance and once through an inflated ROE. Adjusting an MLP's cash distribution to exclude that portion of the distribution in excess of earnings addresses this problem.

20. The Commission recognizes that it raised several concerns in *Kern River* as to whether adjusting the MLP's cash distribution down to the level of its earnings would be sufficient to eliminate the distorting effects of including MLPs in the proxy group. The Commission pointed out that corporations generally do not pay out all of their earnings in dividends, but retain some earnings in order to generate future growth. The Commission also suggested that the DCF model is premised on growth in dividends deriving from reinvestment of current earnings, and does not incorporate growth from external sources, such as issuing debt or additional stock.

21. The Commission believes that these concerns should not render unreliable a DCF analysis using the adjusted MLP results. The market data for the MLPs used in the DCF analysis should itself correct for any distortions remaining after the adjustment to the cash distribution described above. For example, the IBES growth projections represent an average of the growth projections by professionals whose business is to advise investors.[16] The level of an MLP's cash distributions as

[12] *SFPP, L .P.*, 86 FERC ¶ 61,022 at 61,099 (1999).

[13] *SFPP, L.P.*, 117 FERC ¶ 61,285 (2006) (SFPP Sepulveda order), *rehearing pending*.

[14] Enron Gas Liquids was not affiliated with Enron, Inc. at that time, but was a former affiliate that was spun off in the early 1990's.

[15] *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co.* v. *Public Service Comm'n*, 262 U.S. 679 (1923).

[16] Opinion No. 414–B, 85 FERC at 62,268–70.

compared to its earnings is a matter of public record and thus known to the security analysts making the growth forecasts used by IBES. Therefore, the security analysts must be presumed to take those distributions into account in making their growth forecasts for the MLP. To the extent an MLP's relatively high cash distributions reduce its growth prospects that should be reflected in a lower growth forecast, which would offset the MLP's higher ''dividend'' yield.

22. In order to test the validity of this assumption, the Commission reviewed the most recent IBES growth forecasts for five diversified energy companies and six MLPs in the natural gas business. The average IBES forecast for the corporations is 9 percent, while the average IBES forecast for the MLPs is 6.17 percent, or nearly 300 basis points lower.[17] Thus, the security analysts do project lower growth rates for the MLPs than for the corporations.

23. In addition, the fact MLPs may rely upon external borrowings and/or equity issuances to generate growth is not a reason to exclude them from the proxy group. Most pipelines organized as corporations also use external borrowings and to some extent equity issuances. To the extent that gas or oil pipelines are controlled by diversified energy companies with unregulated assets (either federal or state), the financial practices may be the same, although perhaps not as highly leveraged, and the results are likewise reflected in the IBES projections. A prudent investor deciding whether to invest in a security will reasonably consider all factors relevant to assessing the value of that security. The potential effect of future borrowings or equity issuances on share values of either MLPs or corporations is one such factor. Since a DCF analysis is a method for investors to estimate the value of securities, it follows that such an analysis may reasonably take into account potential growth from external capital.

24. The Commission does, however, recognize that an MLP's lack of retained earnings may render cash distributions at their current level unsustainable, and thus still unsuitable for inclusion in the DCF analysis. Therefore, the Commission intends to require participants proposing to include MLPs in the proxy group to provide a multi-year analysis of past earnings. An analysis showing that the MLP does have stable earnings would support a finding that the cash to be included in the DCF calculation is likely to be available for distribution, thus replicating the requirement of the corporate model of a stable dividend.

[17] The IBES forecasts were prepared as of May 31, 2007 applying the current DCF model for the corporate sample and using distributions capped at earnings for the MLPs. Thus the short term growth rates for the five diversified gas corporations were: (1) National Fuel Gas Corporation, 5 percent; (2) Questar Corporation, 9 percent; (3) Oneok, Inc., 9 percent; (4) Equitable Resources Inc., 10 percent; and (5) Williams Companies, 12 percent. The short term growth rates for the six gas MLPs were: (1) Oneok Partners, L.P., 5 percent; (2) TEPPCO Partners, L.P., 5 percent; (3) TC Pipelines, L.P., 5 percent; (4) Boardwalk Pipeline Partners, L.P., 7 percent, (5) Kinder Morgan Energy Partners, L.P., 7 percent, and (6) Enterprise Products Partners, L.P., 8 percent.

III. Procedure for Comments

25. The Commission invites interested persons to submit written comments on its proposed policy to permit the inclusion of MLPs in the proxy group to be used to determine the equity cost of capital of natural gas and oil pipelines. The comments may include alternative proposals for determining a representative proxy group given that (1) Few natural gas companies meet the Commission's traditional standards for inclusion in the proxy group, and (2) the only publicly traded oil pipeline firms available for inclusion in the proxy group are controlled by MLPs. Comments may also address the analysis advanced in this proposed policy statement, alternative methods for adjusting the amount of the MLP's distribution to be included the DCF analysis, and the relevance of the stability of MLP earnings.

26. Comments are due 30 days from the date of publication in the **Federal Register** and reply comments are due 50 days from the date of publication in the **Federal Register**. Comments must refer to Docket No. PL07–2–000, and must include the commentor's name, the organization it represents, if applicable, and its address. To facilitate the Commission's review of the comments, commentors are requested to provide an executive summary of their position. Additional issues the commentors wish to raise should be identified separately. The commentors should double space their comments.

27. Comments may be filed on paper or electronically via the eFiling link on the Commission's Web site at: *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commentors may attach additional files with supporting information in certain other file formats. Commentors filing electronically do not need to make a paper filing. Commentors that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington DC 20426.

28. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commentors are not required to serve copies of their comments on other commentors.

IV. Document Availability

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

30. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, e-Library. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

31. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at: *FERCOnlineSupport@ferc.gov* or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at: *public.referenceroom@ferc.gov*).

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14708 Filed 7–30–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0176; FRL–8448–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; EPA ICR No. 1591.24, OMB Control No. 2060–0277

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to

submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on October 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 1, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0176 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket EPA–HQ–OAR –2007–0176, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW., Washington DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0176. 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at: *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Jose Solar, Office of Transportation and Air Quality, Mail Code: 6406J, Environmental Protection Agency, 12000 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 343–9027; fax number (202)–343–2801; e-mail address: *Solar.Jose@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0176, which is available for online viewing at: *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; 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;

(ii) enhance the quality, utility, and clarity of the information to be collected; and

(iii) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does this Apply to?

Affected Entities: Entities potentially affected by this action are Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for Parties in the Gasoline Distribution Network.

Title: Reformulated Gasoline and Conventional Gasoline: Requirements for Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for Parties in the Gasoline Distribution Network.

ICR Numbers: EPA ICR No. 1591.24, OMB Control No. 2060–0277.

ICR Status: This ICR is currently scheduled to expire on 10–31–07. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by

publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Gasoline combustion is the major source of air pollution in most urban areas. In the 1990 amendments to the Clean Air Act (Act), section 211(k), Congress required that gasoline dispensed in nine areas with severe air quality problems, and areas that opt-in, be reformulated to reduce toxic and ozone-forming emissions. (Ozone is also known as smog.) Congress also required that, in the process of producing reformulated gasoline (RFG), dirty components removed in the reformulation process not be ''dumped'' into the remainder of the country's gasoline, known as conventional gasoline (CG). The Environmental Protection Agency (EPA) promulgated regulations at 40 CFR 80, Subpart D—Reformulated Gasoline, Subpart E—Anti-Dumping, and Subpart F—Attest Engagements, implementing the statutory requirements, which include standards for RFG (80.41) and CG (80.101). The regulations also contain reporting and recordkeeping requirements for the production, importation, transport and storage of gasoline, in order to demonstrate compliance and facilitate compliance and enforcement. The program is run by the Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Office of Air and Radiation. Enforcement is done by the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance. This program excludes California, which has separate requirements for gasoline.

The United States has an annual gasoline consumption of about 130 billion gallons. About 30% is RFG. In 2005 EPA received reports from 258 refineries, 58 importer facilities/facility groups, 44 oxygenate blending facilities, 19 independent laboratory facilities, and the RFG Survey Association, Inc. under this program.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated Total Number of Potential Respondents: 1,190.

Frequency of Response: Quarterly, Annually, on Occasion.

Estimated Total Average Number of Responses for Each Respondent: 100 to 130.

Estimated Total Annual Burden Hours: 96,625.

Estimated Total Annual Costs: $29,745,357. This includes an estimated burden cost of $24,786,000 and an estimated cost of $4,800,00 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates from the Last Approval?

There is an increase due to update in labor costs.

What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 26, 2007.

Margo T. Oge,

Office Director, Office of Transportation and Air Quality.

[FR Doc. E7–14725 Filed 7–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2007–0026, FRL–8447–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e)); EPA ICR No. 1560.08, OMB Control No. 2040–0071

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on September 30, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 1, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OW–2007–0026, by one of the following methods:

- *http://www.regulations.gov* (our preferred method): Follow the on-line instructions for submitting comments.
- *E-mail:* OW–Docket@epa.gov.
- *Mail:* EPA Water Docket, Environmental Protection Agency, Mailcode (2822T) 1200 Pennsylvania Ave, NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2007–0026. 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identify or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically

captures and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Alice Mayio, Assessment and Watershed Protection Division, Office of Water, Mail Code: 4503T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1184; fax number: 202–566–1437; e-mail address: *Mayio.alice@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–OW–2007–0026, which is available for online viewing at: *http://www.regulations.gov* or in-person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used to support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line of the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are States, Territories and Tribes with Clean Water Act (CWA) responsibilities.

Title: National Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e)).

ICR numbers: EPA ICR Number 1560.08 (OMB Control Number 2040–0071).

ICR status: This ICR is currently scheduled to expire on September 30, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 303(d) of the Clean Water Act requires States to identify and rank waters which cannot meet water quality standards (WQS) following the implementation of technology-based controls. Under section 303(d), States are also required to establish total maximum daily loads (TMDLs) for listed waters not meeting standards as a result of pollutant discharges. In developing the Section 303(d) lists, States are required to consider various sources of water quality related data and information, including the section 305(b) State water quality reports. The section 305(b) reports contain information on the extent of water quality degradation, the pollutants and sources affecting water quality, and State progress in controlling water pollution. Section 106(e) requires that states annually update monitoring data and include it in their section 305(b) report. Section 314(a) requires states to report on the condition of their publicly-owned lakes within the section 305(b) report.

EPA's Assessment and Watershed Protection Division (AWPD) works with its Regional counterparts to review and approve or disapprove State section 303(d) lists and TMDLs from 56 respondents (the 50 States, the District of Columbia, and the five Territories). Section 303(d) specifically requires States to develop lists and TMDLs (from time to time,'' and EPA to review and approve or disapprove the lists and the TMDLs. EPA also collects State 305(b) reports from 59 respondents (the 50 States, the District of Columbia, five Territories, and 3 River Basin commissions). Some Tribes also choose to participate in 305(b) reporting.

This announcement includes the reapproval of current, ongoing activities related to 305(b) and 303(d) reporting and TMDL development for the period of October 1, 2007 through September 30, 2010. During the period covered by this ICR renewal, respondents will: Complete their 2008 305(b) reports and 2008 303(d) lists; complete their 2010 305(b) reports and 2010 303(d) lists; transmit annual electronic updates of their 305(b) databases in 2008 through 2010; and continue to develop TMDLs according to their established schedules. EPA will prepare biennial Reports to Congress for the 2008 reporting cycle

and for the 2010 cycle, and EPA will review TMDL submissions from respondents.

The respondent community for 305(b) reporting consists of 50 States, the District of Columbia, 5 Territories (Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands), and 3 River Basin Commissions. The Ohio River Valley Sanitation Commission, the Delaware River Basin Commission, and the Interstate Sanitation Commission have jurisdiction over basins that lie in multiple States. Tribal 305(b) reporting is not included in the current burden estimates for this ICR.

The respondent community for 303(d) activities consists of 50 States, the District of Columbia, and 5 Territories (Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands). Although Indian Tribes are not exempt from 303(d) requirements, there is not a process currently in place to designate them for this purpose. Further, very few Tribes have established water quality standards, and EPA is currently in the process of preparing standards where they are needed. Therefore, we assume that there would be no burden to Indian Tribes over the period covered by this ICR for 303(d) activities.

The burdens of specific activities that States undertake as part of their 305(b) and 303(d) programs are derived from an ongoing project among EPA, States and other interested stakeholders to develop a tool for estimating the States' resource needs for State water quality management programs. This project has developed the State Water Quality Management Workload Model (SWQMWM), which estimates and sums the workload involved in more than one hundred activities or tasks comprising a State water quality management program. Over twenty States have contributed information about their activities that became the basis for the model. According to the SWQMWM, the States will carry out the following activities or tasks to meet the 305(b) and 303(d) reporting requirements: Watershed monitoring and characterization; modeling and analysis; development of a TMDL document for public review; public outreach; formal public participation; tracking; planning; legal support; etc. In general, respondents have conducted each of these reporting and record keeping activities for past 305(b) and 303(d) reporting cycles and thus have staff and procedures in place to continue their 305(b) and 303(d) reporting programs. The burden associated with these tasks is estimated in this ICR to include the total number of TMDLs that may be submitted during the period covered by this ICR.

The biennial frequency of the collection is mandated by section 305(b)(1) of the CWA. Section 305(b) originally required respondents to submit water quality reports on an annual basis. In 1977, the annual requirement was amended to a biennial requirement in the CWA. EPA has determined that abbreviated reporting for hard-copy 305(b) reports, combined with annual electronic reporting using respondent databases, will meet the CWA reporting requirements while reducing burden to respondents. The biennial period with annual electronic reporting ensures that information needed for analysis and water program decisions is reasonably current, yet abbreviated reporting requirements provides respondents with sufficient time to prepare the reports.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is expected to average 3,740,017 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated Total Number of Potential Respondents: 59.

Frequency of Response: Biannually.

Estimated Total Average Number of Responses for Each Respondent: 29.5.

Estimated Total Annual Burden Hours: 3,740,017.

Estimated Total Annual Costs: $155,322,906. These costs are entirely attributed to labor, with $0 attributable to capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is no change in the total estimated respondent burden estimates identified in the ICR currently approved by OMB. EPA will be revising these burden estimates before submitting this ICR to OMB based on developments in the program over the last three years and comments received from the public. We expect that the currently-approved burden may be affected by increased reliance on electronic reporting (including submittal, review and approval of electronic water quality information by EPA and the states) and increased Tribal water quality reporting.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 24, 2007.

Craig E. Hooks,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. E7–14770 Filed 7–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8447–5]

Clean Air Act Advisory Committee (CAAAC) Request for Nominations for 2007 Clean Air Excellence Awards Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations for Clean Air Excellence Awards.

SUMMARY: EPA established the Clean Air Excellence Awards Program in February, 2000. This is an annual awards program to recognize outstanding and innovative efforts that support progress in achieving clean air. This notice announces the competition for the Year 2007 program.

DATES: All submissions of entries for the Clean Air Excellence Awards Program must be postmarked by September 21, 2007.

FOR FURTHER INFORMATION CONTACT: Concerning the Clean Air Excellence Awards Program please use the CAAAC Web site and click on awards program

or contact Mr. Pat Childers, U.S. EPA at 202–564–1082 or 202–564–1352 (Fax), mailing address: Office of Air and Radiation (6102A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

SUPPLEMENTARY INFORMATION: Awards Program Notice: Pursuant to 42 U.S.C. 7403(a)(1) and (2) and sections 103(a)(1) and (2) of the Clean Air Act (CAA), notice is hereby given that the EPA's Office of Air and Radiation (OAR) announces the opening of competition for the Year 2007 ''Clean Air Excellence Awards Program'' (CAEAP). The intent of the program is to recognize and honor outstanding, innovative efforts that help to make progress in achieving cleaner air. The CAEAP is open to both public and private entities. Entries are limited to the United States. There are five general award categories: (1) Clean Air Technology; (2) Community Action; (3) Education/Outreach; (4) Regulatory/ Policy Innovations; (5) Transportation Efficiency Innovations; and two special awards categories: (1) Thomas W. Zosel Outstanding Individual Achievement Award, and (2) Gregg Cooke Visionary Program Award. Awards are given on an annual basis and are for recognition only.

Entry Requirements: All applicants are asked to submit their entry on a CAEAP entry form, contained in the CAEAP Entry Package, which may be obtained from the Clean Air Act Advisory Committee (CAAAC) Web site at: *http://www.epa.gov/oar/caaac* by clicking on Awards Program or by contacting Mr. Pat Childers, U.S. EPA at 202–564–1082 or 202–564–1352 Fax, mailing address: Office of Air and Radiation (6102A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The entry form is a simple, three-part form asking for general information on the applicant and the proposed entry; asking for a description of why the entry is deserving of an award; and requiring information from three (3) independent references for the proposed entry. Applicants should also submit additional supporting documentation as necessary. Specific directions and information on filing an entry form are included in the Entry Package.

Judging and Award Criteria: Judging will be accomplished through a screening process conducted by EPA staff, with input from outside subject experts, as needed. Members of the CAAAC will provide advice to EPA on the entries. The final award decisions will be made by the EPA Assistant Administrator for Air and Radiation. Entries will be judged using both general criteria and criteria specific to each individual category. There are four (4) general criteria: (1) The entry directly or indirectly (i.e., by encouraging actions) reduces emissions of criteria pollutants or hazardous/toxic air pollutants; (2) The entry demonstrates innovation and uniqueness; (3) The entry provides a model for others to follow (i.e., it is replicable); and (4) The positive outcomes from the entry are continuing/ sustainable. Although not required to win an award, the following general criteria will also be considered in the judging process: (1) The entry has positive effects on other environmental media in addition to air; (2) The entry Demonstrates effective collaboration and partnerships; and (3) The individual or organization submitting the entry has effectively measured/ evaluated the outcomes of the project, program, technology, etc. As previously mentioned, additional criteria will be used for each individual award category. These criteria are listed in the 2007 Entry Package.

Dated: July 25, 2007.

Patrick Childers,

Designated Federal Official for Clean Air Act Advisory Committee.

[FR Doc. E7–14731 Filed 7–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8447–8]

Draft NPDES General Permits for Log Transfer Facilities in Alaska (Permit Nos. AK–G70–0000 and AK–G70–1000) and Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft NPDES general permits and request for public comment.

SUMMARY: The Director of the Office of Water and Watersheds, EPA Region 10, is publishing notice of the availability of two draft National Pollutant Discharge Elimination System (NPDES) general permits (numbers AK–G70–0000 and AK–G70–1000) to provide Clean Water Act (33 U.S.C. 1251 *et seq.*) authorization for log transfer facilities (LTFs) operating in Alaska. General permit (GP) AK–G70–0000 (the ''Pre-1985'' GP) includes section 402 modifications to section 404 permits issued to LTFs prior to October 22, 1985, in accordance with section 407 of the Water Quality Act of 1987 (Public Law 100–4). All other LTFs can apply to be authorized to discharge under AK–G70–1000 (the ''Post-1985'' GP) if they meet eligibility requirements.

The draft Post-1985 GP is a reissuance of a previously issued LTF GP that became effective on March 21, 2000, and was subsequently modified on April 27, 2004 (69 FR 19417). The Post-1985 GP expired on March 21, 2005, and has been administratively extended since that time. The draft Pre-1985 GP contains additional modifications to section 404 permits issued to LTFs prior to October 22, 1985. The modifications implemented by the Pre-1985 GP became effective as of April 27, 2004, and did not expire because the section 404 permits had no expiration date.

New LTFs or existing LTFs not currently authorized to discharge, and which meet the eligibility criteria under the Post-1985 permit, must submit a written Notice of Intent (NOI) to be covered at least 60 days prior to the anticipated commencement of in-water log storage or transfer operations. For existing LTFs that are operating under an administratively extended permit pursuant to 40 CFR 122.6, NOIs were to be submitted 180 days prior to the expiration of the permit (i.e., September 22, 2004). If changes have occurred since that time that require a revised NOI to be submitted, such revised NOIs must be submitted no later than 60 days from the effective date of the final GP. Pre-1985 LTFs seeking coverage or continued coverage under GP No. AK–G70–0000 must submit written Notification within 90 days of the effective date of the final Pre-1985 permit if they have not already done so. Facility operators which received a section 404 permit from the Army Corps of Engineers prior to October 22, 1985, but who did not provide Notification under the Pre-1985 GP and who fail to submit a timely written Notification in accordance with the proposed 2007 modifications, must seek coverage under the Post-1985 permit prior to commencing discharges of bark and wood debris.

In order to be authorized to discharge under the Post-1985 GP, owners or operators of an LTF must: (1) Submit a NOI as described in Part V to EPA and the Alaska Department of Environmental Conservation (ADEC); (2) develop and implement a Pollution Prevention Plan (PPP); (3) receive written authorization for a project area zone of deposit (ZOD) from ADEC; and, (4) receive written authorization to discharge bark and wood debris from EPA. In order to be able to discharge in compliance with the Pre-1985 GP modifications, owners or operators of an LTF must: (1) Submit a Notification to EPA and ADEC; (2) develop and

implement a PPP; (3) receive written authorization for a project area ZOD from ADEC; and, (4) receive a NPDES number from EPA. A fact sheet has been prepared which sets forth the principle factual, legal, policy, and scientific information considered in the development of the general permits. Both GPs contain a combination of technology-based requirements and water quality-based effluent limits, standards, or conditions.

Public Comment and Public Hearing: Interested persons may submit written comments on the draft GPs to the attention of Kai Shum at the address below. Copies of the draft GPs and fact sheet are available upon request. The permits and fact sheet may also be downloaded from the Region 10 Web site at: *http://www.epa.gov/r10earth/waterpermits.htm* (click on ''draft permits'', then ''Alaska'').

All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated.

The EPA and ADEC will host a public hearing to present information relevant to the LTF GPs, to answer questions, and to receive verbal comments on the draft general permits. The hearing is scheduled as follows: Thursday, September 6, 2007, 7 p.m.–11 p.m.; Centennial Hall and Convention Center; 101 Eagan Drive; Juneau, Alaska 99801.

After the expiration date of the Public Notice on September 25, the Director, Office of Water and Watersheds, EPA Region 10, will make a final determination with respect to issuance of the permits. Response to comments will be published with the final permits. The proposed requirements contained in the draft GPs will become final 30 days after publication of the final permits in the **Federal Register**.

ADDRESSES: Comments on the proposed GPs should be sent to Kai Shum; USEPA Region 10; 1200 6th Ave., OWW–130; Seattle, Washington 98101. Comments may also be received via electronic mail at: *shum.kai@epa.gov*.

SUPPLEMENTARY INFORMATION:

Administrative Record

The complete administrative record for the draft GPs are available for public review at the EPA Region 10 headquarters at the address listed above.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained by contacting Kai Shum at the address above, or by visiting the Region 10 Web site at: *http://www.epa.gov/r10earth/waterpermits.htm*. Requests may also be made to Audrey Washington at (206) 553–0523, or electronically mailed to: *washington.audrey@epa.gov*.

Other Legal Requirements

State Water Quality Standards and State Certification

EPA is also providing Public Notice of ADEC's intent to certify the permits pursuant to section 401 of the Clean Water Act. ADEC has provided draft certification that the draft GPs comply with State Water Quality Standards (18 AAC 70), including the State's antidegradation policy. Comments on the state's draft section 401 certifications of the permits should be sent to Chris Foley; ADEC; P.O. Box 11180; 410 Willoughby Ave., Suite 303; Juneau, Alaska 99811–1800. Comments may also be received via electronic mail at: *chris.foley@alaska.gov*.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) at 42 U.S.C. 4322, requires federal agencies to conduct an environmental review of their actions (including permitting activity) that may significantly affect the quality of the human environment. EPA regulations which implement NEPA (40 CFR part 6) clarify this requirement as it pertains to NPDES permitting actions for new sources of discharge types with promulgated effluent limitation guidelines. No effluent limitation guidelines have been proposed or promulgated for discharges from LTFs pursuant to CWA Section 306, thus, new LTFs that may seek to discharge under the proposed GPs do not meet the criteria for new sources. Therefore, a NEPA environmental review is not required for the permits.

Endangered Species Act

Section 7 of the Endangered Species Act requires EPA to consult with the U.S. Fish and Wildlife Service and NOAA Fisheries regarding the potential effects that an action may have on listed endangered or threatened species or their critical habitat. To address these ESA requirements, and in support of EPA's informal consultation with the Services, a Biological Evaluation (BE) was prepared to analyze these potential effects. During the development of the draft general permits, information provided by the Services was used to identify 12 species of interest for consideration in the BE. The results of the BE concluded that discharges from LTFs will either have *no effect* or are *not likely to adversely affect* threatened or endangered species in the vicinity of the discharge. The fact sheet, the draft permits and the BE are being reviewed by the Services for consistency with those programs established for the conservation of endangered and threatened species. Any additional comments or conservation recommendations received from the Services regarding threatened or endangered species will be considered prior to issuance of the GPs.

Magnuson-Stevens Fishery Conservation and Management Act

Section 305(b) of the Magnuson-Stevens Act (16 U.S.C. 1855(b)) requires federal agencies to consult with NOAA Fisheries when any activity proposed to be permitted, funded, or undertaken by a federal agency may have an adverse effect on designated Essential Fish Habitat (EFH) as defined by the Act. To address the requirements of the Magnuson-Stevens Act, EPA prepared an EFH Assessment concluding that LTF operations are *not likely to have an adverse effect* on EFH as the total area likely to be adversely impacted is an extremely small proportion of the total available habitat. As with ESA, any additional comments or conservation recommendations received from NOAA Fisheries regarding EFH will be considered prior to issuance of the GPs.

Alaska Coastal Management Program

The State of Alaska, Department of Natural Resources (ADNR), Office of Project Management and Permitting (OPMP), will review this permitting action for consistency as provided in section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)(3)). EPA has determined that the activities authorized by the proposed GPs are consistent to the maximum extent practicable with the state's Coastal Zone Management Plan. EPA will seek concurrence with this determination from the ADNR OPMP prior to issuing the final permits. Comments on the state's consistency determination should be sent to Joe Donohue; ADNR OPMP; P.O. Box 111030; Juneau, Alaska 99811–1030. Comments may also be received via electronic mail at: *joe.donohue@alaska.gov*.

Executive Order 12866

EPA has determined that these GPs are not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Paperwork Reduction Act

The information collection requirements of these GPs were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not ''rules'' subject to the requirements of 5 U.S.C. 553(b), and is therefore not subject to the RFA.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' (defined to be the same as ''rules'' subject to the RFA) on tribal, state, and local governments and the private sector. However, general NPDES permits are not ''rules'' subject to the requirements of 5 U.S.C. 553(b), and is therefore not subject to the RFA.

Signed this 23rd day of July, 2007.

Michael F. Gearheard,

Director, Office of Water and Watersheds, Region 10.

[FR Doc. E7–14772 Filed 7–30–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 15, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. The Irrevocable Trust of Doyle W. Rogers, Sr., and Josephine Raye Rogers, with Barbara R. Hoover and Doyle W. Rogers, Jr. as trustees, in concert with Doyle W. Rogers, Sr., all of Batesville, Arkansas; to acquire additional voting shares of Citizens Bancshares of Batesville, Inc., and thereby indirectly acquire additional voting shares of The Citizens Bank, all of Batesville, Arkansas.

Board of Governors of the Federal Reserve System, July 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–14721 Filed 7–30–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 2007.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Legend Bancorp, Inc., Bowie, Texas, and Legend Financial Corporation, Dover, Delaware; to merge with Bonstate Bancshares, Inc., Bonham, Texas, and Bonham Financial Services, Inc., Dover, Delaware, and thereby indirectly acquire voting shares of Bonham State Bank, Bonham, Texas.

Board of Governors of the Federal Reserve System, July 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–14720 Filed 7–30–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 27-28, 2007

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 27-28, 2007.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 5¼ percent.

By order of the Federal Open Market Committee, July 20, 2007.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. E7–14785 Field 7–30–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

[1] Copies of the Minutes of the Federal Open Market Committee meeting on June 27-28, 2007, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

TIME AND DATE: 12:00 p.m., Monday, August 6, 2007.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, July 27, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–3757 Filed 7–27–07; 3:57 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Personalized Healthcare Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the seventh meeting of the American Health Information Community Personalized Healthcare Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: August 17, 2007, from 1 p.m. to 4 p.m. [Eastern Daylight Time].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/healthcare/.*

SUPPLEMENTARY INFORMATION: The Workgroup will discuss possible common data standards to incorporate interoperable, clinically useful genetic laboratory test data, family history information, and analytical tools into Electronic Health Records (EHR) to support clinical decision-making for the health care provider and patient.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/healthcare/phc_instruct.html.*

Dated: July 20, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–3715 Filed 7–30–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Quality Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 11th meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: August 30, 2007, from 1 p.m. to 4 p.m. [Eastern].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/quality/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how health information technology can provide the data needed for the development of quality measures that are useful to patients and others in the health care industry, automate the measurement and reporting of a comprehensive current and future set of quality measures, and accelerate the use of clinical decision support that can improve performance on those quality measures.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/quality_instruct.html.*

Dated: July 20, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–3716 Filed 7–30–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Report on Carcinogens (RoC) Availability of the Draft Background Documents on Captafol and ortho-Nitrotoluene and Request for Public Comment on the Draft Background Documents; Announcement of the Captafol and the ortho-Nitrotoluene Expert Panel Meeting

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Request for public comments and meeting announcement.

SUMMARY: The NTP announces the availability of the draft background documents for captafol and ortho-nitrotoluene on August 1, 2007, from the RoC Web site (*http://ntp.niehs.nih.gov/go/10091* see captafol or ortho-nitrotoluene) or in printed text from the RoC (see **FOR FURTHER INFORMATION CONTACT** below). The NTP invites the submission of public comments on the two draft background documents (see **SUPPLEMENTARY INFORMATION** below). The expert panel will meet on October 15–16, 2007, at the Sheraton Chapel Hill Hotel, Chapel Hill, North Carolina, to peer review the draft background documents for captafol and ortho-nitrotoluene and once completed make a recommendation regarding the listing status (i.e., known to be a human carcinogen, reasonably anticipated to be a human carcinogen, or not to list) for captafol and ortho-nitrotoluene in the 12th Edition of the RoC (12th RoC). The RoC expert panel meeting is open to the public with time scheduled for oral public comments. Attendance is limited only by the available meeting room space. Following the expert panel meeting and completion of the expert panel report, the NTP will post the final version of the background documents and the expert panel peer review reports on the RoC Web site.

DATES: The expert panel meeting for captafol and ortho-nitrotoluene will be held on October 15–16, 2007. The draft background documents for these

substances will be available for public comment on August 1, 2007. The deadline to submit written comments is October 3, 2007, and the deadline for pre-registration to attend the meeting and provide oral comments at the meeting is October 10, 2007. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 (voice), 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to: *niehsoeeo@niehs.nih.gov*. Requests should be made at least seven business days in advance of the event.

ADDRESSES: The RoC expert panel meeting on captafol and ortho-nitrotoluene will be held at the Sheraton Chapel Hill Hotel [One Europa Drive, Chapel Hill, North Carolina 27514, Phone: (919) 968–4900 FAX: (919) 968–3520]. Access to on-line registration and materials for the meeting is available on the RoC Web site: (*http://ntp.niehs.nih.gov/go/roc* see Expert Panel Meetings). Comments on the draft background documents should be sent to Dr. C.W. Jameson, RoC Director, NIEHS, P.O. Box 12233, MD EC–14, Research Triangle Park, NC 27709, FAX: (919) 541–0144, or *jameson@niehs.nih.gov*. Courier address: Report on Carcinogens, 79 T.W. Alexander Drive, Building 4401, Room 3118, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: Dr. C.W. Jameson, RoC Director, 919–541–4096, *jameson@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background

On April 16, 2007 (72 FR 18999 available at *http://ntp.niehs.nih.gov/go/9732*), NTP announced the RoC review process for the 12th RoC. Captafol and ortho-nitrotoluene are the first two substances (of a total of 14 candidate substances) to undergo formal review. The draft background documents for these two candidate substances will be available on the RoC Web site on August 1, 2007, or in printed text from the RoC Director (see **ADDRESSES** above). Availability of the draft background documents for other candidate substances will be announced via the NTP listserv and on the RoC Web site and expert panel meetings to review these substances will be announced via the **Federal Register**. Persons can register free-of-charge with the NTP listserv to receive notification when draft background documents are posted (*http://ntp.niehs.nih.gov/go/231*).

Captafol (CAS RN: 2425–06–1) is a broad-spectrum fungicide that was widely used in the United States prior to the mid 1980s on fruits, vegetables, and other plants, as well as on timber products. In 1999, the U.S. Environmental Protection Agency revoked all captafol tolerances except those for onions, potatoes, and tomatoes. Although many countries have now banned its use, captafol is still registered in some countries (such as Mexico). The Food and Drug Administration continues to monitor for captafol residues in domestic and imported food. The potential exists for past, extensive exposure for workers producing captafol and for agricultural workers because of past production and use of millions of pounds of captafol.

Ortho-Nitrotoluene (CAS RN: 88–72–2) is used to synthesize agricultural and organic chemicals, explosives, azo and sulfur dyes, and dyes for cotton, wool, silk, leather, and paper. ortho-Nitrotoluene is a high production volume (HPV) chemical, and its U.S. production was between 10 million and 50 million pounds for every four-year reporting period from 1986 to 2002. Exposure to ortho-nitrotoluene in the United States is primarily a result of occupational exposure during the production and use of this chemical.

Request for Comments

The NTP invites written public comments on the draft background documents on captafol and ortho-nitrotoluene. All comments received will be posted on the RoC Web site prior to the meeting and distributed to the expert panel and RoC staff for their consideration in the peer review of the draft background documents and/or preparing for the expert panel meeting. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Jameson (see **ADDRESSES** above) for receipt by October 3, 2007. Time is set aside on October 15–16, 2007, for the presentation of oral public comments at the expert panel meeting. Seven minutes will be available for each speaker (one speaker per organization). Persons can register on-line to present oral comments or contact Dr. Jameson (see **ADDRESSES** above). When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, email and sponsoring organization (if any). If possible, send a copy of the statement or talking points to Dr. Jameson by October 10, 2007. This statement will be provided to the expert panel to assist them in identifying issues for discussion and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on October 15–16, 2007, from 7:30–8:30 a.m. Persons registering at the meeting are asked to bring 25 copies of their statement or talking points for distribution to the expert panel and for the record.

Preliminary Agenda, Availability of Meeting Topics and Registration

Preliminary agenda topics include:

- Oral public comments on captafol
- Peer review of the background document on captafol
- Recommendation for listing status for captafol in the 12th RoC
- Oral public comments on ortho-nitroluene
- Peer review of the background document on ortho-nitrotoluene
- Recommendation for listing status for ortho-nitrotoluene in the 12th RoC

The meeting is scheduled for October 15–16, 2007, from 8:30 a.m. to adjournment each day. The review of ortho-nitrotoluene will immediately follow the review of captafol. A copy of the preliminary agenda, expert panel roster, and any additional information, when available, will be posted on the RoC Web site or may be requested from the RoC Director (see **ADDRESSES** above). Individuals who plan to attend the meeting are encouraged to register on-line by October 10, 2007, to facilitate planning for the meeting.

Background Information on the RoC

The RoC is a Congressionally mandated document that identifies and discusses agents, substances, mixtures, or exposure circumstances (collectively referred to as ''substances'') that may pose a hazard to human health by virtue of their carcinogenicity. Substances are listed in the report as either known or reasonably anticipated human carcinogens. The NTP prepares the RoC on behalf of the Secretary of Health and Human Services. Information about the RoC and the nomination process can be obtained from its homepage (*http://ntp.niehs.nih.gov/go/roc*) or by contacting Dr. Jameson (see **FOR FURTHER INFORMATION CONTACT** above). The NTP follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process is available on the RoC Web site: (*http://ntp.niehs.nih.gov/go/15208*) or in printed copy from the RoC Director.

Dated: July 20, 2007.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences, and National Toxicology Program.

[FR Doc. E7–14689 Filed 7–30–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the Announcement of Availability of Funds for Grants regarding Family Planning Services Delivery Improvement (SDI) Research are to be reviewed and discussed at this meeting. This program is sponsored by the Office of Populations Affairs. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Family Planning Services Delivery Improvement (SDI) Research.

Date: August 23, 2007 (Open on August 23 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: John M. Eisenberg Building, AHRQ Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, HARQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 24, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–3706 Filed 7–30–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07BE]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Research to Reduce Time to Treatment for Heart Attack/Myocardial Infraction for Rural American Indians/Alaska Natives (AI/AN)—NEW—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Every year, approximately 1.1 million Americans have a first or recurrent heart attack/myocardial infarction (MI) and about one third of these will be fatal. Early recognition of MI by both the victim and bystanders followed by prompt cardiac emergency and advanced care has a direct effect on patient outcomes (heart damage, morbidity and mortality): the shorter the delay to treatment, the better the outcomes. Results of a recent Behavioral Risk Factor Survey (BRFSS) survey showed that public recognition of major MI symptoms and the need for immediate action by calling 9–1–1 was poor and that there is a need for increased public health efforts. Patient delay accounts for most of the lag in treatment.

Data from the National MI Registry show that the greatest disparity for delay in treatment exists among the racial and ethnic groups of American Indian/Alaskan Native group. The NATIVE study shows that rural American Indians presenting with acute MI have marked delays in time to treatment (12% of patients waited between 12–24 hours and 23% waited more than 24 hours to present) thus, limiting treatment options; the primary cause of the delay was due to patient misunderstandings about the symptoms of MI.

The project will contribute to our understanding of AI/AN populations and their perceptions of and misconceptions about MI and the need for immediate treatment. Information gained from this project will provide the details needed to tailor message(s) for this population. The agency will develop culturally-tailored messages for native populations that will contribute to the existing National Heart Attack program (NHLBI) ''Act in Time'' messages.

There will be a minimum of 84 key informant interviews and 16 persons in the two focus groups. The key informants will consist of healthcare providers, community leader, and persons who have had an MI. Key informants will be identified for interviews through a clustered, multistate snowball sampling technique. In recognition of the tribal diversity; study participants will represent three AI/AN regions of the U.S.: Great Plains identified by the Aberdeen Area Indian Health Service area, the South West distinct to the Phoenix, Albuquerque and Tucson areas and Alaskan Natives. Interview participants will have established relationships with tribes or

are members of tribes, and have a good sense of cultural health beliefs.

The healthcare provider group will consist of nomination by the Indian Health Service Chief Medical Officer (IHSCMO), who will nominate 3 MD/NP's or PA's and 3 nurses in each region. The participating emergency care providers will each be asked to nominate 2 providers from a cardiology clinic (cardiologists or cardiac nurses) and/or a pre-hospital (EMT/Paramedic) provider. The 6 original from each region will subtotal to 18 emergency care providers plus the 2 individuals they each nominate will subtotal to 36 from each region, a total of 54 pre-hospital and cardiology providers (medical providers) key informant interviews covering all three regions.

The community key informants will consist of 3 tribal health directors who will nominate 3 community key informants from each region, who will then each nominate 2 additional community members to be interviewed for a sample of 30 community key informants.

The individual key informant interviews of the group of patients who have had an MI or have a high risk of MI, nominated by the physicians, nurses and community members will be asked to nominate individuals whom they know have had or are at risk for a heart attack. The medical providers and community members asked to participate in the key informant interviews will equal a *minimum* of approximately 27 health providers, 15 community members or 42 key informant interview, each contacts 2 individuals, a minimum of 168 respondents to the survey.

After the key informant interviews have been completed and analyzed there will be two community focus groups each comprised of 8 to 10 participants from all three regions held. The first involving patients who have had an MI and the second focus group will involve community members at risk for MIs.

There are no costs to the respondent except their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (in hours)
Healthcare providers	54	1	1	54
Community leaders	30	1	1	30
Community members interviews	168	1	1	168
(2) Community member focus group retreats	20	1	8	160
Total				412

Dated: July 25, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–14703 Filed 7–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–07–06BN]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to: *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Conduct a Chronic Fatigue Syndrome Registry Pilot Test (Bibb County, Georgia)—New—National Center for Infectious Diseases (NCID) Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is tasked with establishing a registry of chronic fatigue syndrome (CFS) and other fatiguing illnesses. The objective of the registry is to identify persons with unexplained fatiguing illnesses, including CFS, who access the healthcare system because of their symptoms. Patients will be between the ages of 12 and 59, inclusive.

Specific aims of the registry are; (1) Identify and enroll patients with CFS and other unexplained fatiguing illnesses who are receiving medical and ancillary medical care and describe their epidemiologic and clinical characteristics; (2) follow CFS patients and patients with other fatiguing illnesses over time to characterize the natural history of CFS and other unexplained fatiguing illnesses; (3) assess and monitor health care providers' knowledge, attitudes, and beliefs concerning CFS; (4) and to identify well-characterized CFS patients for clinical studies and intervention trials. These specific aims require inclusion of subjects in early stages of CFS (i.e., ill less than one year duration) who can be followed longitudinally to assess changes in their CFS symptoms. Data on persons with CFS in the general population has been collected in a separate study and is not an objective of this Registry.

In order to determine the most effective and cost-efficient design for achieving the objective and specific aims, CDC will conduct a pilot test of the Registry of CFS and other fatiguing illnesses in Bibb County, Georgia. The CFS Registry Pilot Test will assess two Registry designs for efficacy and efficiency in identifying adult and adolescent subjects with CFS who are

receiving medical and ancillary medical care. Specifically, the CFS Registry Pilot Test will evaluate surveillance of patients with CFS identified through physician practices and a surveillance of CFS patients identified by physicians and other health care providers.

The proposed study will begin when a provider refers a patient to the registry. Patients who consent to be contacted for the registry will be asked to complete a detailed telephone interview that screens for medical and psychiatric eligibility. Eligible subjects will be invited to have a clinical evaluation that comprises a physical examination; collection of blood, urine, and saliva specimens; a mental health interview; and self-administered questionnaires.

There is no cost to respondents other than their time. Patients who are clinically evaluated will be reimbursed for their time and effort. The total annualized burden hours are 2,557.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondent	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
Referring Providers	400	2	5/60	67
Patient Consent to be Contacted	677	1	10/60	113
Patient Telephone Interview	541	1	30/60	271
Patient Clinical Evaluation	234	1	540/60	2,106
Total Burden				2,557

Dated: July 24, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–14704 Filed 7–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Bureau of Primary Health Care (BPHC) Uniform Data System (OMB No. 0915–0193) Revision

The Uniform Data System (UDS) contains the annual reporting requirements for the cluster of primary care grantees funded by the HRSA. The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Public Housing Primary Care, and other grantees under section 330. The authorizing statute is section 330 of the Public Health Service Act, as amended.

HRSA collects data in the UDS which is used to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, BPHC requires a core set of data collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends.

The 2008 calendar year UDS will be revised in several ways. Certain UDS tables are being proposed for elimination or modification to streamline data collection and reporting. A limited number of clinical measures will be added for reporting quality of care, health outcomes, and disparities data. In addition, the tool used to report calendar year UDS data will be changed to a Web based tool.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Universal report	1,076	1	1,076	54	32,280
Grant report	150	1	150	18	2,700
Total	1,076		1,076		34,980

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to: *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: July 20, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–14680 Filed 7–30–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Sample Preparation and Exfoliated Cells/DNA.

Date: September 20, 2007.

Time: 9 a.m. to 5 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 6006, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd. Room 8053, Bethesda, MD 20892, 301/435–1822, *githenss@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, SPORE in Lymphoma, Prostate, Breast & Skin Cancers.

Date: September 26–27, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Caron Lyman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd, Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Prevention, Control and Population Sciences.

Date: October 4, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Wlodek Lopaczynski, MD, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd, Room 8131, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Discovery and Development.

Date: October 9–10, 2007.

Time: 8 a.m. to 1 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter J. Wirth, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328, 301–496–7565, *pw2q@nih.gov.*

(Catalogue of Federal Domestic Assistance program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: July 24, 2007.

Jennifer Spaeth

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3729 Filed 07–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 a meeting of the National Advisory Council on Aging.

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.

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 Advisory Council on Aging.

Date: September 25–26, 2007.

Closed: September 25, 2007, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: September 26, 2007, 8 a.m. to 1:15 p.m.

Agenda: Call to Order; Task Force on Minority Aging Research Report; Working Group on Program Report; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Robin Barr, PhD, Director, National Institute on Aging, Office of Extramural Affairs, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496-9322, *barr@nia.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3723 Filed 7–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel. Effect of Reactive Oxygen Species in Old Muscle.

Date: August 28, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Lewis, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3724 Filed 7–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 a meeting of the National Advisory Environmental Health Sciences Council.

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.

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 Advisory Environmental Health Sciences Council.

Date: September 17–18, 2007.

Open: September 17, 2007, 8:30 a.m. to 12:30 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: September 17, 2007, 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Open: September 18, 2007, 8:30 a.m. to 12 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Dennis R. Lang, PhD, Acting Director, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233/EC–3431, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–7729, *lang4@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: July 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3726 Filed 7–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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 a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

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.

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 Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 27, 2007.

Open: 8:30 a.m. to 12 p.m.

Agenda: To discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Madeline K. Turkeltaub, PhD, Deputy Director, Extramural Program, NIH/NIAMS, One Democracy Plaza, 6701 Democracy Blvd., Suite 800, MSC 4872, Bethesda, MD 20892–4872, 301–451–5888, *turkeltm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on

campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: July 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3727 Filed 7–30–07; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Statistical and Data Coordinating Center for Clinical Research in Infectious Diseases.

Date: August 22, 2007.

Time: 2 p.m. to 6 p.m.

Agenda: To Review and Evaluate Contract Proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Lynn Rust, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–3938, *lr228v@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: July 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3730 Filed 7–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

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.

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 discussions 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 Child Health and Human Development Council.

Date: September 10, 2007.

Open: 8 a.m. to 12:30 p.m.

Agenda: (1) A report by the Director, NICHD; (2) an annual review of the Division of Intramural Research; (3) a report of the Subcommittee on Planning and Policy; (4) a Demographic and Behavioral Sciences Branch Presentation; and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892,

Closed: 1:30 p.m. to 5:00 p.m.

Agenda: To Review and Evaluate Grant Applications and/or Proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health, and Human Development, NIH, 9000 Rockville Pike, MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496–1848.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nichd, nih.gov/about/nachhd.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: July 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3731 Filed 7–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Superfund Basic Research and Training Program Administrative Meeting.

Date: August 9, 2007.
Time: 2 p.m. to 5 p.m.
Agenda: To Review and Evaluate Grant Applications.
Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 3162, Research Triangle Park, NC 27709 (Telephone Conference Call).
Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919–541–7556.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: July 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3732 Filed 7–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Cochlea Development.
Date: August 13, 2007.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Edwin C. Clayton, PhD, Scientific Review Administrator Intern, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Metabolism, Energy Balance, and Immune Response.
Date: August 17, 2007.
Time: 10:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514, *jerkinsa@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Biomedical Imaging Technology Study Section.
Date: September 24–25, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Anterior Eye Disease Study Section.
Date: September 24–25, 2007.
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 Person: Jerry L. Taylor, PhD, Scientific Review Administrator, 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: Center for Scientific Review Special Emphasis Panel, Clinical Medical Imaging.
Date: September 24, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Cognitive Neuroscience Study Section.
Date: September 25–26, 2007
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 Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Medical Imaging Study Section.
Date: September 25, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator and Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Developmental Therapeutics Study Section.
Date: September 27–28, 2007.
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 Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurotransporters, Receptors, and Calcium Signaling Study Section.
Date: September 27–28, 2007.
Time: 8:30 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Healthy, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@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: July 25, 2007.

Jennifer Spaeth

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3725 Filed 7–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular and Cellular Neuroscience.

Date: August 3, 2007.

Time: 2 p.m. to 3:30 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting to the time limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893. National Institutes of Health, HHS).

Dated: July 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3728 Filed 7–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Science and Technology Directorate; Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Science and Technology Directorate (Office of National Laboratories within the Office of Research), DHS.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the National Bio and Agro-Defense Facility (NBAF).

SUMMARY: DHS announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate reasonable siting alternatives for the construction and operation of the proposed NBAF. DHS invites individuals, organizations, and agencies to present oral or written comments concerning the scope of the EIS, including the environmental issues and alternatives that the EIS should address.

DATES: The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until September 27, 2007. DHS will consider all comments received, postmarked, or emailed by that date in defining the scope of the EIS. DHS also intends to hold public meetings during this comment period to provide the public with added opportunities to present comments, ask questions, and discuss concerns regarding the EIS with DHS officials.

All public meetings are listed in the **SUPPLEMENTARY INFORMATION** section.

DHS will publish additional notices regarding the dates, times, and locations of the public meetings in local newspapers in advance of the scheduled meetings. Any necessary changes will be announced in the local media and on the NBAF Web site (*http://www.dhs.gov/nbaf*).

ADDRESSES: Comments may be submitted by mail, online, fax, or voice mail:

U.S. Mail: Department of Homeland Security; Science and Technology Directorate; James V. Johnson; Mail Stop #2100; 245 Murray Lane SW., Building 410; Washington, DC 20528; Online: *http://www.dhs.gov/nbaf* (click on Public Involvement); Toll-free fax: 1–866–508-NBAF (6223); or Toll-free voice mail: 1–866–501–NBAF (6223).

Updates and other information will be posted to the NBAF EIS Web page at: *http://www.dhs.gov/nbaf.*

In addition to providing comments at the public meetings, all interested parties are invited to record their comments, ask questions concerning the EIS, or request to be placed on the EIS mailing or document distribution list by leaving a message on the EIS Hotline at (toll free) 1–866–501–NBAF (6223). The Hotline will have instructions on how to record comments and requests. Additional information on public participation opportunities is included in the **SUPPLEMENTARY INFORMATION** section.

All interested persons and organizations including minority, low income, disadvantaged, and Native American groups are urged to participate in this environmental impact review process. Assistance will be provided upon request to anyone with special needs to facilitate their participation in the process.

SUPPLEMENTARY INFORMATION: Consultations between DHS and the United States Department of Agriculture (USDA) on a coordinated biodefense strategy called for in Homeland Security Presidential Directives 9 and 10 have revealed a gap that must be filled by an integrated research, development, test and evaluation (RDT&E) infrastructure for combating bio and agro terrorism threats. DHS S&T is responsible for filling this gap in a safe, secure, and environmentally sound manner. The proposed NBAF is envisioned to provide the nation with the first integrated agricultural, zoonotic disease, and public health RDT&E facility with the capability to address threats from human pathogens, high consequence zoonotic disease agents, and foreign animal diseases.

DHS intends to select a single site for the construction of the NBAF. A competitive selection process to identify and evaluate potential candidate sites, other than Plum Island, for the NBAF was recently completed. This process was initiated by issuance of a notice of request for Expressions of Interest (EOI), on January 19, 2006 (71 **Federal Register** 3107–3109). DHS has determined that the following ''Site Alternatives'' are reasonable alternative sites for the construction of the NBAF:

Manhattan Campus Site Manhattan, Kansas: This alternative would locate the NBAF within what is identified as the Kansas City Health Corridor on the Kansas State University Campus.

South Milledge Avenue Site, Athens, Georgia: This alternative would locate the NBAF on the campus of the University of Georgia Whitehall Farm.

Texas Research Park Site, San Antonio, Texas: This alternative would locate the NBAF on the land of the Texas Research Park in San Antonio Texas.

Umstead Research Farm Site, Butner, North Carolina: This alternative would

locate the NBAF on the Umstead Research Farm site in Butner, North Carolina.

Flora Industrial Park Site, Flora, Mississippi: This alternative would locate the NBAF in Flora Industrial Park in Flora, Mississippi.

Although not included in the competitive selection process outlined above, the DHS-owned Plum Island Animal Disease Center (PIADC) will also be considered as a reasonable alternative.

Plum Island Site, Plum Island Animal Disease Center, Plum Island, New York: This alternative would locate the new NBAF on the same federally owned property as the existing PIADC.

Additionally, a No Action alternative will also be evaluated. Under the No Action Alternative, the NBAF would not be built and DHS would continue to use PIADC with necessary investments in facility upgrades, replacements, and repairs so that it could continue to operate at its current capability.

Additional alternatives may be identified during the public scoping process. DHS invites comments and suggestions on alternatives that should be considered. A preferred location for the construction of the NBAF has not been identified at this time.

DATES: The Public Meeting dates are:

1. Wednesday, August 22, 2007, from 7 p.m. to 10 p.m. Old Saybrook, CT Saybrook Point Inn, Two Bridge Street, Old Saybrook, CT 06475.

2. Thursday, August 23, 2007, from 7 p.m. to 10 p.m. Greenport, NY, Southold Town Hall, 53095 Main Road (Route 25), Greenport, NY 11971.

3. Tuesday, August 28, 2007, from 7 p.m. to 10 p.m. Manhattan, KS, Kansas State University, K-State Student Union, Manhattan, KS 66505.

4. Thursday, August 30, 2007, from 7 p.m. to 10 p.m. Flora, MS, First Baptist Church, Christian Life Center, 121 Center Street, Flora, MS 39071.

5. Thursday, September 6, 2007, from 1:30 p.m. to 4:30 p.m. Washington, DC, Grand Hyatt Washington, 1000 H Street NW, Washington, DC 20001.

6. Tuesday, September 11, 2007, from 7 p.m. to 10 p.m. San Antonio, TX, Marriott Plaza San Antonio, 555 South Alamo Street, San Antonio, TX 78205.

7. Tuesday, September 18, 2007, from 7 p.m. to 10 p.m. Creedmoor, NC, South Granville High School, 701 North Crescent Drive, Creedmoor, NC 27522.

8. Thursday, September 20, 2007, from 7 p.m. to 10 p.m. Athens, GA, The University of Georgia, Center for Continuing Education, 1197 South Lumpkin Street, Athens, GA 30602.

Onsite registration and sign-up to present oral comments will be available at 6 p.m. for all meetings (12:30 p.m. for the Washington, DC meeting).

Preliminary Identification of Environmental Issues: The following issues have been tentatively identified for analysis in the EIS. DHS invites suggestions for the addition or deletion of items on this list:

- Land-use plans, policies, and controls;
- Visual resources;
- Air quality;
- Acoustic (noise) environment;
- Geology and soil characteristics;
- Water resources, including surface and groundwater, floodplains and wetlands, and water use and quality;
- Plants and animals, and their habitats, including Federally-listed threatened or endangered species and their critical habitats, wetlands and floodplains;
- Cultural resources, including historic and prehistoric resources and traditional cultural properties encompassing Native American or culturally important sites;
- Human health and safety (involving both members of the public and laboratory workers);
- Socioeconomic effects that may be related to the new construction and facility operations;
- Public infrastructure, including utilities and local transportation;
- Waste management practices and activities including the handling, collection, treatment, and disposal of research wastes; and
- Compliance with all applicable federal, tribal, state, and local statutes and regulations and with international agreements, and required environmental permits, consultations and notifications.

The list of issues discussed above for consideration in the NBAF EIS is preliminary and is intended to facilitate public comment. It is not intended to be all-inclusive, nor does it imply any predetermination or relative importance of potential impacts. During the process of preparing the EIS, DHS will evaluate the potential environmental and human health impacts of the alternatives, together with engineering and socioeconomic considerations. The NBAF EIS will present the results of this environmental impact evaluation process.

DHS anticipates that certain classified or otherwise protected information will be consulted in the preparation of this EIS and used by decision-makers to decide where and how to relocate the NBAF. To the extent allowable, the EIS will summarize and present this information in a publicly releasable form.

EIS Preparation and Public Participation Process: The process for preparing the NBAF EIS begins with the publication of this Notice of Intent in the **Federal Register**. After the close of the public scoping period, DHS will begin the environmental impact evaluation process. DHS expects to issue a draft NBAF EIS for public review in the spring of 2008. Public comments on the draft will be accepted during a comment period of at least 60 days following its publication. DHS will consider the public comments received on the draft EIS, perform further environmental impact evaluation if needed, and expects to publish a final NBAF EIS during fall 2008. No sooner than 30 days after publication of the Notice of Availability of the final NBAF EIS in the **Federal Register**, DHS will issue its Record of Decision and publish it in the **Federal Register**. In addition to the **Federal Register**, the Notices of Availability for the draft EIS, final EIS, and EIS Record of Decision will be provided through direct mail and other media.

Authority: 42 U.S.C. 4321–4347 (National Environmental Policy Act).

Dated: July 30, 2007.

Jay M. Cohen,

Under Secretary, Science & Technology.

[FR Doc. E7–14692 Filed 7–30–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–27923]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0019, 1625–0062, 1625–0082, and 1625–0092

AGENCY: Coast Guard, DHS.

ACTION: Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard is forwarding four Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0019, Alternative Compliance for International and Inland Navigation Rules—33 CFR Parts 81 and 89; (2) 1625–0062, Approval of Alterations to Marine Portable Tanks; Approval of Non-Specification Portable Tanks; (3) 1625–0082, Navigation Safety

Information and Emergency Instructions for Certain Towing Vessels; and (4) 1625–0092, Sewage and Graywater Discharge Records for Certain Cruise Vessels Operating on Alaskan Waters. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 30, 2007.

ADDRESSES: To make sure your comments and related material do not enter the docket [USCG–2007–27923] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. (b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room W12–140 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 or by contacting (b) OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System (DMS) at *http://dms.dot.gov.* (b) By e-mail to: *nlesser@omb.eop.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of complete ICRs are available through this docket on the Internet at *http://dms.dot.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, room 1236 (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collections of information to determine if collections are necessary in the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICR(s) addressed. Comments to DMS must contain the docket number of this request, [USCG 2007–27923]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the August 30, 2007.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to: *http://dms.dot.gov.* They will include any personal information you provide. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2007–27923], indicate the specific section of this document or the ICR to which each comment applies, providing a reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–1/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to: *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in 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 the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit: *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (72 FR 24594, May 3, 2007) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request:

1. *Title:* Alternative Compliance for International and Inland Navigation Rules—33 CFR parts 81 and 89.

OMB Control Number: 1625–0019.

Type of Request: Extension of a currently approved collection.

Affected Public: Vessel owners, operators, builders, and agents.

Forms: None.

Abstract: The information collected provides an opportunity for an owner, operator, builder, or agent of a unique vessel to present reasons why the vessel cannot comply with existing International/Inland Navigation Rules and how alternative compliance can be achieved. If appropriate, a Certificate of Alternative Compliance is issued.

Burden Estimate: The estimated burden has decreased from 180 hours to 122 hours a year.

2. *Title:* Approval of Alterations to Marine Portable Tanks; Approval of Non-Specification Portable Tanks.

OMB Control Number: 1625–0062.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners of marine portable tanks and owners/designers of non-specification portable tanks.

Forms: None.

Abstract: The information will be used to evaluate the safety of proposed alterations to marine portable tanks and non-specification portable tank designs used to transfer hazardous materials during off-shore operations.

Burden Estimate: The estimated burden remains unchanged at 18 hours a year.

3. *Title:* Navigation Safety Information and Emergency Instructions for Certain Towing Vessels.

OMB Control Number: 1625–0082.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners, operators, and masters of vessels.

Forms: None.

Abstract: Navigation safety regulations help assure the mariner piloting a towing vessel has adequate equipment, charts, maps, and other publications. For inspected towing vessels, a muster list and emergency instructions provide effective plans and references for crew to follow in an emergency situation.

Burden Estimate: The estimated burden has decreased from 367,701 hours to 362,907 hours a year.

4. *Title:* Sewage and Graywater Discharge Records for Certain Cruise Vessels Operating on Alaskan Waters.

OMB Control Number: 1625–0092.

Type Of Request: Extension of a currently approved collection.

Affected Public: Owners, operators, and masters of vessels.

Forms: None.

Abstract: To comply with the Consolidated Appropriations Act, 2001, Public Law 106–554, 114 Stat. 2763, 2763A–315, this information collection is needed to enforce sewage and graywater discharge requirements from certain cruise ships operating on Alaskan waters.

Burden Estimate: The estimated burden has decreased from 910 hours to 637 hours a year.

Dated: July 20, 2007.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E7–14696 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Fee Schedule for Processing Requests for Map Changes, for Flood Insurance Study Backup Data, and for National Flood Insurance Program Map and Insurance Products

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice contains the revised fee schedules for processing certain types of requests for changes to national Flood Insurance Program (NFIP) maps, for processing requests for Flood Insurance Study (FIS) technical and administrative support data, and for processing requests for particular NFIP map and insurance products. The changes in the fee schedules will allow the Federal Emergency Management Agency (FEMA) to reduce further the expenses to the NFIP by recovering more fully the costs associated with processing conditional and final map change requests; retrieving, reproducing, and distributing technical and administrative support data related to FIS analyses and mapping; and producing, retrieving, and distributing particular NFIP map and insurance products.

EFFECTIVE DATE: The revised fee schedules are effective for all requests dated October 1, 2007, or later.

FOR FURTHER INFORMATION CONTACT: William Blanton Jr., CFM, Section Chief, Engineering Management Section, Risk Analysis Branch, 500 C Street, SW., Washington, DC 20472; by telephone at (202) 646–3151 or by facsimile at (202) 646–2787 (not toll-free calls); or by e-mail at *william.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: This notice contains the revised fee schedules for processing certain types of requests for changes to NFIP maps, requests for FIS technical and administrative support data, and requests for particular NFIP map and insurance products.

Effective Dates. The revised fee schedule for map changes is effective for all requests dated October 1, 2007, or later. The revised fee schedule supersedes the current fee schedule, which was established on October 30, 2005.

The revised fee schedule for requests for FIS backup data also is effective for all requests dated October 1, 2007, or later. The revised fee schedule supersedes the current fee schedule, which was established on October 30, 2005.

The revised fee schedule for requests for particular NFIP map and insurance products, which are available through the FEMA Map Service Center (MSC) is effective for all written requests, on-line Internet requests made through the FEMA Flood Map Store, and all telephone requests received on or after October 1, 2007. The revised fee schedule supersedes the current fee schedule, which was established on October 30, 2005.

Evaluations Performed. To develop the revised fee schedule for conditional and final map change requests, FEMA evaluated the actual costs of reviewing and processing requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Conditional Letters of Map Revision (CLOMRs), Letters of Map Revision Based on Fill (LOMR–Fs), and Letters of Map Revision (LOMRs).

To develop the revised fee schedule requests for FIS technical and administrative support data, FEMA evaluated the actual costs of reviewing, reproducing, and distributing archived data in seven categories. These categories are discussed in more detail below.

To develop the revised fee schedule for requests for particular NFIP map and insurance products, FEMA: (1) Evaluated the actual costs incurred at the MSC for producing, retrieving, and distributing those products; (2) analyzed historical sales, cost data, and product unit cost for unusual trends or anomalies; and, (3) analyzed the effect of program changes, new products, technology investments, and other factors on future sales and product costs. The products covered by this notice are discussed in detail below.

Periodic Evaluations of Fees. A primary component of the fees is the prevailing private-sector rates charged to FEMA for labor and materials. Because these rates and the actual review and processing costs may vary from year to year, FEMA will evaluate the fees periodically and publish revised fee schedules, when needed, as notices in the **Federal Register**.

Fee Schedule for Requests for Conditional Letters of Map Amendment and Conditional and Final Letters of Map Revision Based on Fill

Based on a review of actual cost data for Fiscal Year 2005 and Fiscal Year 2006, FEMA maintained the following review and processing fees, which are to be submitted with all requests:

Request for single-lot/single-structure CLOMA and CLOMR–F: $500.

Request for single-lot/single-structure LOMR–F: $425.

Request for single-lot/single-structure LOMR–F based on as-built information (CLOMR–F previously issued by FEMA): $325.

Request for multiple-lot/multiple-structure CLOMA: $700.

Request for multiple-lot/multiple-structure CLOMR–F and LOMR–F: $800.

Request for multiple-lot/multiple-structure LOMR-F based on as-built information (CLOMR–F previously issued by FEMA): $700.

Fee Schedule for Requests for Conditional Map Revisions

Based on a review of actual cost data for Fiscal Year 2005 and Fiscal Year 2006, FEMA established the following review and processing fees, which are to be submitted with all requests that are not otherwise exempted under 44 CFR 72.5:

Request based on new hydrology, bridge, culvert, channel, or combination thereof: $4,400.

Request based on levee, berm, or other structural measure: $5,500.

Fee Schedule for Requests for Map Revisions

Based on a review of actual cost data for Fiscal Year 2005 and Fiscal Year 2006, FEMA established the following review and processing fees, which are to be submitted with all requests that are not otherwise exempted under 44 CFR 72.5, requesters must submit the review and processing fees shown below with requests for LOMRs dated October 1, 2007, or later that are not based on structural measures on alluvial fans.

Request based on bridge, culvert, channel, hydrology, or combination thereof: $4,800.

Request based on levee, berm, or other structural measure: $6,500.

Request based on as-built information submitted as follow-up to CLOMR: $4,800.

Fees for Conditional and Final Map Revisions Based on Structural Measures on Alluvial Fans

Based on a review of actual cost data for Fiscal Year 2005 and Fiscal Year 2006, FEMA has maintained $5,600 as the initial fee for requests for CLOMRs and LOMRs based on structural measures on alluvial fans. FEMA will also continue to recover the remainder of the review and processing costs by invoicing the requester before issuing a determination letter, consistent with current practice. The prevailing private-sector labor rate charged to FEMA ($60 per hour) will continue to be used to calculate the total reimbursable fees.

Fee Schedule for Requests for Flood Insurance Study Backup Data

Non-exempt requestors of FIS technical and administrative support data must submit fees shown below with requests dated October 1, 2007, or later. These fees are based on the complete recovery costs to FEMA for retrieving, reproducing, and distributing the data, as well as maintaining the library archives, and for collecting and depositing fees. Based on a review of actual cost data for Fiscal Year 2005 and Fiscal Year 2006, FEMA maintained the following review and processing fees from the October 30, 2005, fee schedule, which are to be submitted with all requests.

All entities except the following will be charged for requests for FIS technical and administrative support data:

- Private architectural-engineering firms under contract to FEMA to perform or evaluate studies and restudies;
- Federal agencies involved in performing studies and restudies for FEMA (i.e., U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, and Tennessee Valley Authority);
- Communities that have supplied the Digital Line Graph base to FEMA and request the Digital Line Graph data (Category 6 below);
- Communities that request data during the statutory 90-day appeal period for an initial or revised FIS for that community;
- Mapped participating communities that request data at any time other than during the statutory 90-day appeal period, provided the data are requested for use by the community and not a third-party user; and
- State NFIP Coordinators, provided the data requested are for use by the State NFIP Coordinators and not a third-party user.

FEMA has established seven categories into which requests for FIS backup data are separated. These categories are:

(1) Category 1—Paper copies, microfiche, or diskettes of hydrologic and hydraulic backup data for current or historical FISs;

(2) Category 2—Paper or mylar copies of topographic mapping developed during FIS process;

(3) Category 3—Paper copies or microfiche of survey notes developed during FIS process;

(4) Category 4—Paper copies of individual Letters of Map Change (LOMCs);

(5) Category 5—Paper copies of Preliminary Flood Insurance Rate Map or Flood Boundary and Floodway Map panels;

(6) Category 6—Computer tapes or CD–ROMs of Digital Line Graph files, Digital Flood Insurance Rate Map files, or Digital LOMR attachment files; and

(7) Category 7—Computer diskettes and user's manuals for FEMA computer programs.

FEMA established the initial non-refundable fee of $135 non-exempt requesters of FIS technical and administrative support data pay to initiate their request under Categories 1, 2, and 3 above. This fee covers the preliminary costs of research and retrieval. If the data requested are available and the request is not cancelled, the final fee due is calculated as a sum of standard per-product charge plus a per-case surcharge of $93, designed to recover the cost of library maintenance and archiving. The total costs of processing requests in Categories 1, 2, and 3 will vary based on the complexity of the research involved in retrieving the data and the volume and medium of data to be reproduced and distributed. The initial fee will be applied against the total costs to process the request, and FEMA will invoice the requester for the balance plus the per-case surcharge before the data are provided. No data will be provided to a requester until all required fees have been paid.

No initial fee is required to initiate a request for data under Categories 4 through 7. Requesters will be notified by telephone about the availability of the data and the fees associated with the requested data.

As with requests for data under Categories 1, 2, and 3, no data will be provided to requesters until all required fees are paid. A flat user fee for each of these categories of requests, shown below, will continue to be required.

Request Under Category 4 (First Letter): $40.

Request Under Category 4 (Each additional letter): $10.

Request Under Category 5 (First panel): $35.

Request Under Category 5 (Each additional panel): $2.

Request Under Category 6 (per county/digital LOMR attachment shapefiles): $150.

Request Under Category 7 (per copy): $25.

Fee Schedule for Requests for Map and Insurance Products

The MSC distributes a variety of NFIP map and insurance products to a broad range of customers, including Federal,

State, and local government officials; real estate professionals; insurance providers; appraisers; builders; land developers; design engineers; surveyors; lenders; homeowners; and other private citizens. The MSC distributes the following products:

- Paper (printed) copies of Conversion Letters;
- Paper (printed) copies of Flood Hazard Boundary Maps (FHBMs);
- Paper (printed) copies of Flood Insurance Rate Maps (FIRMs);
- Paper (printed) copies of Digital Flood Insurance Rate Maps (DFIRMs);
- Printed copies of Flood Insurance Studies (FISs), including the narrative report, tables, Flood Profiles, and other graphics;
- Paper (printed) copies of Flood Boundary and Floodway Maps (FBFMs), when they are included as an exhibit in the FIS;
- Digital Q3 Flood Data files, which FEMA developed by scanning the published FIRM and vectorizing a thematic overlay of flood risks;
- Digital Q3 Flood Data files for Coastal Barrier Resource Areas (CBRA Q3 Flood Data files);
- Flood Map Status Information Service (FMSIS), through which FEMA provides status information for effective NFIP maps;
- Letter of Map Change (LOMC) Subscription Service, through which FEMA makes certain types of LOMCs available biweekly on CD-ROM;
- Paper (printed) and CD copies of NFIP Insurance Manual (Full Manual), which provides vital NFIP information for insurance agents nationwide;
- Paper (printed) copies of NFIP Insurance Manual (Producer's Edition), which is used for reference and training purposes;
- Community Map Action List (CMAL), which is a semimonthly list of communities and their NFIP status codes;
- Digital copies of Conversion Letters, downloadable from the web;
- Digital copies of Flood maps, available on CD-ROM and downloadable from the web; which can be purchased by panel or in community, county or state kits;
- Digital copies of FISs and FBFMs (where applicable), including the narrative report, tables, Flood Profiles, and other graphics, on CD–ROM and downloadable from the web;
- DFIRM Database (DB), with and without orthographic photos, on CD–ROM and downloadable from the web;
- FIRMette, a user-defined ''cut-out'' section of a flood map at 100% map scale designed for printing on a standard office printer.
- F–MIT Basic Version 1.0, which is a view tool for map images, on CD–ROM and downloadable from the web;
- DFIRM CD Viewer (formerly F–MIT Pro), which is a view tool for map images, on CD–ROM;
- FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners* on CD–ROM; and
- MHIP—*Multi-year Hazard Implementation Plan* on CD–ROM.

For more information on the map and insurance products available from the MSC, interested parties are invited to visit the MSC Web site at *http://msc.fema.gov.*

Based on a review of actual cost data and future trends, FEMA has revised the fee schedule for the map and insurance products that are available from the MSC. For requests for paper copies of conversion letters, FHBMs, FIRMs, DFIRMs, FBFMs, and FISs, FEMA has increased both the processing fee and the shipping cost; for digital copies of FHBMs, FIRMs, DFIRMs, FBFMs, and FISs on CD–ROM, FEMA has increased the processing fee and decreased the shipping cost; for digital copies of conversion letters, FHBMs, FIRMs, DFIRMs, FBFMs, and FISs downloadable from the web, FEMA has increased the processing fee; for DFIRM DBs (with and without orthographic photos), Q3 Flood Data Files, CBRA Flood Data Files, FMSIS, LOMC Subscription Service, FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners,* MHIP, DFIRM CD Viewer, FEMA has changed the shipping cost on the first two CDs, but have not increased the cost of the additional CDs. Federal, State, and local governments continue to be exempt from paying fees for the map products. The revised fee schedule for the current and new products is shown in the following table.

Product	Current fee	Shipping
Paper:		
Letters	$4.00 per letter	$.041 per letter for first 10 plus $0.10 for each additional letter.
Maps	$4.00 per panel	$.041 per panel for first 10 plus $0.10 for each additional panel.
Floodways (as part of studies)	$4.00 per panel	$.041 per panel for first 10 plus $0.10 for each additional panel.
Studies	$9.00 per study	$5.00 per study plus $.50 for each additional study.
Hurry Charge (added to regular charge)	$33.00	N/A.
Internet Products:		
FIRMettes	Free	N/A.
Letters	$2.50 per letter	N/A.
Downloadable Maps	$2.50 per panel	N/A.
Downloadable Floodways	$2.50 per panel	N/A.
Downloadable Studies	$5.00 per study	N/A.
DFIRM Database (DB)	$10.00 per DB	N/A.
CD–ROM:		
CD Maps	$4.00 per panel	$1.75 for first 2 CDs and $0.25 for each additional CD.
CD Floodways	$4.00 per panel	$1.75 for first 2 CDs and $0.25 for each additional CD.
CD Studies	$6.00 per study	$1.75 for first 2 CDs and $0.25 for each additional CD.
DFIRM DB	$10.00 per database	$1.75 for first 2 CDs and $0.25 for each additional CD.
DFIRM w/Orthos	$10.00 per database	$1.75 for first 2 CDs and $0.25 for each additional CD.

Product	Current fee	Shipping
Q3 on CD	$50.00 per CD–ROM	$1.75 for first 2 CDs and $0.25 for each additional CD.
CBRA Q3 on CD	$50.00 per CD–ROM or $200 for all 5 Q3 CDs.	$1.75 for first 2 CDs and $0.25 for each additional CD.
FMSIS (Individual Orders)	$13.00 per State or $38.00 for entire USA	$1.75 for first 2 CDs and $0.25 for each additional CD.
FMSIS (Annual Subscription)	$148.00 per state or $419.00 for entire USA	N/A.
LOMC Subscription Service (Individual Orders).	$85.00 per issue	$1.75 for first 2 CDs and $0.25 for each additional CD.
LOMC Subscription Service (Annual Subscriptions).	$2,000 per year	N/A.
FEMA's Guidelines and Specifications for Flood Hazard Mapping Partners on CD.	$2.60	$1.75 for first 2 CDs and $0.25 for each additional CD.
MHIP—Multi-Hazard Implementation Plan	$2.60	$1.75 for first 2 CDs and $0.25 for each additional CD.
View Tool:		
F–MIT Light on Web	Free	N/A.
F–MIT Light on CD	Free	N/A.
DFIRM CD Viewer (formerly F–MIT Pro)	$30.00 per Viewer	$1.75 for first 2 CDs and $0.25 for each additional CD.
Manuals:		
NFIP Insurance Manual (Full Manual)	$25.00 per subscription for two years	N/A.
NFIP Insurance Manual (Producer's Edition).	$15.00 per subscription for two years	N/A.
NFIP Insurance Manual (Full Manual) on CD.	$25.00 per subscription for two years	N/A.
Other:		
Community Map Action List (CMAL)	Free	N/A.

Payment Submission Requirements

Fee payments for non-exempt requests must be made in advance of services being rendered. These payments shall be made in the form of a check, money order, or by credit card payment. Checks and money orders must be made payable, in U.S. funds, to the *National Flood Insurance Program.*

FEMA will deposit all fees collected to the National Flood Insurance Fund, which is the source of funding for providing these services.

Dated: July 17, 2007.

David I. Maurstad,

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

[FR Doc. E7–14712 Filed 7–30–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Each year the Federal Emergency Management Agency (FEMA) is required by the Write-Your-Own (WYO) program Financial Assistance/Subsidy Arrangement (Arrangement) to notify the private insurance companies (Companies) and make available to the Companies the terms for subscription or re-subscription to the Arrangement. In keeping with that requirement, this notice provides the terms to the Companies to subscribe or re-subscribe to the Arrangement.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, FEMA, 500 C Street, SW., Washington, DC 20472, 202–646–3429 (phone), 202–646–3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

SUPPLEMENTARY INFORMATION: Under the Arrangement, approximately 90 private sector property insurers issue flood insurance policies and adjust flood insurance claims under their own names based on the Arrangement with the Federal Insurance Administration (FIA) (44 CFR part 62, appendix A). The WYO insurers receive an expense allowance and remit the remaining premium to the Federal Government. The Federal Government pays WYO insurers for flood losses and pays loss adjustment expenses based on a fee schedule. Litigation costs, including court costs, attorney fees, judgments, and settlements, are paid by FIA based on submitted documentation. The Arrangement provides that under certain circumstances reimbursement for litigation costs will not be made. The complete Arrangement is published in 44 CFR part 62, appendix A. Each year FEMA is required to publish in the **Federal Register** and make available to the Companies the terms for subscription or re-subscription to the Financial Assistance/Subsidy Arrangement. During the 2006–2007 Arrangement year FEMA published (71 FR 54678, Sept. 18, 2006) notice of the changes to the Arrangement. No changes have been made to the Arrangement since the publication of the previous notice; however changes to the arrangement are contemplated for the future.

During September 2007, FEMA will send a copy of the offer for the 2007–2008 Arrangement year, together with related materials and submission instructions, to all private insurance companies participating under the current 2006–2007 Arrangement. Any private insurance company not currently participating in the WYO Program but wishing to consider FEMA's offer for 2007–2008 may request a copy by writing: Federal Emergency Management Agency, Mitigation Division, Attn: WYO Program, 500 C Street, SW., Washington, DC 20472, or contact Edward Connor at 202–646–3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

Dated: July 23, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–14716 Filed 7–30–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

[Docket No. NCS–2007–0003]

National Security Telecommunications Advisory Committee

AGENCY: National Communications System, DHS.

ACTION: Notice of Partially Closed Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will be meeting by teleconference: the meeting will be partially closed.

DATES: Thursday, August 16, 2007, from 2 p.m. until 3 p.m.

ADDRESSES: The meeting will take place by teleconference. For access to the conference bridge and meeting materials, contact Mr. William Fuller at (703) 235–5521 or by e-mail at: *william.c.fuller@dhs.gov* by 5 p.m. on Friday, August 10, 2007. If you desire to submit comments, they must be submitted by August 23, 2007. Comments must be identified by NCS–2007–0003 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: NSTAC1@dhs.gov*. Include docket number in the subject line of the message.
- *Mail:* Office of the Manager, National Communications System (N5), Department of Homeland Security, Washington, DC, 20529.
- *Fax:* 1–866–466–5370.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and NCS–2007–0003, the docket number for this action. Comments received will be posted without alteration at: *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NSTAC, go to: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Kiesha Gebreyes, Chief, Industry Operations Branch at (703) 235–5525, e-mail: *Kiesha.Gebreyes@dhs.gov* or write the Deputy Manager, National Communications System, Department of Homeland Security, CS&C/NCS/N5.

SUPPLEMENTARY INFORMATION: The NSTAC advises the President on issues and problems related to implementing national security and emergency preparedness telecommunications policy. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. App.1 *et seq.*).

At the upcoming meeting, between 2 p.m. and 2:25 p.m., the members will receive comments from government stakeholders, and discuss and vote on the NSTAC's International Task Force (ITF) Report. This portion of the meeting will be open to the public.

Between 2:25 p.m. and 3 p.m., the committee will discuss network security and the global communications environment. This portion of the meeting will be closed to the public.

Persons with disabilities who require special assistance should indicate this when arranging access to the teleconference and are encouraged to identify anticipated special needs as early as possible.

Basis for Closure: The network security and global communications environment discussions will contain sensitive information concerning system threats and explicit physical/cyber vulnerabilities of the critical domestic communications infrastructure. Public disclosure of such information would heighten awareness of potential vulnerabilities and increase the likelihood of exploitation by terrorists or other motivated adversaries. Pursuant to Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*), the Department has determined that this discussion will concern matters which, if disclosed, would be likely to frustrate significantly the implementation of a proposed agency action. Accordingly, the relevant portion of this meeting will be closed to the public pursuant to the authority set forth in 5 U.S.C. 552b(c)(9)(B).

Dated: July 12, 2007.

Sallie McDonald

Director, National Communications System.

[FR Doc. E7–14693 Filed 7–30–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–601, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: I–601, Application for Waiver of Grounds of Inadmissibility; OMB Control Number 1615–0029.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 1, 2007.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at: *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0029 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–601. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information collected on this form is used by U.S Citizenship and Immigration Services (USCIS) to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,500 responses at 1½ hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 23,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main.* We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: July 25, 2007.

Richard Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–14690 Filed 7–30–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–080 6350–DP; HAG 07–0–158]

Salem District Resource Advisory Committee:

Pursuant to the Federal Advisory Committee Act, the Department of the Interior Bureau of Land Management (BLM) announces the following advisory committee meeting:

Name: Salem District Resource Advisory Committee.

Time and Date: 8:30 a.m.to 4 p.m. August 16, 2007 or August 21, 2007 if needed.

Place: Salem District Office, 1717 Fabry Road SE., Salem, OR 97306.

Status: Open to the public.

Matters To Be Considered: The Resource Advisory Committee will consider proposed projects for Title II funding under section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393) that focus on maintaining or restoring water quality, land health, forest ecosystems, and infrastructure.

FOR FURTHER INFORMATION CONTACT: Program information, meeting records, and a roster of committee members may be obtained from Randy Gould, Salem District Designated Official, 1717 Fabry Road, Salem, OR 97306. 503–375–5682. The meeting agenda will be posted at: *http://www.blm.gov/or/districts/salem/rac* when available.

Should you require reasonable accommodation, please contact the BLM Salem District 503–375–5682 as soon as possible.

Aaron Horton,

District Manager.

[FR Doc. E7–14782 Filed 7–30–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–921–1310–FI–07; NMNM 111742]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 111742

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, and 43 CFR 3108.2–3, the Bureau of Land Management (BLM) received a petition for reinstatement of Non-Competitive oil and gas lease NMNM 111742 from the lessee, Blue Dolphin Energy, LLC, for lands in Rio Arriba County, New Mexico. The petition was filed on time and it was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bernadine T. Martinez, BLM, New Mexico State Office, at (505) 438–7530.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of $5.00 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease NMNM 111742, effective the date of termination, March 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

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

Dated: July 24, 2007.

Bernadine T. Martinez,

Land Law Examiner.

[FR Doc. E7–14786 Filed 7–30–07; 8:45 am]

BILLING CODE 4310–FB–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 July 14, 2007.

Pursuant to § 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 August 15, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ALABAMA

Jefferson County

Graymont School, (Civil Rights Movement in Birmingham, Alabama 1933–1979 MPS),

300 Eighth Ave. W, Birmingham, 07000838.
New Pilgrim Baptist Church, (Civil Rights Movement in Birmingham, Alabama 1933–1979 MPS), 903 Sixth Ave. S, Birmingham, 07000837.

ARIZONA

Maricopa County

Chandler High School, 350 N. Arizona Ave., Chandler, 07000836.

COLORADO

Routt County

Christian Science Society Building, 641 Oak St., Steamboat Springs, 07000839.

FLORIDA

Volusia County

Turnbull Canal System, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 07000840.

NORTH DAKOTA

Burke County

Metzger, William E., House, 112 Makee St., Portal, 07000841.

OREGON

Multnomah County

Costanzo Family House, 811 SW Broadway Dr., Portland, 07000842.
Tarpley, Louis and Bessie, House, 2520 NW. Westover Rd., Portland, 07000843.

VERMONT

Rutland County

Linden Terrace, 191 Grove St., Rutland, 07000844.
Scoville, Anthony, House, (International Style in Vermont MPS), Dawley Rd., Mount Holly, 07000845.

WEST VIRGINIA

Fayette County

Nuttallburg Coal Mining Complex and Town Historic District, WV 85/2, Edmonds, 07000846.

[FR Doc. E7–14688 Filed 7–30–07; 8:45 am]

BILLING CODE 4312–57–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–491]

China: Government Policies Affecting U.S. Trade in Selected Sectors

AGENCY: United States International Trade Commission.

ACTION: Institution of Investigation and Scheduling of Hearing.

SUMMARY: Following receipt of a request dated May 23, 2007 (received May 29, 2007) from the Committee on Ways and Means of the U.S. House of Representatives (Committee) for a series of three reports under section 332(g) of the Tariff Act of 1930 (19 U.S.C. (332(g)) on U.S.-China trade, the U.S. International Trade Commission (Commission) instituted investigation No. 332–491, *China: Government Policies Affecting U.S. Trade in Selected Sectors*, for the purpose of preparing the second report.

DATES:

October 16, 2007: Deadline for Filing Request to Appear at the Public Hearing.

October 16, 2007: Deadline for Filing Pre-Hearing Briefs and Statements.

October 30, 2007: Public Hearing.

November 13, 2007: Deadline for Filing Post-Hearing Briefs and Submissions.

February 1, 2008: Deadline for Filing all Other Written Statements.

July 29, 2008: Transmittal of Commission Report to the Committee on Ways and Means.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at: *http://www.usitc.gov/secretary/edis.htm*.

FOR FURTHER INFORMATION CONTACT: Project leaders Deborah McNay (202–205–3425 or *deborah.mcnay@usitc.gov*) or Joanne Guth (202–205–3264 or *joanne.guth@usitc.gov*) for information specific to this investigation (the second report). For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: This notice announces institution of an investigation relating to preparation of the second in a series of three reports, as further described below. In its letter of May 23, 2007, the Committee noted that it had earlier, in a letter dated September 21, 2006, requested that the Commission prepare three reports relating to U.S.-China trade. In its May 23, 2007 letter, the Committee requested that the Commission augment the earlier request by adding two more components to its investigation to provide an in-depth assessment of the causes of the U.S.-China trade imbalance and whether and to what extent China uses various forms of government intervention to promote investment, employment, and exports. The Committee allotted additional time to complete these requests, with the first report to be delivered 7 months after receipt of the May 23, 2007 letter, and the second and third reports to be delivered 14 and 24 months, respectively, after receipt of the letter. To prepare the first report, the Commission instituted investigation No. 332–492, *China: Description of Selected Government Practices and Policies Affecting Decision-Making in the Economy*, on June 21, 2007; the Commission expects to submit its report to the Committee in that investigation by December 29, 2007. In its letter the Committee also requested that the Commission expand the scope of its ongoing investigation No. 332–478, *U.S.-China Trade: Implications of U.S.-Asia-Pacific Trade and Investment Trends*. The report in that investigation will be the third in the series of three reports, and the Committee has extended the transmittal date to May 29, 2009. The Commission will issue a notice amending the scope and announcing the schedule for that investigation at a later date.

As requested by the Committee in its letter of May 23, 2007, the Commission in its second report will build on the report in its first China investigation under the revised schedule (Investigation No. 332–492) by comprehensively cataloguing and where possible, quantifying the government policies and interventions described in the first report in specific sectors. The Commission will include case studies on sectors where leading U.S. exports have not penetrated the Chinese market, and on sectors which are the primary drivers of the U.S.-China trade deficit. The report will also include case studies on sectors where government policies and interventions are prevalent, including the semiconductor, telecommunications, banking, textiles and apparel, steel, automotive parts, and aircraft sectors. Where applicable, the case studies will describe how Chinese policies and actions are exacerbating existing global overcapacity in specific

sectors. In addition, consistent with the focus described above, this second report will include the information requested by the Committee for the second report outlined in its letter of September 21, 2006, with respect to the macro-economic and other driving factors behind the rapid growth in U.S.-China trade. The Commission will provide this consolidated second report to the Committee by July 29, 2008.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on October 30, 2007. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., October 16, 2007, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., October 16, 2007; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., November 13, 2007. In the event that, as of the close of business on October 16, 2007, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after October 16, 2007, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., February 1, 2008. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by § 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In its request letter, the Committee stated that it intends to make the Commission's reports available to the public in their entirety, and asked that the Commission not include any confidential business information or national security classified information in the reports that the Commission sends to the Committee. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: July 25, 2007.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E7–14687 Filed 7–30–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–564]

In the Matter of Certain Voltage Regulators, Components Thereof and Products Containing Same; Notice of Commission Determination To Review Portions of a Final Initial Determination of Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review portions of the final Initial Determination (''ID'') issued by the presiding Administrative Law Judge (''ALJ'').

FOR FURTHER INFORMATION CONTACT: Eric Frahm, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3107. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 22, 2006, based on a complaint filed by Linear Technology Corporation (''Linear'') of Milpitas, California. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain voltage regulators, components thereof and products containing the same, by reason of infringement of claims 1–14 and 23–35 of United States Patent No. 6,411,531 (''the '531 patent'') and claims 1–19, 31, 34, and 35 of United States Patent No. 6,580,258 (''the '258 patent''). The complaint named Advanced Analogic Technologies, Inc. (''AATI'') of Sunnyvale, California as the sole respondent. Only claims 4, 9, and 26 of the '531 patent and claims 2, 3, 34, and 35 of the '258 patent remain in the investigation.

On May 22, 2007, the ALJ issued his final ID finding no violation of section 337. Specifically, he found that none of AATI's accused products directly infringe the asserted claims of the '258 patent, and that one accused product directly infringes claims 4 and 26 of the '531 patent. He found that no indirect infringement had occurred in connection with any of the asserted claims of either patent. As to validity, the ALJ determined that claim 35 of the '258 patent and claims 4, 9, and 26 of the '531 patent are invalid due to anticipation, rejecting other arguments of invalidity, unenforceability, and estoppel. The ALJ also determined that a domestic industry exists with regard

to the '258 patent; but that there was no domestic industry with regard to the '531 patent, because of a failure to meet the technical prong of the domestic industry requirement. With respect to the '531 patent, the Commission understands the ALJ to have construed the term ''voltage regulator'' to include a tolerance of approximately five percent as set forth at page 35 of the ID. On May 30, 2007, the ALJ issued his Recommended Determination (''RD'') on remedy and bonding. Linear, AATI, and the Commission investigative attorney (''IA'') filed petitions for review of the ALJ's ID.

Having examined the pertinent portions of the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has made the following determinations. With respect to the '258 patent, the Commission has determined (1) to review the ID concerning the issues of claim construction, infringement, and validity; and (2) not to review the remainder of the ID as to the '258 patent. With respect to the '531 patent, the Commission has determined (1) to review the ID concerning the issue of whether asserted claim 9 of the '531 patent is invalid for anticipation by the Kase reference, and upon review to take no position as to that issue, and (2) not to review the remainder of the ID as to the '531 patent.The parties should brief their position on these issues with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. With respect to asserted claim 35 of the '258 patent, can monitoring a voltage using a voltage threshold in the accused products be considered an equivalent to ''monitoring the current'' using a ''current threshold'' in assessing infringement of claim 35 under the doctrine of equivalents? (Parties should discuss the ''function, way, result'' test in their analysis.)

2. With respect to the '258 patent, provide an analysis of indirect infringement under 271(b) and (c), including an analysis of any evidence upon which you rely.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues for review identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the RD issued by the ALJ on remedy and bonding on May 30, 2007. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to state the dates that the '258 patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on August 7, 2007. Reply submissions must be filed no later than the close of business on August 14, 2007. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: July 24, 2007.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E7–14709 Filed 7–30–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0060]

Cranes and Derricks in Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in the Construction Standard on Cranes and Derricks (29 CFR

1926.550). The Standard is designed to protect employees who work with, or in the vicinity of, cranes or derricks.

DATES: Comments must be submitted (postmarked, sent, or received) by October 1, 2007.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0060, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0060). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the **PUBLIC PARTICIPATION** heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Stewart Burkhammer at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Stewart Burkhammer, Directorate of Construction, OSHA, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Several paragraphs of the Cranes and Derricks Standard for Construction (§ 1926.550) contain notification requirements, including paragraphs (a)(1), (a)(2), (a)(4), (a)(16), (d)(1), (f)(1), (f)(2) and (g)(4). If an equipment manufacturer's specifications are not available, paragraph (a)(1) requires employers to operate a crane or derrick using specifications determined and recorded by a qualified engineer who is competent to make such determinations. Under paragraph (a)(2), employers must post on each crane and derrick its rated load capacities, and recommended operating speeds, special hazard warnings, or instructions. Paragraph (a)(4) requires employers to post at the worksite an illustration of the hand signals prescribed by the applicable ANSI standard for that type of crane or derrick. According to paragraph (a)(16), employers must revise as appropriate the capacity, operation, and maintenance instruction plates, tags, or decals if they make alterations that involve the capacity or safe operation of a crane or derrick.

Paragraph (d)(1) requires employers to plainly mark the rated loads of overhead and gantry cranes on each side of the cranes, and if the crane has more than one hoisting unit, each hoisting unit shall have its rated load marked on it or its load block. These markings must be clearly legible from the ground or floor. Similarly, paragraph (f)(1)(ii) requires employers to ensure that floating cranes and derricks have a load rating chart, with clearly legible letters and figures, and are securely fixed at a location easily visible to the operator. When load ratings are reduced to stay within the limits for the list of the barge with a crane mounted on it, paragraph (f)(1)(iii) requires employers to provide a new load rating chart. For permanently mounted floating cranes and derricks, paragraph (f)(2)(ii), requires that a load rating chart with clearly legible letters and figures be provided and securely fixed at a location easily visible to the operator. Paragraph (g)(4)(ii)(I) requires employers to ensure that the personnel platform be conspicuously posted with a plate or other permanent marking which indicates the weight of the platform and its rated load capacity or maximum intended load.

In summary, these provisions require employers to provide notification of specified operating characteristics through documentation, posting, or revising maintenance instruction plates, tags, or decals, and to notify employees of hand signals used to communicate with equipment operators by posting an illustration of applicable signals at the worksite. These paperwork requirements ensure that employers operate a crane or derrick according to the limitations and specifications developed for that equipment, and that hand signals used to communicate with equipment operators are clear and correct. Therefore, these requirements prevent employers from exceeding the operating specifications and limitations of cranes and derricks, and ensure that they use accurate hand signals regarding equipment operation. By operating the equipment safely and within specified parameters, and communicating effectively with equipment operators, employers will prevent serious injury and death to the equipment operators and other employees who use or work near the equipment.

The Cranes and Derricks Standard also contains two paragraphs requiring employers to inspect and document crane inspections. Paragraph (a)(6) requires employers to perform annual inspections of cranes and derricks and to establish and maintain a written record of the dates and results of these inspections. Paragraph (b)(2) requires the employer to prepare and maintain a certification record which includes the date, listing of critical items inspected, signature of person performing the

inspections, and a serial number or identifier of the crane inspected as specified in ANSI B30.5–1968, Safety Code for Crawler, Locomotive and Truck Cranes.

These inspections identify problems such as deterioration caused by exposure to adverse weather conditions, worn components and other flaws and defects that develop during use, and accelerated wear resulting from misalignments of connecting systems and components. Establishing and maintaining a written record of the annual inspections alerts the equipment mechanics to servicing or repair problems. Prior to returning the equipment to service, employers can review the records to ensure that the mechanics performed the necessary repairs and maintenance. Accordingly, by using only equipment that is in safe working order, employers will prevent severe injury and death to the equipment operators and other employees who use or work near the equipment.

Paragraph (a)(11) of OSHA's Cranes and Derricks Standard for Construction (1926.550) addresses conditions in which a crane or derrick powered by an internal combustion engine is exhausting in an enclosed space that employees occupy or will occupy. Under these conditions, employers must record tests made of the breathing air in the space to ensure that adequate oxygen is available and that concentrations of toxic gases are at safe levels.

Establishing a test record allows employers to document oxygen levels and specific atmospheric contaminants, ascertain the effectiveness of controls, implement additional controls if necessary, and readily provide this information to other crews and shifts who may work in the enclosed space. Accordingly, employers will prevent serious injury and death to equipment operators and other employees who use or work near this equipment in an enclosed space. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the required tests and implemented appropriate controls.

Paragraph (a)(15) requires that any overhead wire be considered to be an energized line unless and until the person owning such line or the electrical utility authorities indicate that it is not an energized line and it has been visibly grounded. Failure to appropriately identify overhead wires would require those working with or in the vicinity of overhead lines to perform costly, time-consuming activities, prior to performing their assigned duties.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Construction Cranes and Derricks Standard (29 CFR 1926.550). The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: The Construction Standard on Cranes and Derricks (29 CFR 1926.550).

OMB Number: 1218–0113.

Affected Public: Business or other for-profit.

Number of Respondents: 91,997.

Frequency: Annually; On occasion.

Average Time Per Response: Varies from 5 hours to inspect a crane with a capacity of more than 60 tons to 3 minutes (.05 hour) to maintain and disclose exposure monitoring data of an enclosed space where exhaust from cranes or derricks may expose employees to a deficiency of oxygen and/or toxic gases.

Estimated Total Burden Hours: 103,076.

Estimated Cost (Operation and Maintenance): $570,074

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0060). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on July 26, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–14714 Filed 7–30–07; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before August 30, 2007 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on May 16, 2007 (72 FR 27592 and 27593). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by these collections. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Item Approval Request List.

OMB Number: 3095–0025.

Agency Form Number: NA Form 14110 and 14110A.

Type of Review: Regular.

Affected Public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated Number of Respondents: 2,816.

Estimated Time Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 704 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. NARA uses the Item Approval Request List form to track reproduction requests and to provide information for customers and vendors.

2. *Title:* Microfilm Rental Order Form.

OMB Number: 3095–0059.

Agency Form Number: NA Form 14127.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,200.

Estimated Time Per Response: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 867 hours.

Abstract: The NARA microfilm publications provides ready access to records for research in a variety of fields including history, economics, political science, law, and genealogy. NARA emphasizes microfilming groups of records relating to the same general subject or to a specific geographic area. For example, the decennial population censuses from 1790 to 1930 and their related indexes are available on microfilm. Census records constitute the vast majority of microfilmed records available currently through the rental program.

Dated: July 25, 2007.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E7–14775 Filed 7–30–07; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 72 FR 29002 and no substantial comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, VA 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information

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

SUPPLEMENTARY INFORMATION:

Title: FY 2007 and FY 2009 Survey of Science and Engineering Research Facilities.

Type of Request: Intent to seek approval to reinstate an information collection for three years.

Proposed Project: The National Science Foundation Survey of Science and Engineering Research Facilities is a Congressionally mandated (Pub. L. 99–159), biennial survey that has been conducted since 1986. The survey collects data on cyber infrastructure and on the amount, condition, and costs of the physical facilities used to conduct science and engineering research. It was expected by Congress that this survey would provide the data necessary to describe the status and needs of science and engineering research facilities and to formulate appropriate solutions to documented needs. During the FY 2003 and FY 2005 survey cycles, data were collected from a population of approximately 475 research-performing colleges and universities. This survey population was supplemented with approximately 190 nonprofit biomedical research institutions receiving research support from the National Institutes of Health. Beginning with the FY 2003 cycle, a new section was added to the survey requesting information on the computing and networking capacity at the surveyed institutions, an increasingly important part of the infrastructure for science and engineering research. Other important changes include updating the networking and computing section, based on technological changes that may occur.

Use of the Information: Analysis of the Facilities Survey data will provide updated information on the status of scientific and engineering research facilities and capabilities. The information can be used by Federal policy makers, planners, and budget analysts in making policy decisions, as well as by institutional academic officials, the scientific/engineering establishment, and state agencies and legislatures that fund universities.

Burden on the Public: Based on pretests, the time to complete the research space section of the survey (Part 1) ranged from 10 to 85 hours with an average of 40 hours. The time to complete the computing and networking section of the survey (Part 2) averaged 60 minutes. Therefore, in total, the time per academic institution to complete the survey is expected to average approximately 41 hours. Assuming a 94% response rate, this would result in an estimated burden of 18,368 hours in FY 2007 and a similar burden in FY 2009. [(.94 response rate × 477 institutions) × 41 hours = 18,368].

Because biomedical research organizations generally are not as large, diverse or complex as colleges and universities, there is substantially less variation in the survey completion time. On average, completion time per biomedical research organization for Part 1 of the survey was 4 hours. For Part 2 of the survey, average completion time per biomedical research organization was 1 hour. Therefore, in total, the time per biomedical research organization to complete the survey is expected to average approximately 5 hours. Assuming a 94% response rate, this would result in an estimated burden of 895 hours in FY 2007 and a similar burden in FY 2009. [(.94 response rate × institutions)] × 5 hours = 895]

Total burden hours for academic institutions and biomedical institutions are 19,263.

Dated: July 26, 2007.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 07–3722 Filed 7–30–07; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permits Issued Under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 13, 2007, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on July 14, 2007 to:

Ross D. E. MacPhee: Permit No. 2008–002.

Anthony Powell: Permit No. 2008–003.

Arthur L. DeVries: Permit No. 2008–004.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E7–14691 Filed 7–30–07; 8:45 am]

BILLING CODE 7555–01–P ?≤

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on August 16, 2007. This meeting is a continuation of the discussion of training and experience implementation issues in the medical community, from the June 12, 2007, ACMUI meeting. The meeting will be a discussion of various items related to the training and experience criteria in 10 CFR part 35, to include, but not limited to: the preceptor statement and the issue of the non-availability of preceptors; radiation safety officer requirements; and the grandfathering of diplomates. A copy of the agenda for the meeting can be obtained at *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda* or by contacting Ashley M. Tull at the contact information below.

DATE: The teleconference meeting will be held on Thursday, August 16, 2007, from 1 p.m. to 3:30 p.m Eastern Daylight Time.

PUBLIC PARTICIPATION: Any member of the public who wishes to participate in the teleconference discussion may contact Ashley M. Tull using the contact information below.

FOR FURTHER INFORMATION CONTACT: Ashley M. Tull, telephone (301) 415–5294; e-mail: *amt1@nrc.gov;* of the Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Mail Stop T8–E 24, Washington, DC 20555–0001.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The

following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy or mail a reproducible copy to Ms. Tull at the contact information listed above. All submittals must be postmarked by August 14, 2007, and must pertain to the topic on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about November 16, 2007. Minutes of the meeting will be available on or about September 17, 2007.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations,* Part 7.

Dated: July 25, 2007.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E7–14715 Filed 7–30–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of July 30, August 6, 13, 20, 27, September 3, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 30, 2007

Thursday, August 2, 2007

1:25 p.m. Affirmation Session (Public Meeting) (Tentative).

a. Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP–07–9 (June 29, 2007) (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

1:30 p.m. Briefing on Risk-Informed, Performance-Based Regulation (Public Meeting) (Contact: John Monninger, 301 415–6189).

This meeting will be webcast live at the Web address— *http://www.nrc.gov*.

Week of August 6, 2007—Tentative

There are no meetings scheduled for the Week of August 6, 2007.

Week of August 13, 2007—Tentative

There are no meetings scheduled for the Week of August 13, 2007.

Week of August 20, 2007—Tentative

Tuesday, August 21, 2007

1:30 p.m. Meeting with OAS and CRCPD (Public Meeting) (Contact: Shawn Smith, 301 415–2620).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Wednesday, August 22, 2007

9:30 a.m. Periodic Briefing on New Reactor Issues (Morning Session) (Public Meeting) (Contact: Donna Williams, 301 415–1322).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

1:30 p.m. Periodic Briefing on New Reactor Issues (Afternoon Session) (Public Meeting) (Contact: Donna Williams, 301 415–1322).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of August 27, 2007—Tentative

There are no meetings scheduled for the Week of August 27, 2007.

Week of September 3, 2007—Tentative

There are no meetings scheduled for the Week of September 3, 2007.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: July 26, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–3744 Filed 7–27–07; 12:11 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving no Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 4, 2007 to July 18, 2007. The last biweekly notice was published on July 17, 2007 (72 FR 39081).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1)

Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express

mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 15, 2007.

Description of amendment request: The amendment proposes to relocate the inservice testing requirements to the administrative section of the technical specifications (TS), remove the inservice inspection activities from TS and locate them in an owner-controlled program, and establish a TS Bases Control Program. All of these changes are proposed to be consistent with NUREG–1431, Revision 3, ''Standard Technical Specifications Westinghouse Plants.''

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the *Code of Federal Regulations* (10 CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated, and it does not change an accident previously evaluated in the Final Safety Analysis Report (FSAR). The proposed change is administrative in nature, and it will continue to ensure that the inspection and testing requirements required by regulations are met. The American Society of Mechanical Engineers (ASME) Code requirements are established, reviewed and approved by ASME, the industry, and ultimately endorsed by the NRC for inclusion into 10 CFR 50.55a. Updates to the ASME Code reflect advances in technology and consider information obtained from plant operating experience to provide enhanced inspection and testing. Thus, the proposed change will revise TS to appropriately reference the ASME Code required by 10 CFR 50.55a for performing inservice testing, specifically referencing the ASME Code for Operation and Maintenance of Nuclear Power Plants, rather than the ASME Section XI Code.

The proposed change does not affect operations, and the inspection and testing required is not an accident initiator.

Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new of different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated, and it does not change an accident previously evaluated in the Final Safety Analysis Report (FSAR). As noted above, the proposed change is administrative in nature, the inspection and testing required is not an accident initiator, and no new accident precursors are being introduced. The proposed change will revise TS to appropriately reference the ASME Code required by 10 CFR 50.55a for performing inservice testing, which will continue to ensure that the inspection and testing requirements required by regulations are met. Since inservice testing will continue to be performed in accordance with regulations, adequate assurance is provided to ensure that the safety-related pumps and valves will continue to operate as required. No new testing is required that could create a new or different type of accident.

Therefore, this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not involve a significant reduction in a margin of safety. The proposed amendment does not adversely affect a plant safety limit or a limiting safety system setting, and does not alter a design basis limit for a parameter evaluated in the FSAR. The proposed change is administrative in nature, and it will continue to ensure that the inspection and testing requirements required by regulations are met. Since inservice testing will continue to be performed in accordance with regulations, adequate assurance is provided to ensure that the safety-related pumps and valves will continue to operate as required and perform their intended safety function.

Therefore, this amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 3, 2007.

Description of amendment request: The proposed change relocates the quality and quantity requirements

associated with the emergency diesel generator (EDG) fuel oil within the Technical Specifications (TS) through the creation of a new TS Limiting Condition for Operation and the Diesel Fuel Oil Testing Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes in the diesel fuel oil testing program will continue to ensure that new and stored diesel fuel oil properties are maintained within specified limits to assure EDG operation. The testing of diesel generator fuel oil is not considered an initiator or a mitigating factor in any previously evaluated accidents.

The deletion of the requirement to drain and inspect the fuel oil storage tank (FOST) does not impact any of the previously analyzed accidents. Periodic testing of the fuel oil as required by the Diesel Fuel Oil Testing Program will identify poor quality oil. Actions are included that will require the quality of the oil to be maintained within acceptable limits. Draining and inspecting the FOST are not considered an accident initiator or mitigating factor in any previously evaluated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change results in changes to the existing diesel fuel oil testing program and the deletion of the [Surveillance Requirements] associated with the performance of periodic draining and inspection of the FOSTs. No plant modifications are required to support the proposed TS changes. There is no impact to plant structures, systems, or components, or in the design of the plant structures, systems, or components.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not result in any plant modifications. Diesel generator fuel oil quantity and quality will continue to be maintained within acceptable limits to assure the ability of the EDG to perform its intended function.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Exelon Generation Company, LLC, Docket No. 50–237, Dresden Nuclear Power Station (DNPS), Unit 2, Grundy County, Illinois

Date of amendment request: July 10, 2007.

Description of amendment request: The proposed amendment would revise the values of the safety limit minimum critical power ratio (SLMCPR) in Technical Specification (TS) Section 2.1.1, ''Reactor Core SLs.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC-approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change conservatively establishes the SLMCPR for DNPS, Unit 2, Cycle 21 such that the fuel is protected during normal operation and during plant transients or anticipated operational occurrences (AOOs).

Changing the SLMCPR does not increase the probability of an evaluated accident. The change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Therefore, no individual precursors of an accident are affected.

The proposed change revises the SLMCPR to protect the fuel during normal operation as well as during plant transients or AOOs. Operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated. This will ensure that the fuel design safety criterion (i.e., that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and AOOs) is met. Since the proposed change does not affect operability of plant systems designed to mitigate any consequences of accidents, the consequences of an accident previously evaluated are not expected to increase.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

Creation of the possibility of a new or different kind of accident requires creating one or more new accident precursors. New accident precursors may be created by modifications of plant configuration, including changes in allowable modes of operation. The proposed change does not involve any plant configuration modifications or changes to allowable modes of operation.

The proposed change to the SLMCPR assures that safety criteria are maintained for DNPS, Unit 2, Cycle 21.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

The SLMCPR provides a margin of safety by ensuring that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and AOOs if the MCPR limit is not violated. The proposed change will ensure the current level of fuel protection is maintained by continuing to ensure that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and AOOs if the MCPR limit is not violated. The proposed SLMCPR values were developed using NRC-approved methods. Additionally, operational

limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated. This will ensure that the fuel design safety criterion (*i.e.*, that no more than 0.1% of the rods are expected to be in boiling transition if the MCPR limit is not violated) is met.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Exelon Generation Company, LLC, Docket No. 50–373, LaSalle County Station, Unit 1, LaSalle County, Illinois

Date of amendment request: June 18, 2007.

Description of amendment request: The proposed amendment would revise technical specification TS 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time extension of the LaSalle County Station (LSCS), Unit 1, primary containment Type A Integrated Leak Rate Test (ILRT) date for the current requirement of no later than June 13, 2009, prior to startup following the thirteenth LSCS Unit 1 refueling outage (L1R13).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed changes will revise LSCS, Unit 1, TS 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time extension of the primary containment Type A Integrated Leak Rate Test (ILRT) date to ''prior to startup following L1R13.'' The current Type A ILRT interval of 15 years, based on past performance, would be extended on a one-time basis by approximately 5% of the current interval.

The function of the primary containment is to isolate and contain fission products released from the reactor Primary Coolant System (PCS) following a design basis Loss of Coolant Accident (LOCA) and to confine the postulated release of radioactive material to within limits. The test interval associated with Type A ILRTs is not a precursor of any accident previously evaluated. Type A ILRTs provide assurance that the LSCS Unit 1 primary containment will not exceed allowable leakage rate values specified in the TS and will continue to perform their design function following an accident. The risk assessment of the proposed changes has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed changes for a one-time extension of the Type A ILRT for LSCS Unit 1 will not affect the control parameters governing unit operation or the response of plant equipment to transient and accident conditions. The proposed changes do not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No

LSCS Unit 1 is a General Electric BWR/5 plant with a Mark II primary containment. The Mark II primary containment consists of two compartments, the drywell and the suppression chamber. The drywell has the shape of a truncated cone, and is located above the cylindrically shaped suppression chamber. The drywell floor separates the drywell and the suppression chamber. The primary containment is penetrated by access, piping and electrical penetrations.

The integrity of the primary containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak tight integrity of the primary containment is verified by a Type A ILRT, as required by 10 CFR 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' These tests are performed to verify the essentially leak tight characteristics of the primary containment at the design basis accident pressure. The proposed changes for a one-time extension of the Type A ILRT does not affect the method for Type A, B, or C testing or the test acceptance criteria.

EGC has conducted a risk assessment to determine the impact of a change to the LSCS Unit 1 Type A ILRT schedule from a baseline ILRT frequency of three times in ten years to once in 15.67 years (i.e., 15 years plus 8 months) for the risk measures of Large Early Release Frequency (i.e., LERF), Total Population Dose, and Conditional Containment Failure Probability (i.e., CCFP). This assessment indicated that the proposed LSCS ILRT interval extension has a minimal impact on public risk.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: November 27, 2006.

Description of amendment request: The proposed amendments would modify various technical specification (TS) requirements for emergency diesel generators (EDGs). Specifically, the licensee stated that the proposed changes would eliminate several accelerated tests and a test table, modify acceptance criteria for fast start and load rejection tests, and also, eliminate the EDG failure report. The proposed changes are consistent with the Nuclear Regulatory Commission's (NRC's) regulatory guidance presented in Generic Letter 93–05, ''Line-Item Technical Specifications Improvement to Reduce Surveillance Requirements for Testing During Power Operation,'' Generic Letter 94–01, ''Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators,'' and NUREG–1433, Rev. 3.1, ''Standard Technical Specifications, General Electric Plants, BWR/4.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are associated with the testing and reporting requirements of the eight (four on each unit) Emergency Diesel Generators (EDGs). The changes will eliminate unnecessary EDG testing requirements that contribute to potential mechanical degradation of the EDGs. The changes are based on the NRC guidance and recommendations provided in Generic Letter 93–05 or Generic Letter 94–01, or are consistent with NUREG–1433. The change to the reporting requirement is administrative in nature.

The probability of an accident is not increased by these changes because the EDGs are not assumed to be initiators of any design basis event. Additionally, the proposed changes do not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, or controlled. The consequences of an accident will not be increased because the changes to the EDGs and associated support systems still provide a high degree of assurance that their operability is maintained.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not alter the physical design, safety limits, or safety analysis assumptions, associated with the operation of the plant. Accordingly, the proposed changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant structure or system in the performance of their safety function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to the EDGs either: (1) Modify the test acceptance criteria, (2) modify the accelerated testing schedules, or (3) eliminate a reporting requirement. The change to the test acceptance criteria is based on the recommendations of Regulatory Guide 1.9, and the change to the reporting requirement is enveloped by other NRC reporting requirements. The other changes are consistent with NRC guidance, and reduce unnecessary testing and improve EDG reliability. Requirements to assure that a common mode failure has not affected the remaining operable EDGs have been maintained. The existing routine testing frequency, unaffected by these changes, has been shown to be adequate for assuring the EDGs are operable based on operating experience. The proposed changes do not impact the assumptions of any design basis accident, and do not alter assumptions relative to the mitigation of an accident or transient event.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 29, 2007.

Description of amendment request: The proposed amendment would revise the Seabrook Station, Unit No. 1 Technical Specifications to increase the power level required for a reactor trip following a turbine trip (P–9 setpoint).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The analysis of the proposed change included an evaluation of loss of load/turbine trip transient. With systems functioning as designed, the proposed change to the P–9 setpoint does not impact [the] accident analyses previously evaluated in the Updated Final Safety Analysis Report (UFSAR). In the best estimate case (normal plant conditions; all control systems functioning per design), the pressurizer power operated relief valves (PORV) and the steam generator safety valves are not challenged following the turbine trip without reactor trip. Consequently, the proposed change does not adversely affect the probability of a small break loss of coolant accident due to a stuck-open PORV. The sensitivity study that assessed the affects of degraded control systems found that a failure of all condenser steam dump valves resulted in challenging the PORVs and the steam generator (SG) safety valves. However, overfilling of the pressurizer will not occur and this Condition 2 event will not initiate a Condition 3 event. The challenge to the PORVs with all steam dump banks failed does not violate design or licensing criteria. Therefore, the proposed setpoint change does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed setpoint change does not create the possibility of a new or different kind of accident than any accident previously evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed change. The proposed Technical Specification changes have no adverse effects on any safety-related system and do not challenge the performance or integrity of any safety-related system. The revised setpoint for the P–9 function ensures that accident/transient analyses acceptance criteria continue to be met. This change makes no modifications to the plant that would introduce new accident causal mechanisms and has no affect on how the trip functions operate upon actuation. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed Technical Specification changes do not involve a significant reduction in a margin of safety. The analyses supporting the proposed change to the P–9 setpoint demonstrate that margin exists between the setpoint and the corresponding safety analysis limits. The calculations are based on plant instrumentation and calibration/

functional test methods and include allowances associated with the setpoint change. The results of analyses and evaluations supporting the proposed change demonstrate acceptance criteria continue to be met. The reactor trip on turbine trip provides additional protection and conservatism beyond that required for protection of public health and safety; the safety analyses in chapter 15 of the UFSAR do not take credit for this reactor trip. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Harold K. Chernoff.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: June 27, 2007.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 3.3.3, ''Post Accident Monitoring (PAM) Instrumentation,'' to include containment recirculation sump level instrumentation which will be used for indication of recirculation sump strainer blockage. Additionally, the amendment would revise TS 3.5.2, ''ECCS [Emergency Core Cooling System]—Operating,'' by replacing the term ''trash racks and screens'' with the more descriptive term ''strainers.'' Finally, the amendment would revise TS 3.6.14, ''Containment Recirculation Drains,'' to include Limiting Conditions for Operation, Actions, and Surveillance Requirements to ensure the operability of flow paths credited in the evaluation of potential adverse effects of post-accident debris on the containment recirculation function pursuant to NRC Generic Letter 2004–02.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed change consists of a revision to the Technical Specifications (TS) for post accident monitoring (PAM) instrumentation to include new containment recirculation sump level instrumentation, a revision to the TS for Emergency Core cooling System (ECCS) to replace the term ''trash rack and screen'' with the term ''strainer,'' and a revision to the TS for containment recirculation drains to add two flow paths credited in the evaluation of the effects of post-accident debris on the containment recirculation functions pursuant to Nuclear Regulatory Commission Generic Letter 2004–02.

The proposed TS revisions will not increase the probability of an accident because the associated components, i.e., the new sump level instruments, the new strainers, and the two flow paths, are not, and will not become, accident initiators. The activities involving these components pursuant to the proposed TS revisions consist of implementing Surveillance Requirements for the new sump level instruments and flow paths and actions to be taken if these components are inoperable. These activities will not increase the likelihood of an accident. The TS change associated with the sump strainers is editorial in that it reflects the terminology that has been applied to new pocket strainers that continue to perform the trash rack and screen functions. The change in terminology will not result in any new activities.

The proposed TS revision will not increase the consequences of an accident because the associated components all provide mitigative functions for an accident, and their ability to perform their mitigative functions is not reduced by the associated TS changes. The TS changes associated with the new sump level instrumentation and the recirculation [flow paths] will provide increased assurance that these components will be available to perform their mitigative function if needed. The TS change associated with the sump strainers is editorial and does not affect the mitigative capability of the screens.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS revisions will not create the possibility of a new or different kind of accident from any accident previously evaluated because the associated components, i.e., the new sump level instruments, the new strainers, and the two flow paths, are components that will not initiate any accident. The proposed TS changes associated with these components will not cause them to be operated in any manner not previously evaluated for the specific components or for similar components, or cause them to become other than passive components.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety associated with the proposed TS revisions involves the ability of the associated components, i.e., the new sump level instruments, the new strainers, and the two flow paths, to assure the ECCS and containment spray recirculation function can be adequately accomplished. The TS changes associated with the new sump level instrumentation and the recirculation [flow paths] will provide increased assurance that this function can be fulfilled. The TS change associated with the sump strainers is editorial and does not affect this function.

Therefore, the proposed change will not involve a significant reduction in the margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Kimberly Harshaw, Esquire, One Cook Place, Bridgman, MI 49106.

NRC Acting Branch Chief: Travis Tate.

Nine Mile Point Nuclear Station (NMPNS), LLC, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2 (NMP2), Oswego County, New York

Date of amendment request: May 31, 2007.

Description of amendment request: The proposed amendment would revise the accident source term used in the NMP2 design basis radiological consequence analyses in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50.67. The revised accident source term replaces the current methodology that is based

on TID–14844, ''Calculation of Distance Factors for Power and Test Reactor Sites,'' with the alternative source term (AST) methodology described in Regulatory Guide (RG) 1.183, ''Alternative Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors.'' The amendment request is for full implementation of the AST as described in RG 1.183, with the exception that TID–14844 will continue to be used as the radiation dose basis for equipment qualification and vital area access. Proposed changes include the following: Revision of the Technical Specification (TS) definition of Dose Equivalent I–131 to be consistent with the AST analyses; TS changes that reflect revised design requirements regarding the use of the standby liquid control system (SLCS) to buffer the suppression pool pH to prevent iodine re-evolution following a postulated design basis loss-of-coolant accident (LOCA); revisions to the TS operability requirements for the control room envelope filtration system and the control room envelope air conditioning system, consistent with the assumptions contained in the AST fuel-handling accident (FHA) analysis; and credit for operation of the residual heat removal system in the drywell spray mode for the post-LOCA removal of airborne elemental iodine and particulates from the drywell atmosphere. Because NMPNS is considering an extended power uprate (EPU) project that would increase the maximum licensed reactor core power level to 3,988 megawatts thermal (MWt), the AST analyses have been performed using a bounding core isotopic inventory that is based on operation at 3,988 MWt in lieu of the currently licensed power of 3,467 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Adoption of the AST and those plant systems affected by implementing AST do not initiate DBAs [design-basis accidents]. The AST does not affect the design or manner in which the facility is operated; rather, for postulated accidents, the AST is an input to calculations that evaluate the radiological consequences. The AST does not by itself affect the post-accident plant response or the actual pathway of the radiation released from the fuel. It does, however, better represent the physical characteristics of the release, so that appropriate mitigation techniques may be applied. Implementation of the AST has been incorporated in the analyses for the limiting DBAs at NMP2.

The structures, systems and components affected by the proposed change mitigate the consequences of accidents after the accident has been initiated. Application of the AST does result in changes to NMP2 Updated Safety Analysis Report (USAR) functions (e.g., Standby Liquid Control system [SLCS]). As a condition of application of AST, NMPNS is proposing to use the [SLCS] to control the suppression pool pH following a LOCA. These changes do not require any physical modifications to the plant. As a result, the proposed changes do not involve a revision to the parameters or conditions that could contribute to the initiation of a DBA discussed in Chapter 15 of the NMP2 USAR. Since design basis accident initiators are not being altered by adoption of the AST, the probability of an accident previously evaluated is not affected.

Plant-specific AST radiological analyses have been performed and, based on the results of these analyses, it has been demonstrated that the dose consequences of the limiting events considered in the analyses are within the acceptance criteria provided by the NRC for use with the AST. These criteria are presented in 10 CFR 50.67 and Regulatory Guide 1.183. Even though the AST dose limits are not directly comparable to the previously specified whole body and thyroid dose guidelines of General Design Criterion 19 and 10 CFR 100.11, the results of the AST analyses have demonstrated that the 10 CFR 50.67 limits are satisfied. Therefore, it is concluded that adoption of the AST does not involve a significant increase in the consequences of an accident previously evaluated.

Based on the above discussion, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Implementation of AST and the proposed changes does not alter or involve any design basis accident initiators. These changes do not involve any physical changes to the plant and do not affect the design function or mode of operations of systems, structures, or components in the facility prior to a postulated accident. Since systems, structures, and components are operated essentially no differently after the AST implementation, no new failure modes are created by this proposed change.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The changes proposed are associated with a new licensing basis for analysis of NMP2 DBAs. Approval of the licensing basis change from the original source term to the AST is being requested. The results of the accident analyses performed in support of the proposed changes are subject to revised acceptance criteria. The limiting DBAs have been analyzed using conservative methodologies, in accordance with the guidance contained in Regulatory Guide 1.183, to ensure that analyzed events are bounding and that safety margin has not been reduced. The dose consequences of these limiting events are within the acceptance criteria presented in 10 CFR 50.67 and Regulatory Guide 1.183. Thus, the proposed changes continue to ensure that the doses at the exclusion area boundary and low population zone boundary, as well as in the control room, are within corresponding regulatory criteria.

Therefore, by meeting the applicable regulatory criteria for AST, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

Pacific Gas and Electric Co., Docket No. 50–133, Humboldt Bay Power Plant (HBPP), Unit 3 Humboldt County, California

Date of amendment request: April 4, 2007.

Description of amendment request: The licensee has proposed amending the existing license to allow the results of near-term surveys, performed on a portion of the plant site, to be included

in the eventual Final Status Survey (FSS) for license termination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow survey results for a specific area within the licensed site area, performed prior to Humboldt Bay Power Plant (HBPP) Unit 3 decommissioning and dismantlement activities, to be used in the overall licensed site area Final Status Survey (FSS) for license termination. The FSS will be performed following completion of HBPP Unit 3 decommissioning and dismantlement activities. This proposed change would not change plant systems or accident analysis, and as such, would not affect initiators of analyzed events or assumed mitigation of accidents. Therefore, the proposed change does not increase the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant or require existing equipment to be operated in a manner different from the present design. Implementation of a cross contamination prevention and monitoring plan will be done in accordance with plant procedures and licensing bases documents. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change has no effect on existing plant equipment, operating practices, or safety analysis assumptions. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Jennifer K. Post, Pacific Gas and Electric Company, 77 Beale Street, B30A, San Francisco, CA.

NRC Branch Chief: Bruce Watson.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 22, 2007.

Description of amendment request: The proposed amendment supports full-scope implementation of an alternative source term (AST) methodology, in accordance with Section 50.67, ''Accident source term,'' of Title 10 of the *Code of Federal Regulations* (10 CFR) with the exception that Technical Information Document (TID) 14844, ''Calculation of Distance Factors for Power and Test Reactor Sites,'' will continue to be used as the radiation dose basis for equipment qualification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The implementation of AST assumptions has been evaluated in revisions to the analyses of the following limiting DBAs [design-basis accidents].

- Loss-of-Coolant Accident.
- Fuel Handling Accident.
- Control Rod Ejection Accident.
- Locked Rotor Accident.
- Main Steam Line Break Accident.
- Steam Generator Tube Rupture Accident.

Based upon the results of these analyses and evaluations, it has been demonstrated that, with the requested changes, the dose consequences of these limiting events satisfies the dose limits in 10 CFR 50.67 and are within the regulatory guidance provided by the NRC for use with the AST methodology. The AST is an input to calculations used to evaluate the consequences of an accident and does not affect the plant response or the actual pathway of the activity released from the fuel. Therefore, it is concluded that AST does not involve a significant increase in the consequences of an accident previously evaluated.

Implementation of AST provides for elimination of the Fuel Handling Building ventilation system filtration TS [Technical Specification] requirements and elimination of Control Room ventilation filtration TS requirements in Modes 5 or 6. It also eliminates containment integrity TS requirements while handling irradiated fuel and during core alterations. The equipment affected by the proposed changes is mitigative in nature and relied upon after an accident has been initiated. The affected systems are not accident initiators; and application of the AST methodology is not an initiator of a design basis accident.

Elimination of the requirement to suspend operations involving positive reactivity additions that could result in loss of required SHUTDOWN MARGIN or required boron concentration if the control room ventilation system is inoperable in Modes 5 or 6 does not increase the probability of an accident because the proposed change does not affect the design and operational controls to prevent dilution events. These same design and operational controls prevent a loss of SHUTDOWN MARGIN or a boron dilution event so that radiological consequences from these events are precluded.

The proposed changes do not involve physical modifications to plant equipment and do not change the operational methods or procedures used for moving irradiated fuel assemblies. The proposed changes do not affect any of the parameters or conditions that could contribute to the initiation of any accidents. Relaxation of operability requirements during the specified conditions will not significantly increase the probability of occurrence of an accident previously analyzed. Since design basis accident initiators are not being altered by adoption of the AST, the probability of an accident previously evaluated is not affected.

Administrative changes to delete a footnote from Technical Specification surveillance requirement 4.7.7.e.3) and a note from ACTION 20 of Technical Specification Table 3.3–3, in which the provisions of the notes have expired, does not impact the probability or consequences of an accident previously evaluated.

Based on the above discussion, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical change. The change will allow the automatic start feature of systems no longer credited in the accident analyses for mitigation to be disabled through the STPNOC [STP Nuclear Operating Company]

modification process. Implementation of AST provides increased operating margins for filtration system efficiencies. Application of AST provides for relaxation of certain Control Room ventilation system filtration requirements. The Fuel Handling Building filtration and holdup is no longer credited in the AST analyses. Therefore, the Fuel Handling Building Exhaust Air Ventilation system is no longer required in the Technical Specifications. It also relaxes containment integrity requirements while handling irradiated fuel and during core alterations. Elimination of the requirement to suspend operations involving positive reactivity additions that could result in loss of required SHUTDOWN MARGIN or required boron concentration if the control room ventilation system is inoperable in Mode 5 or Mode 6 does not create the possibility of a new or different kind of accident because these events have already been analyzed in the safety analysis with a conclusion that adequate measures exist to prevent these events.

Similarly, the proposed changes do not require any physical changes to any structures, systems or components involved in the mitigation of any accidents. Therefore, no new initiators or precursors of a new or different kind of accident are created. New equipment or personnel failure modes that might initiate a new type of accident are not created as a result of the proposed changes.

Administrative changes to delete a footnote from Technical Specification surveillance requirement 4.7.7.e.3) and a note from ACTION 20 of Technical Specification Table 3.3–3, in which the provisions of the notes have expired, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Based on the above discussion, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Approval of a change from the original source term methodology (i.e., TID 14844) to an AST methodology, consistent with the guidance in RG [NRC Regulatory Guide] 1.183, will not result in a significant reduction in the margin of safety. The safety margins and analytical conservatisms associated with the AST methodology have been evaluated and were found acceptable. The results of the revised DBA analyses, performed in support of the proposed changes, are subject to specific acceptance criteria as specified in RG 1.183. The dose consequences of these DBAs remain within the acceptance criteria presented in 10 CFR 50.67 and RG 1.183.

Elimination of the requirement to suspend operations involving positive reactivity additions that could result in loss of required SHUTDOWN MARGIN or required boron concentration if the control room ventilation system is inoperable in Mode 5 or Mode 6 does not result in a reduction in a margin to safety because adequate measures exist to preclude radiological consequences from these events.

The proposed changes continue to ensure that the doses at the exclusion area boundary (EAB) and low population zone boundary (LPZ), as well as the Control Room and Technical Support Center, are within the specified regulatory limits.

Administrative changes to delete a footnote from Technical Specification surveillance requirement 4.7.7.e.3) and a note from ACTION 20 of Technical Specification Table 3.3–3, in which the provisions of the notes have expired, does not impact the margin of safety.

Therefore, based on the above discussion, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Thomas G. Hiltz.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 21, 2007.

Description of amendment request: The license amendment request proposes revising the Technical Specification (TS) Surveillance Requirement (SR) 4.5.2.d for the inspection of Emergency Core Cooling System (ECCS) sumps for consistency with the new STP sump design. SR 4.5.2.d includes a noncomprehensive parenthetical list of sump components, some of which have been removed in the new sump screen design. The licensee proposes an administrative change to delete the parenthetical reference to sump components in its entirety.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is an administrative editorial change to remove unnecessary information from a surveillance requirement. It will not affect how any system, structure, or component is designed or operated and so has no potential to affect the mitigation of an accident. The change does not affect an initiator of any accident previously evaluated. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is an administrative editorial change to remove unnecessary information from a surveillance requirement. It will not affect how any system, structure, or component is designed or operated or involve any new or different plant configurations. Therefore, the change does not create the possibility of a new or different kind of accident previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change is editorial and administrative and consequently has no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Thomas G. Hiltz.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: June 8, 2007.

Description of amendment request: The proposed amendment would revise

the technical specifications for Watts Bar Nuclear Plant, Unit 1 (WBN) to allow relaxations of various Reactor Trip System (RTS) and Engineered Safety Feature Actuation System (ESFAS) logic completion times, bypass test times, allowable outage times, and surveillance testing intervals. The proposed changes implement several Technical Specifications Task Force travelers, which the NRC staff has previously reviewed and approved for incorporation into the Standard Technical Specifications for Westinghouse plants.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the *Code of Federal Regulations* (10 CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not result in any modifications to RTS and ESFAS hardware, design requirements, or functions. No system operational parameters are affected. The protection system will continue to perform the intended design functions consistent with the design bases and accident analyses. The proposed changes will not modify any system interfaces and, therefore, could not increase the likelihood of an accident described in the UFSAR [Updated Facility Safety Analysis Report]. The proposed amendment will not change, degrade or prevent actions, or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR.

Plant-specific evaluations confirm the applicability of the [Westinghouse Topical Report] WCAP–14333 and WCAP–15376 analyses to WBN. Implementation of the approved changes is in accordance with the conditions of the NRC safety evaluations for these reports and will result in an insignificant risk impact.

The proposed changes to the completion time, bypass test time, and surveillance frequencies reduce the potential for inadvertent reactor trips and spurious actuations and, therefore, do not increase the probability of any accident previously evaluated. The proposed changes to the allowed completion time, bypass test time, and surveillance frequencies do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the RTS and ESFAS signals. The RTS and ESFAS will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by core damage frequency [CDF] is less than 1.0E–06 per year and the impact on large early release frequency [LERF] is less than 1.0E–07 per year. In addition, for the completion time change, the incremental conditional core damage probabilities [ICCDP] and incremental conditional large early release probabilities [ICLERP] are less than 5.0E–07 and 5.0E–08, respectively. These changes meet the acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their functions with high reliability as originally assumed, and the increase in risk as measured by CDF, LERF, ICCDP, and ICLERP is within the acceptance criteria of existing regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with the safety analysis assumptions and resultant consequences.

Therefore, this change does not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not require any design changes, physical modifications or changes in normal operation of the RTS and ESFAS instrumentation. Existing setpoints will be maintained. The changes do not affect functional performance requirements of the instrumentation. No changes are required to accident analysis assumptions. The changes do not introduce different malfunctions, failure modes, or limiting single failures. The changes to the completion time, bypass test time, and surveillance frequency do not change any existing accident scenarios nor create any new or different accident scenarios.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in Regulatory Guides 1.174 and 1.177. Although there was no attempt to quantify any positive human factors benefit due to increased completion time, bypass test time, and surveillance frequencies, it is expected that there would be a net benefit due to a reduced potential for spurious reactor trips and actuations associated with testing.

Therefore, it is concluded that this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas H. Boyce.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 6, 2006.

Brief description of amendment request: The proposed amendments would provide a new action for selected Technical Specifications (TSs) limiting conditions for operation to permit extension of the completion times of action requirements, provided risk is assessed and managed. A new program, the Configuration Risk Management Program, would be added to the Administrative Controls of TSs.

Date of publication of individual notice in **Federal Register**: June 12, 2007.

Expiration date of individual notice: July 12, 2007.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: November 13, 2006.

Brief description of amendment: The proposed amendment revises the technical specification (TS) testing frequency for the surveillance requirement (SR) in TS 3.2.4, ''Control Rod Scram Times.'' Specifically, the proposed change would revise the frequency for SR 3.1.4.2, control rod scram time testing, from ''120 days cumulative operation in MODE 1,'' to ''200 days cumulative operation in MODE 1.'' This operating license improvement was made available by the Nuclear Regulatory Commission on August 23, 2004, as part of the consolidated line item improvement process.

Date of issuance: July 5, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 177.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** April 10, 2007 (72 FR 17944). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 2007.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 14, 2006, as supplemented by letters dated November 27, 2006 and January 17, 2007.

Brief description of amendment: The amendment revised the technical specifications (TSs) to allow a one-time change in the Appendix J, Type A, Containment Integrated Leak Rate Test from the required 10 years to 15 years.

Date of issuance: June 29, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No. 239.

Facility Operating License No. NPF–49: Amendment revised the technical specifications.

Date of initial notice in **Federal Register:** September 12, 2006 (71 FR 53717). The November 27, 2006 and January 17, 2007, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 2007.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: June 2, 2006.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to incorporate revised requirements in Title 10 of the *Code of Federal Regulations* (10 CFR), Part 20. Specifically, the amendment revises the definitions for Members of the Public and Unrestricted Area, adds a definition for Restricted Area, revises the requirements for limitations on the concentrations of radioactive material

released in liquid and gaseous effluents, and revises the references for radioactive effluent control requirements.

Date of issuance: June 29, 2007.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 187 and 148.

Facility Operating License Nos. NPF–39 and NPF–85: This amendment revised the license and Technical Specifications.

Date of initial notice in ***Federal Register:*** April 10, 2007 (72 FR 17949). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 2007.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: June 8, 2006, as supplemented by letter dated February 5, 2007.

Brief description of amendments: These amendments modify the Technical Specifications by removing reference to ''the Banked Position Withdrawal Sequence'' and replace it with ''the analyzed rod position sequence.''

Date of issuance: June 29, 2007.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendments Nos.: 260 and 264.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 15, 2006 (71 FR 46934). The February 5, 2007, letter, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 2007.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: July 14, 2006, as supplemented by letter dated June 5, 2007.

Brief description of amendments: The proposed changes modified Technical Specification (TS) requirements related to required end states for TS action statements that are consistent with the NRC-approved Revision 0 to Technical Specification Task Force (TSTF) Change Traveler, TSTF–423, ''Risk Informed Modification to Selected Required Action End States for BWR [boiling-water reactor] Plants.''

Date of issuance: July 12, 2007.

Effective date: As of the date of issuance, to be implemented within 120 days.

Amendments Nos.: 261 and 265.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** December 19, 2006 (71 FR 75994). The letter dated June 5, 2007, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 2007.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: January 19, 2007.

Brief description of amendment: The amendment modifies the technical specifications requirements for the diesel fuel oil program by relocating references to specific standards for fuel oil testing to licensee-controlled documents and adds alternate criteria to the ''clear and bright'' acceptance test for new fuel oil.

Date of issuance: July 12, 2007.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 146.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** April 10, 2007 (72 FR 17950). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 2007.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: January 30, 2007, supplemented by your letter dated April 11, 2007.

Brief description of amendment request: The amendments revise Section 5 of the technical specifications to reflect the move to a site vice president organizational structure for Joseph M. Farley Nuclear Plant, Units 1 and 2.

Date of issuance: July 16, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 175, 168.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the technical specifications.

Date of initial notice in ***Federal Register:*** February 13, 2007 (72 FR 6790). The supplement provided clarifying information that did not change the scope of the application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a safety evaluation dated July 16, 2007.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 2, 2004, as resubmitted on June 6, 2006, and supplemented by letters dated December 28, 2006, February 28, May 9, and May 17, 2007.

Brief description of amendments: The amendments provide for a new action for selected Technical Specifications (TS) limiting conditions for operation to permit extending the completion times allowed for action requirements subject to the requirements that the risk is assessed and managed. A new Configuration Risk Management Program is added to the TS under Administrative Controls, as a risk assessment tool.

Date of issuance: July 13, 2007.

Effective date: As of the date of issuance and shall be implemented within 180 days of the date of issuance.

Amendment Nos.: Unit 1—179; Unit 2—166.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** June 12, 2007 (72 FR 32332). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 13, 2007.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 19th day of July 2007.

For the Nuclear Regulatory Commission

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–14350 Filed 7–30–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Regulatory Guide: Issuance, Availability.

FOR FURTHER INFORMATION CONTACT: NRC Senior Program Manager, Satish Aggarwal, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–6005 or e-mail *SKA@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled ''Qualification of Safety-Related Battery Chargers & Inverters for Nuclear Power Plants,'' is temporarily identified by its task number, DG–1148, which should be mentioned in all related correspondence.

The Commission's regulations in Title 10, Part 50, of the *Code of Federal Regulations* (10 CFR part 50), ''Domestic Licensing of Production and Utilization Facilities,'' require that structures, systems, and components that are important to safety in a nuclear power plant must be designed to accommodate the effects of environmental conditions [i.e., remain functional under postulated design-basis events (DBEs)]. Toward that end, the general requirements are contained in General Design Criteria 1, 2, 4, and 23 of Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR part 50. Augmenting those general requirements, the specific requirements pertaining to qualification of certain electrical equipment important to safety are contained in 10 CFR 50.49, ''Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants.'' In addition, Criterion III, ''Design Control,'' of Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants,'' to 10 CFR part 50, requires that where a test program is used to verify the adequacy of a specific design feature, it should include suitable qualification testing of a prototype unit under the most severe DBE.

This regulatory guide describes a method that the NRC considers acceptable for use in implementing specific parts of the agency's regulations for qualification of safety-related battery chargers and inverters for nuclear power plants.

II. Further Information

The NRC is soliciting comments on Draft Regulatory Guide DG–1148. Comments may be accompanied by relevant information or supporting data, and should mention DG–1148 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *E-mail comments to: NRCREP@nrc.gov.* You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

3. *Hand-deliver comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

4. *Fax comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Draft Regulatory Guide DG–1148 may be directed to NRC Senior Program Manager, Satish Aggarwal, at (301) 415–6005 or e-mail *SKA@nrc.gov.*

Comments would be most helpful if received by October 2, 2007. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of Draft Regulatory Guide DG–1148 are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML071440292.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.*

Please note that the NRC does not intend to distribute printed copies of Draft Regulatory Guide DG–1148, unless specifically requested on an individual basis with adequate justification. Such requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions 3 should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 25 day of July, 2007.

For The Nuclear Regulatory Commission.

Andrea Valentin,

Chief, Regulatory Guide Branch, Division of Fuel, Engineering and Radiological Research, Office of Nuclear Regulatory Research.

[FR Doc. E7–14717 Filed 7–30–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled ''Minimization of Contamination and Radioactive Waste Generation in Support of Decommissioning,'' is temporarily identified by its task number, DG–4012, which should be mentioned in all related correspondence.

The issuance of the final rule for Subpart E, ''Radiological Criteria for License Termination,'' of Title 10, Part 20, ''Standards for Protection Against Radiation,'' of the Code of Federal Regulations (10 CFR part 20), published in Volume 62 of the **Federal Register** on July 21, 1997 (62 FR 39058–92), included specific requirements in 10 CFR 20.1406, ''Minimization of Contamination,'' for the submission of information by license applicants with regard to design and operational procedures for minimizing contamination of the facility and the environment and for minimizing radioactive waste generation and facilitating decommissioning. As specifically stated, ''Applicants for licenses, other than renewals, after August 20, 1997, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.'' Therefore, a license applicant should consider the total life cycle of the facility, from initial facility layout and design to programs and procedures for operation to final decontamination and dismantling at the time of decommissioning. During the operating life of a facility, the design and operating procedures might change, but the objectives of 10 CFR 20.1406 need to be addressed. The purpose of this regulatory guide is to present guidance that will assist license applicants in effectively implementing this licensing requirement.

The NRC staff is soliciting comments on Draft Regulatory Guide DG–4012. Comments may be accompanied by relevant information or supporting data, and should mention DG–4012 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: NRCREP@nrc.gov. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

Hand-deliver comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Draft Regulatory Guide DG–4012 may be directed to NRC Senior Program Manager, Edward O'Donnell, at (301) 415–6265 or e-mail *EXO@nrc.gov.*

Comments would be most helpful if received by November 1, 2007. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of Draft Regulatory Guide DG–4012 are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession #ML071210011.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.* Requests for single copies of draft or final guides (which may be reproduced) should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15 day of June, 2007.

For the U.S. Nuclear Regulatory Commission.

Jimi T. Yerokun,

Chief, Risk Applications and Special Projects Branch, Division of Risk Assessment and Special Projects, Office of Nuclear Regulatory Research.

[FR Doc. E7–14718 Filed 7–30–07; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Request for public comment.

SUMMARY: On May 1, 2007, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2007, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the **Federal Register**. 72 FR 28558 (May 21, 2007). Two of the amendments, specifically Amendment 9 pertaining to offenses involving cocaine base (''crack'') and Amendment 12 pertaining to certain criminal history rules, have the effect of lowering guideline ranges. The Commission requests comment regarding whether either amendment should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as amendments that may be

applied retroactively to previously sentenced defendants. The Commission also requests comment regarding whether, if it amends § 1B1.10(c) to include either amendment, it also should amend § 1B1.10 to provide guidance to the courts on the procedure to be used when applying an amendment retroactively under 18 U.S.C. 3582(c)(2).

DATES: Public comment should be received on or before October 1, 2007.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs-Retroactivity Public Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: Section 3582(c)(2) of title 18, United States Code, provides that ''in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.''

The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, public comment should address each of these factors.

The text of the amendments referenced in this notice also may be accessed through the Commission's Web site at *www.ussc.gov*.

Authority: 28 U.S.C. 994(a), (o), (u); USSC Rules of Practice and Procedure 4.1, 4.3.

Ricardo H. Hinojosa,

Chair.

[FR Doc. 07–3734 Filed 7–30–07; 8:45 am]

BILLING CODE 2211–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities. Request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2008.

DATES: Public comment should be received on or before August 23, 2007.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs-Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2008. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any of the tentative priorities by the statutory deadline of May 1, 2008. Accordingly, it may be necessary to continue work on some of these issues beyond the amendment cycle ending on May 1, 2008.

As so prefaced, the Commission has identified the following tentative priorities:

(1) Implementation of crime legislation enacted during the 110th Congress warranting a Commission response, including (A) the Animal Fighting Prohibition Enforcement Act of 2007, Public Law 110(22 ; and (B) any other legislation authorizing statutory penalties or creating new offenses that requires incorporation into the guidelines.

(2) Continuation of its work with Congress and other interested parties on cocaine sentencing policy to implement the recommendations set forth in the Commission's 2002 and 2007 reports to Congress, both entitled Cocaine and *Federal Sentencing Policy*, and to develop appropriate guideline amendments in response to any related legislation.

(3) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to *United States* v. *Booker* and *United States* v. *Rita*, including any appropriate amendments to the guidelines or other changes to the *Guidelines Manual* to reflect those decisions, as well as continuation of its monitoring and analysis of post-*Booker* federal sentencing practices, data, case law, and other feedback, including reasons for departures and variances stated by sentencing courts.

(4) Continuation of its policy work regarding immigration offenses, specifically, offenses sentenced under 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States) and implementation of any immigration legislation that may be enacted.

(5) Continuation of its policy work, in light of the Commission's prior and ongoing research on criminal history, to develop and consider possible options that might improve the operation of Chapter Four (Criminal History).

(6) Continuation of guideline simplification efforts with consideration and possible development of options that might improve the operation of the sentencing guidelines.

(7) Resolution of a number of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States*, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts.

(8) Preparation and dissemination, pursuant to the Commission's authority under 28 U.S.C. 995(a)(12)–(16), of research reports on various aspects of federal sentencing policy and practice, including information on any amendments that might be appropriate in response to those reports.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other

issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2008. Further, with respect to items (7) and (8), the Commission requests specific comment regarding what circuit conflict issues it should address and what research topics it should consider.

To the extent practicable, public comment should include the following: (1) A statement of the issue, including scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Ricardo H. Hinojosa,

Chair.

[FR Doc. E7–14829 Filed 7–30–07; 8:45 am]

BILLING CODE 2211–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2007–0029]

Social Security Ruling, SSR 07–01p; Titles II and XVI: Evaluating Visual Field Loss Using Automated Static Threshold Perimetry

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 07–01p. This Ruling clarifies how we use automated static threshold perimetry to determine statutory blindness based on visual field loss.

EFFECTIVE DATE: July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Michelle Hungerman, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2289 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this Social Security Ruling, we are doing so in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, special veterans benefits, and black lung benefits programs. Social Security Rulings may be based on determinations or decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are binding as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income.)

Dated: May 30, 2007.

Michael J. Astrue,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Evaluating Visual Field Loss Using Automated Static Threshold Perimetry

Purpose: To clarify how we use automated static threshold perimetry to evaluate visual field loss.

Citations (Authority): Sections 205(a), 216(i)(1), 221, 223(d), 1614(a), 1631(d), and 1633 of the Social Security Act (Act), as amended; Regulations No. 4, subpart P, sections 404.1520, 404.1525, 404.1526, 404.1581, and 2.00A, 2.03, 102.00A, and 102.03 of appendix 1; and Regulations No.16, subpart I, sections 416.920, 416.924, 416.925, 416.926, and 416.981.

Pertinent History: The Act provides for a finding of blindness based on visual field loss when the widest diameter of the visual field in the better eye subtends an angle no greater than 20 degrees. Even when visual field loss does not result in blindness, it may nevertheless be disabling. In sections 2.00A6 and 102.00A6 of the Listing of Impairments in appendix 1 to subpart P of part 404 (the listings) we provide that when we need to measure the extent of visual field loss, we will use visual field measurements obtained with an automated static threshold perimetry test that satisfies our requirements.[1]

Automated static threshold perimetry measures the retina's sensitivity to light at predetermined locations in the visual field. While the individual focuses on a specific point, called the *point of fixation*, stimuli are presented in random order at each of the predetermined locations within the visual field. The size of the stimulus and the locations tested remain constant, but the intensity (brightness) of the stimulus is varied in order to determine the level at which the individual sees the stimulus. The intensity level where the individual sees the stimulus is referred to as the *threshold*. The threshold for each point tested is reported in decibels (dB).

The results of automated static threshold perimetry are reported on standard charts. (See Exhibits 1 and 2 at the end of this ruling for examples of standard charts that may be found in case records.) These charts:

- Identify the perimeter that was used to perform the test;
- Provide identifying information about the test, such as the date of the test, the type of test used, the size and color of the stimulus, and the background illumination;
- Provide the *mean deviation* (MD);[2] and
- Contain a printout that shows the threshold, in dB, for each of the locations tested. We refer to this printout, examples of which are shown below, as the dB printout.

In this Ruling we explain:

- How to use the information in the standard charts produced as part of automated static threshold perimetry to determine whether the visual field test satisfies our requirements. To illustrate this, we refer to standard charts produced by the Humphrey Field Analyzer. We refer only to the Humphrey Field Analyzer because it is the perimeter most widely used in the United States.
- How to use the MD to determine whether the individual has visual field loss.
- Our process for determining whether the test results show statutory blindness based on visual field loss.[3]
- How to evaluate cases in which severe visual field loss has not resulted in statutory blindness.

[1] Our rules provide that in addition to automated static threshold perimetry we can use comparable visual field measurements obtained with kinetic perimetry, such as Goldmann perimetry. Because we allow for different types of testing, our listings provide comparable criteria that can be used with the different types of test results. Accordingly, only one type of testing is needed to evaluate visual field loss under our listings.

[2] The MD represents the average elevation or depression of the individual's visual field when compared to a normal field. This measurement is expressed in dB.

[3] We developed our process to enable us to apply the results of automated static threshold perimetry to the standard for statutory blindness. Health care providers do not use our process in their clinical practices or for treatment purposes.

Policy Interpretation: We use the following process to evaluate automated static threshold perimetry.

Step 1—Is the automated static threshold perimetry test acceptable?

We consider an automated static threshold perimetry test to be acceptable when it meets all of the following requirements:

- The test is performed on a perimeter that satisfies all of the requirements in sections 2.00A6a(ii) and 102.00A6a(ii) of the listings; [4]
- The test uses a white size III Goldmann stimulus and a 31.5 apostilb (asb) [5] (10 candela (cd)/m^2) white background; [6]
- The points tested are no more than 6 degrees apart horizontally or vertically; and
- The test measures the central 24 to 30 degrees of the visual field; that is, the area measuring 24 to 30 degrees around the point of fixation.

The Humphrey Field Analyzer central 30–2 threshold test (HFA 30–2) and central 24–2 threshold test (HFA 24–2) are tests that can meet these criteria. The HFA 30–2 tests 76 points in the central 30 degrees of the visual field. The HFA 24–2 tests 54 points in the central 24 to 30 degrees of the visual field. For both of these tests, the tested points are spaced in an equidistant grid pattern, with each point 6 degrees apart horizontally or vertically from any adjacent point. Therefore, we consider the HFA 30–2 and the HFA 24–2 to be acceptable tests when performed using a size III white stimulus on a 31.5 asb white background.

The following examples of dB printouts illustrate the grid patterns used for the HFA 30–2 and the HFA 24–2 and provide information for interpreting the test results.

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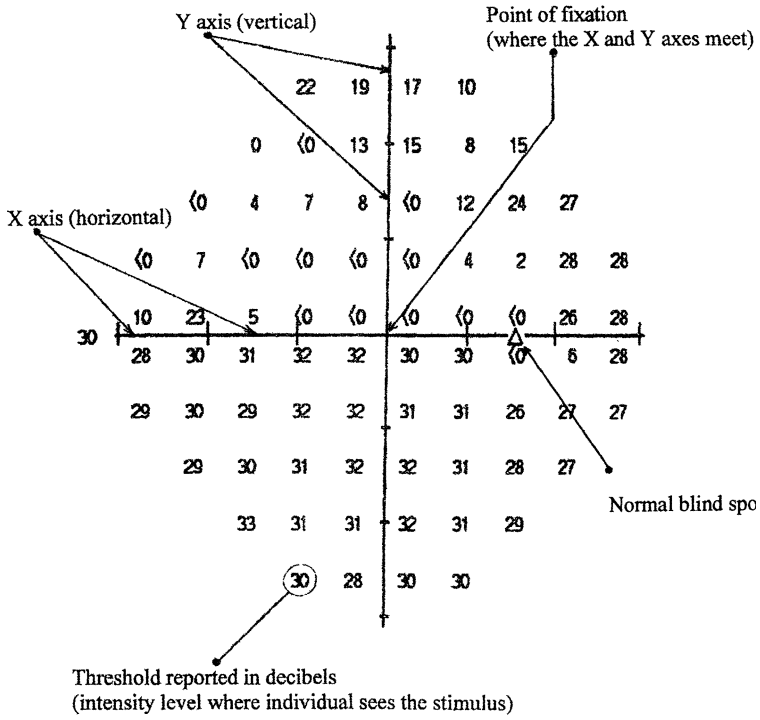
[4] As of the effective date of this ruling, all models of the Humphrey Field Analyzer satisfy these requirements.

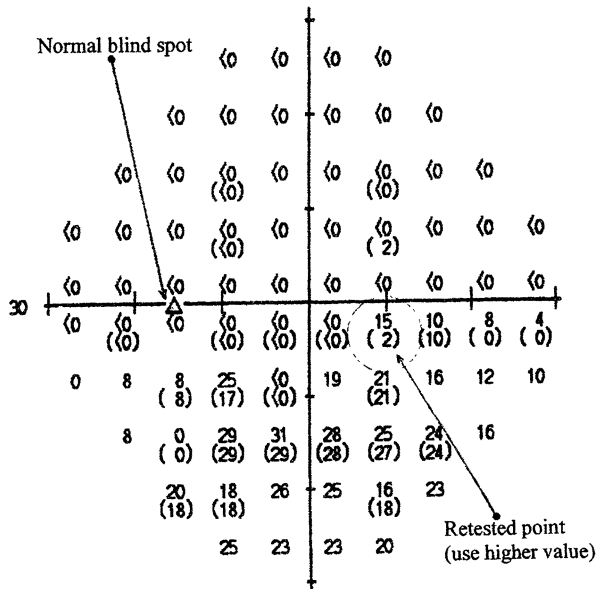
[5] An *apostilb* is a unit of luminance.

[6] The background color is not shown on the standard charts produced by the Humphrey Field Analyzer. However, as of the effective date of this ruling, the Humphrey Field Analyzer always uses a white background if a white stimulus is used.

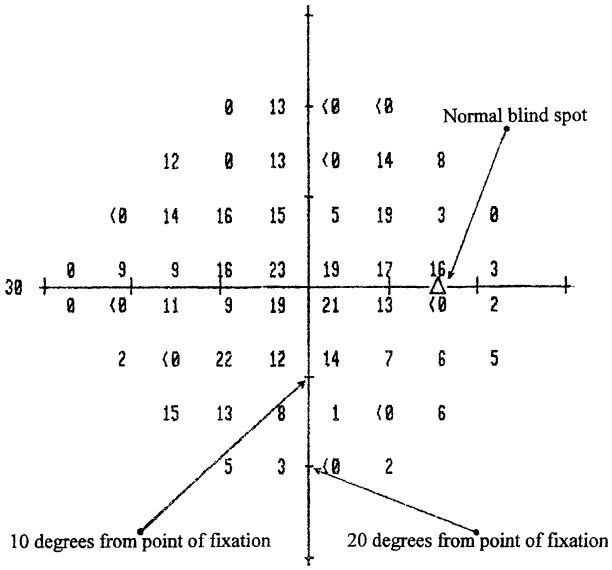
Example 1—An HFA 30-2 dB printout for the right eye



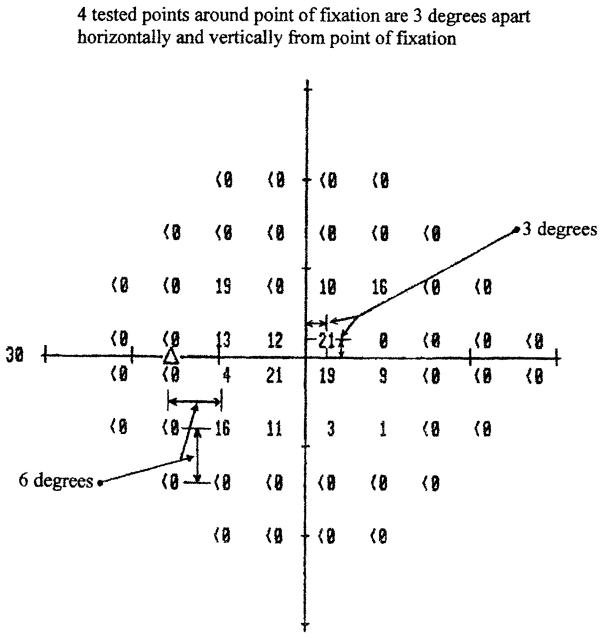
Example 2—An HFA 30-2 dB printout for the left eye



Example 3—An HFA 24-2 dB printout for the right eye



Example 4—An HFA 24-2 dB printout for the left eye



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We will not use automated static threshold perimetry test results to evaluate the visual field loss if the test was not performed using all of our requirements; for example, a stimulus other than a size III stimulus was used, or the stimulus was not white.

Step 2—Are the test results reliable?

Each perimeter manufacturer will identify factors that are used to determine whether the test results are reliable.

For the Humphrey Field Analyzer, the reliability factors are *fixation losses, false positive errors,* and *false negative errors.* Information about these factors is at the top of the chart (see Exhibits 1 and 2). The test results are not reliable for evaluating visual field loss if the fixation losses exceed 20 percent, or if the false positive errors or false negative errors exceed 33 percent.

Even when the reliability factors are within the manufacturer's specifications, we will not use the test results to evaluate visual field loss if there is other information in the case file that suggests that the results are not valid; for example, the test results are inconsistent with the clinical findings or the individual's daily activities.

Step 3—Does the individual have visual field loss?

For acceptable tests performed on a Humphrey Field Analyzer, an MD equal to or greater than −5 dB (for example, −4.39, −2.58, or 0) indicates that the visual field is normal. An MD less than −5 dB (for example, −5.5, −8.85, or −11.18) indicates the individual has visual field loss.

Step 4—Do the test results show statutory blindness based on visual field loss?

In automated static threshold perimetry, the intensity of the stimulus varies. We measure the extent of visual field loss by determining the portion of the visual field in which the individual can see a white III4e stimulus. The ''III'' refers to the standard Goldmann test stimulus size III. The ''4e'' refers to the standard Goldmann filters used to determine the intensity of the stimulus. Therefore, a determination is needed as to the dB threshold level that corresponds to a 4e intensity for the particular perimeter being used. Points that are at this dB threshold level or above are considered seeing points because they are the same intensity or dimmer than a 4e stimulus. Points that are below this dB threshold level are considered non-seeing points because they are brighter than a 4e stimulus.

For acceptable tests performed on a Humphrey Field Analyzer, a 10 dB threshold is equivalent to a 4e intensity. Therefore, for these tests we consider any point with a threshold of 10 dB or higher to be a seeing point; we consider any point with a threshold of less than 10 dB to be a non-seeing point (see sections 2.00A6a(vii) and 102.00A6a(vii) of the listings).

After we determine the dB threshold that is comparable to a 4e stimulus, we use the dB printout to determine whether the widest diameter of the field is less than or equal to 20 degrees. The diameter must go through the point of fixation.

To determine whether the widest diameter is greater than 20 degrees, we may map the visual field on a copy of the dB printout by drawing a line, which we refer to as a *pseudoisopter,* midway between the seeing and non-seeing points.[7] For example, for acceptable tests performed on a Humphrey Field Analyzer, we draw the pseudoisopter between any two adjacent tested points when one threshold is 10 dB or greater and the other threshold is less than 10 dB. If any number at the outermost edge of the field is a seeing point, we draw the pseudoisopter on the edge of the field at that point. If more than one number is shown for a particular point, we use the higher number to determine whether the point is a seeing point. We include the map of the visual field in the case record.

The pseudoisopter(s) differentiates the seeing area of the visual field from the non-seeing area. We consider the pseudoisopter itself to be part of the seeing area.

We determine whether the widest diameter is greater than 20 degrees by using the hash marks on the horizontal (x-) and vertical (y-) axes of the Humphrey Field Analyzer dB printout or by calculating the distance between the points. As shown above, for the HFA 30–2 and the HFA 24–2, each hash mark covers a distance of 10 degrees, and the degrees are divided evenly between the hash marks. Additionally, each tested point on a dB printout from an HFA 30–2 or an HFA 24–2 is 6 degrees apart horizontally or vertically from any adjacent tested point. The four tested points immediately surrounding the point of fixation are each 3 degrees horizontally and vertically from the point of fixation. Any tested point adjacent to an axis is 3 degrees from that axis.

When we measure the widest diameter of the visual field, we subtract the length of any scotoma (non-seeing area), other than the ''normal'' blind spot,[8] from the overall length of any diameter on which it falls. (On some Humphrey Field Analyzer dB printouts, the normal blind spot is identified by a small triangle, as shown in Example 1.) As previously noted, we consider the pseudoisopter to be a seeing area and do not subtract it from the overall length of the diameter.

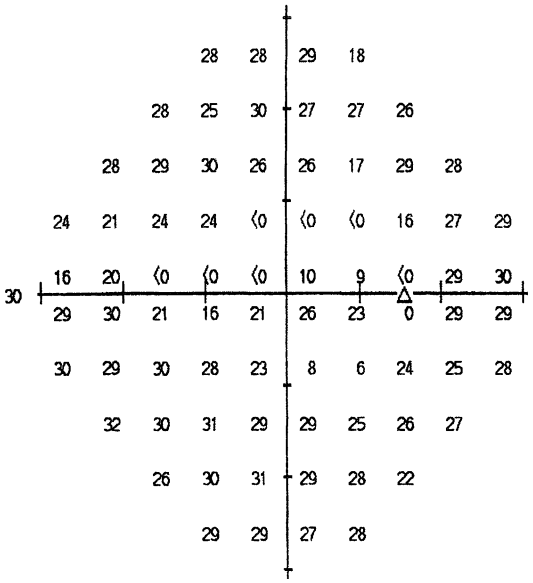
We will determine that the individual has statutory blindness if the widest diameter in the better eye is less than or equal to 20 degrees, this finding is consistent with the other evidence in the case record, and for title II, a medically determinable impairment that could result in the visual field loss has been identified.

Examples of how we determine whether the individual has statutory blindness based on visual field loss.

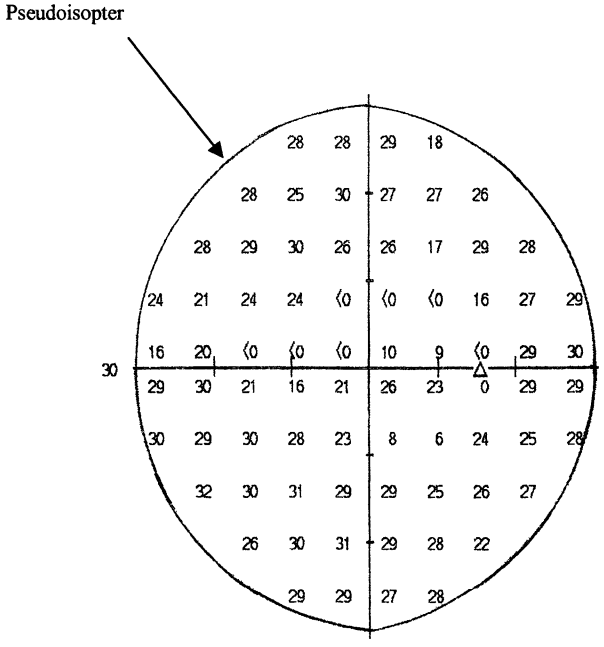
[7] A pseudoisopter is similar to an isopter drawn as part of kinetic visual field testing. Drawing a pseudoisopter assists in determining the location of the widest diameter of the visual field and whether that diameter is 20 degrees or less. However, we do not always need to draw a pseudoisopter to determine whether the widest diameter is 20 degrees or less. For example, if the only seeing points on the dB printout are the four locations around the point of fixation, we can determine that the widest diameter of the visual field is less than 20 degrees without drawing a pseudoisopter. If all the points in an entire quadrant of the dB printout are seeing points, we can determine that the widest diameter is greater than 20 degrees.

[8] The normal blind spot is usually located 15.5 degrees temporal to fixation (to the right for the right eye, to the left for the left eye) and 1.5 degrees below the horizontal meridian. It is approximately 5.5 degrees in width and 7.5 degrees in length.

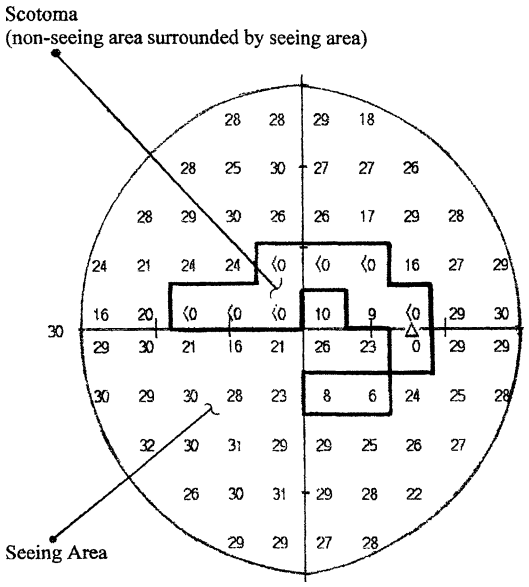
Example 5—An HFA 30-2 dB printout for the right eye



To measure the widest diameter, we create a pseudoisopter by drawing a line midway between points with a threshold of 10 dB and higher and adjacent points with a threshold less than 10 dB, or by drawing the pseudoisopter on the edge of the tested area when the thresholds at the outermost points are 10 dB or higher. As all of the outermost points on the dB printout above are 10 dB or higher, we draw the pseudoisopter delineating the outer edge of the visual field around the tested area.



After determining the outer edge of the seeing area as shown on the dB printout, we need to determine whether there are any scotomata; that is, blind spots. If so, we map the scotomata as we do not consider them when we determine whether the widest diameter of the visual field is greater than 20 degrees. A scotoma is illustrated below.

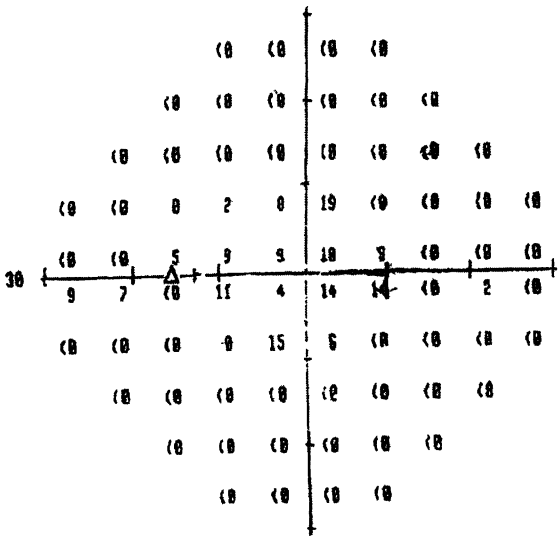


As all of the thresholds in the lower left quadrant of this dB printout are higher than 10 dB, we consider this entire quadrant to be a seeing area. Any diameter that is drawn through this quadrant will be at least 30 degrees long. Therefore, without calculating the actual length of the widest diameter shown on the dB printout, we can determine that the widest diameter of this visual field must be greater than 20 degrees and that this individual does not have statutory blindness based on visual field loss.

Although we did not need to calculate the widest diameter for this example, the widest diameter shown on this dB printout is 54 degrees on both axes. On the y-axis, the diameter extends from the top of the dB printout to the bottom of the dB printout, which is 60 degrees in length. However, there is a segment of the y-axis that is in the scotoma, the segment from 6 degrees to 12 degrees.[9] This segment is 6 degrees long (calculated on the y-axis by adding the 3 degrees above the non-seeing point to the 3 degrees below it). We subtract the 6 degrees from the 60 degrees for a total diameter of 54 degrees.

On the x-axis, the diameter extends from one side of the dB printout to the other side of the dB printout, which is 60 degrees in length. However, there is a segment of the x-axis that is in the scotoma, the segment from 12 degrees to 18 degrees.[10] This segment is 6 degrees long. We subtract the 6 degrees from the 60 degrees for a diameter of 54 degrees.

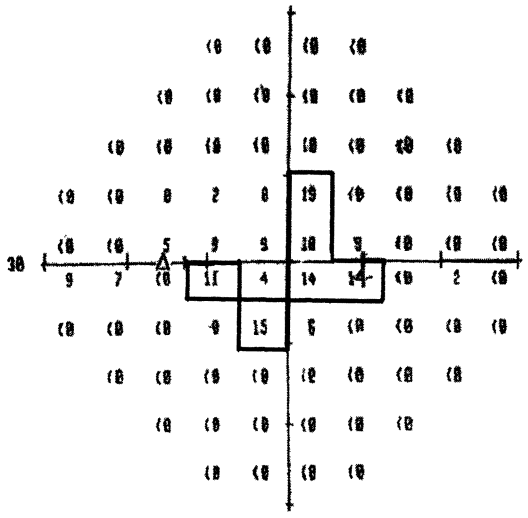
Example 6—An HFA 30-2 dB printout for the left eye



[9] We would not deduct the segments of the y-axis from the point of fixation to 6 degrees or from −6 to −12 degrees because those segments are part of the pseudoisopter and we consider the pseudoisopter to be a seeing area.

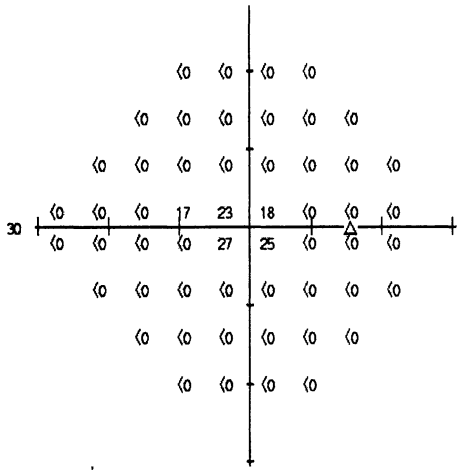
[10] This segment includes the ''normal'' blind spot, which is usually not deducted from the visual field. However, because the area around the''normal'' blind spot is part of the non-seeing area, the ''normal'' blind spot is no longer considered ''normal'' and we include it as part of the scotoma.

To measure the widest diameter, we create a pseudoisopter by drawing a line midway between points with a threshold of 10 dB and higher and adjacent points with a threshold less than 10 dB.

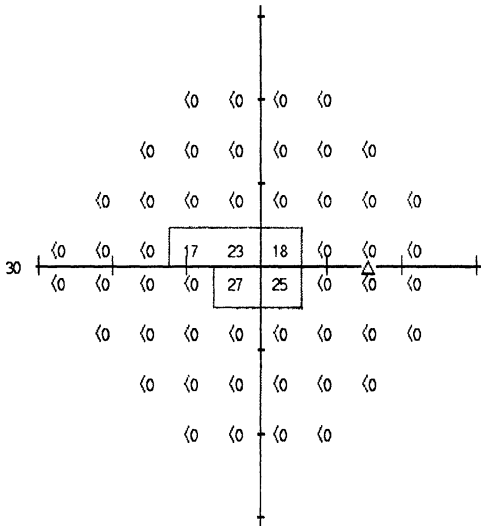


The widest diameter is 24 degrees on the y-axis. We can determine that the individual does not have statutory blindness based on visual field loss because the widest diameter is greater than 20 degrees.

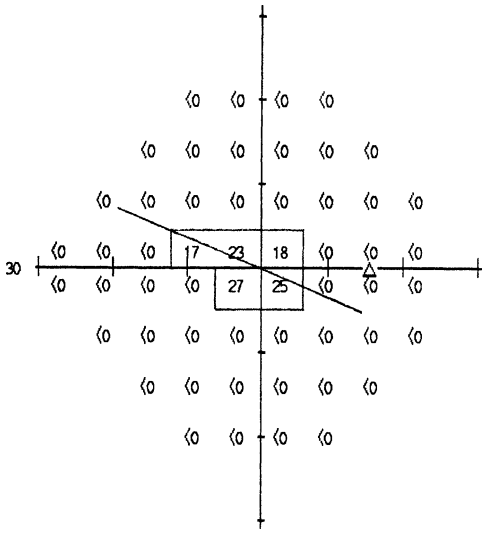
Example 7—An HFA 24-2 dB printout for the right eye



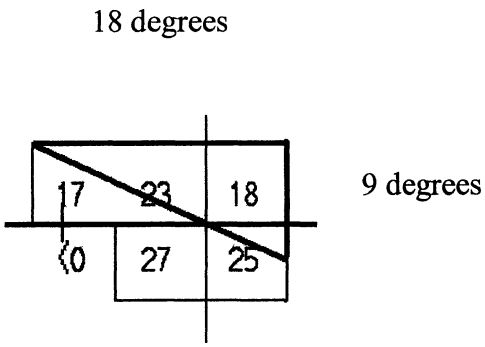
To measure the widest diameter, we create a pseudoisopter by drawing a line midway between points with a threshold of 10 dB or higher and adjacent points with a threshold less than 10 dB.



The widest diameter is shown below.



The widest diameter is on a diagonal; therefore, we calculate its length as the hypotenuse of a right triangle.[11] The widest diameter extends from the point in the field that is 6 degrees above and 12 degrees to the left of the point of fixation, through the point of fixation, to the point in the field that is 3 degrees below and 6 degrees to the right of the point of fixation. These two points are 9 degrees apart vertically and 18 degrees apart horizontally, as shown below.



[11] The formula for calculating the length of the hypotenuse of a right triangle is $a^2 + b^2 = c^2$, where a and b represent the vertical and horizontal distances between two points and c represents the diagonal distance between two points.

To measure the widest diameter, we apply the formula for calculating the length of the hypotenuse of a right triangle as follows: $9^2 + 18^2 = 81 + 324 = 405$. The widest diameter is the square root of 405, or 20.12 degrees, which we round to 20 degrees.[12] Assuming that this is the individual's better eye, that the field shown is consistent with the other evidence in file, and for a title II claim, that there is a medically determinable impairment that could cause this field loss, we will find that the individual has statutory blindness.

Step 5—How do we evaluate severe visual field loss that has not resulted in statutory blindness?

If the individual's visual disorder has resulted in severe visual field loss but has not resulted in statutory blindness, we will consider whether the visual disorder meets listing 2.03B or 102.03B. A visual disorder meets listing 2.03B or 102.03B when the MD for the better eye, measured with an HFA 30–2, is -22 dB or worse.[13] If the visual disorder does not meet a listing, we will determine whether the visual disorder medically equals a listing or, if not, assess the limitations imposed by the visual disorder.

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[12] When determining the widest diameter of the visual field, follow the normal rules for rounding to the nearest whole number; that is, round decimals below 0.5 down to the lower whole number and round decimals 0.5 and above up to the higher whole number.

[13] An HFA 24–2 cannot be used to determine if the visual disorder meets or medically equals listing 2.03B or 102.03B because the criterion in those listings was calculated using an HFA 30–2. An MD calculated using an HFA 24–2 cannot be substituted for an MD calculated using an HFA 30–2.

Exhibit 1—Standard Chart from an HFA 30-2

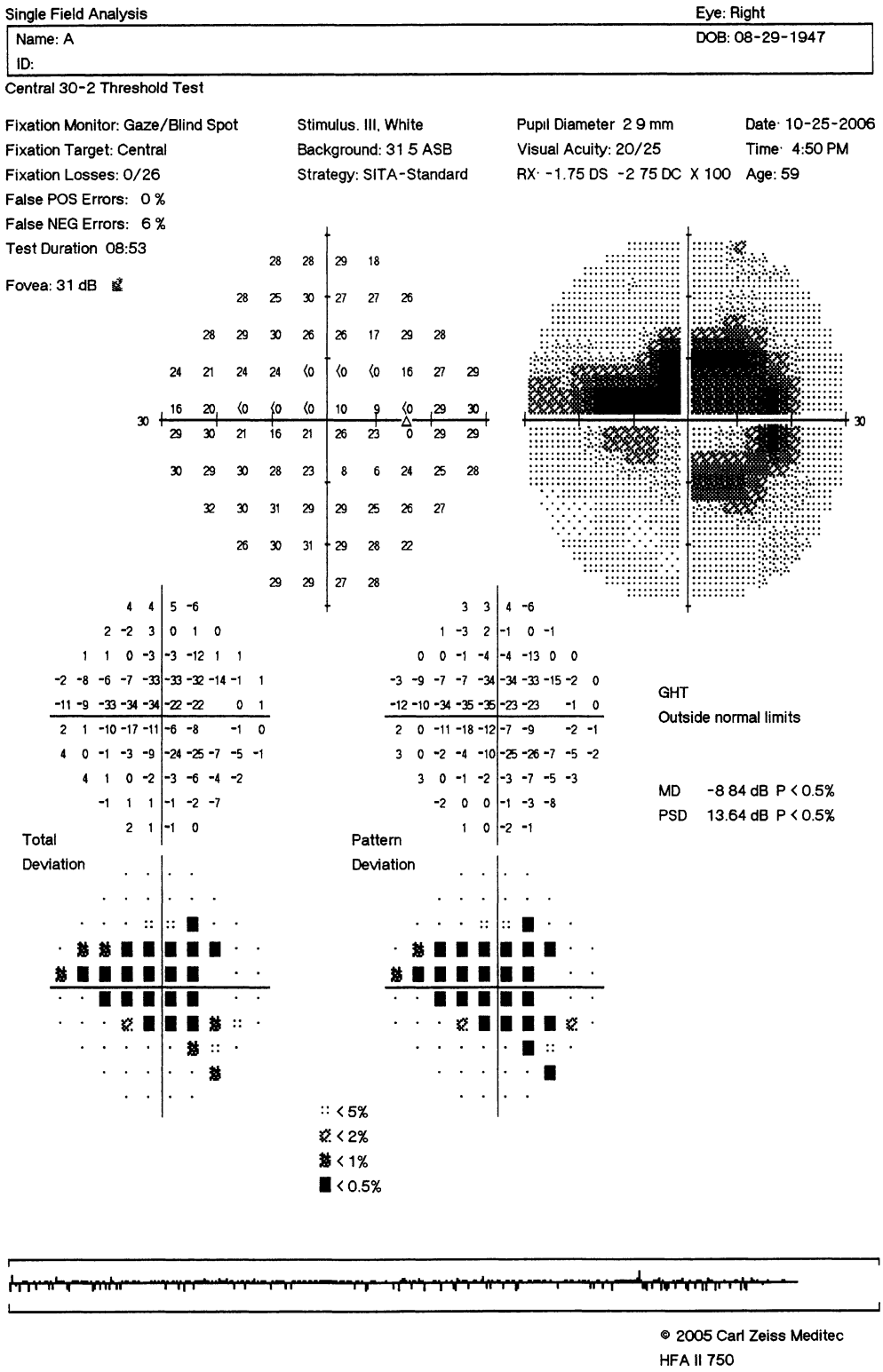
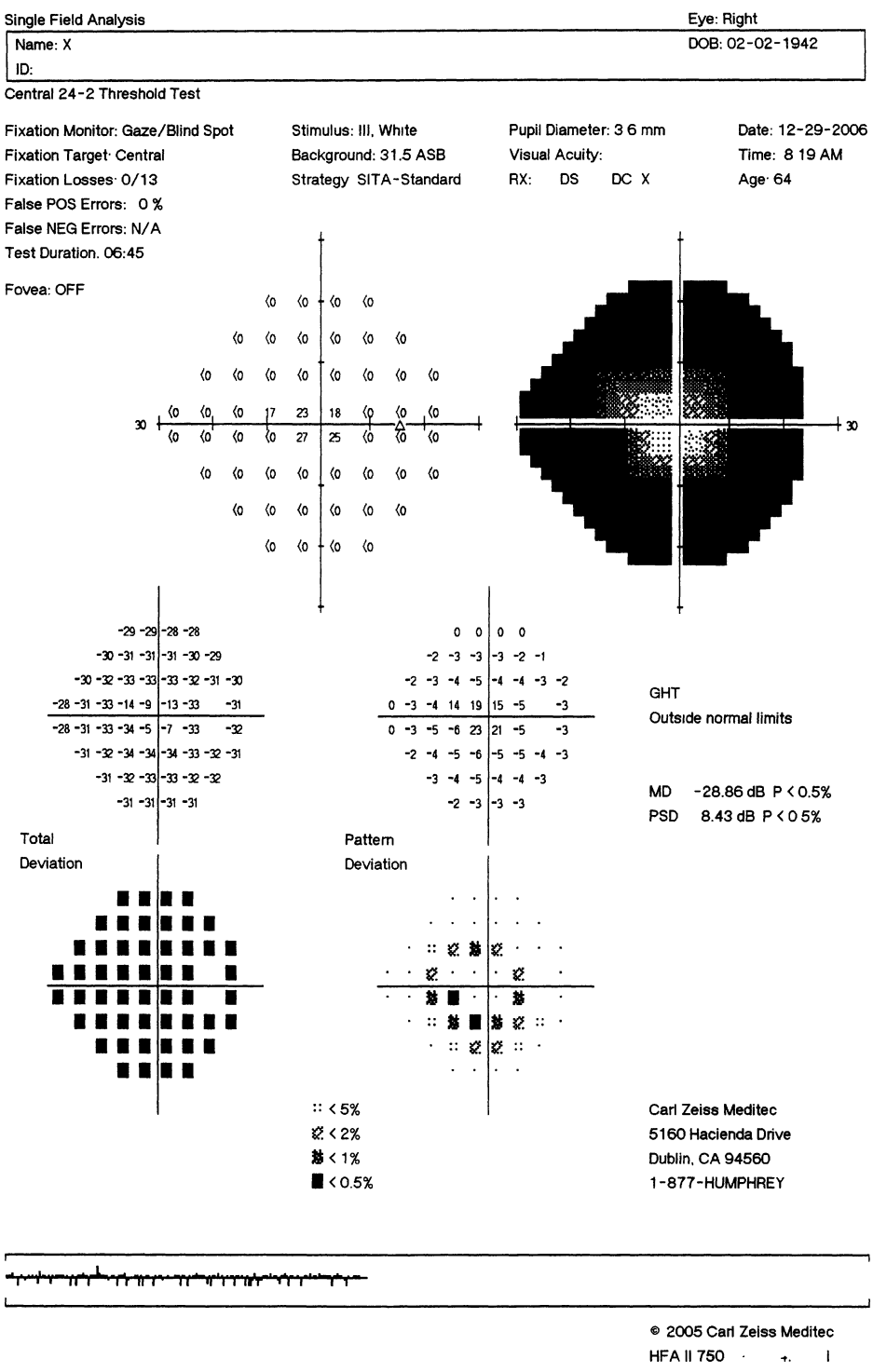


Exhibit 2—Standard Chart from an HFA 24-2



Effective Date: This Ruling is effective upon publication in the **Federal Register**.

Cross-References: Program Operations Manual System DI 34001.012 and DI 34005.102; Special Senses and Speech—Adult, Program Policy Online 104167188, Special Senses and Speech—Child, Program Policy Online 734761857.

[FR Doc. 07–3708 Filed 7–30–07 8:45 am]

BILLING CODE 4191–02–C

DEPARTMENT OF STATE

[Public Notice 5870]

United States-Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants to Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators

AGENCY: Department of State.

ACTION: Notice.

EFFECTIVE DATE: July 2, 2007.

FOR FURTHER INFORMATION CONTACT: Barbara Jones, Program Administrator, U.S.-Egypt Science and Technology Grants Program, USAID/Cairo, Unit 64900, Box 5, APO AE 09839–4900; phone: 011–(20–2) 2522–6887; fax: 011–(20–2) 2522–7041; E-mail: *bljones@usaid.gov.*

The 2007 Program Announcement, including proposal guidelines, will be available starting July 2, 2007 on the Joint Board Web site: *http://www.usembassy.egnet.net/usegypt/joint-st.htm.*

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin July 2, 2007. This program will provide modest grants for successfully competitive proposals for binational collaborative projects and other activities submitted by U.S. and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals which fully meet the submission requirements as outlined in the Program Announcement will receive peer reviews. Proposals considered for funding in fiscal year 2008 must be postmarked by October 22, 2007. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined by the Joint Board. These include priorities in the areas of information technology, environmental technologies, biotechnology, energy, standards and metrology, manufacturing technologies, and others. More information and copies of the Program Announcement and Application may be obtained by request.

FOR FURTHER INFORMATION CONTACT: Please contact Robert S. Senseney, Senior Advisor for Science Partnerships, Office of Science and Technology Cooperation, Bureau of Oceans, Environment and Science, U.S. Department of State and Chair, U.S.-Egypt S&T Joint Board at (202) 663–3246 or *SenseneyRS@state.gov.*

Dated: July 24, 2007.

Shirley Hart,

Deputy Director, Office of Science and Technology Cooperation, Bureau of Oceans, Environment and Science, Department of State.

[FR Doc. E7–14807 Filed 7–30–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5871]

United States-Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants To Support Junior Scientist Development Visits by U.S. and Egyptian Scientists

AGENCY: Department of State.

ACTION: Notice.

EFFECTIVE DATE: July 2, 2007.

FOR FURTHER INFORMATION, CONTACT: Barbara Jones, Program Administrator, U.S.-Egypt Science and Technology Grants Program, USAID/Cairo, Unit 64900, Box 5, APO AE 09839–4900; phone: 011–(20–2) 2522–6887; fax: 011 (20–2) 2522–7041; E-mail: *bljones@usaid.gov.*

The 2007 Program guidelines for Junior Scientist Development visits will be available starting July 2, 2007 on the Joint Board Web site: *http://egypt.usembassy.gov/usegypt.htm.*

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin July 2, 2007. This program will provide modest grants for successfully competitive proposals for development visits by U.S. Junior Scientists to Egypt and Junior Egyptian Scientists to the United States. Applicants must be scientists who have received their PhD within the past ten years. U.S. applicants only may have a Master's degree or be currently enrolled in a PhD program. Applications considered for funding must be postmarked by October 29, 2007. All proposals which fully meet the submission requirements will be considered. More information and copies of the Program Announcement and Application may be obtained upon request.

FOR FURTHER INFORMATION CONTACT: Please contact Robert S. Senseney, Senior Advisor for Science Partnerships, Office of Science and Technology Cooperation, Bureau of Oceans, Environment and Science, U.S. Department of State and Chair, U.S.-Egypt S&T Joint Board at (202) 663–3246 or *SenseneyRS@state.gov.*

Dated: July 24, 2007.

Shirley Hart,

Deputy Director, Office of Science and Technology Cooperation, Bureau of Oceans, Environment and Science, Department of State.

[FR Doc. E7–14806 Filed 7–30–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 22, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–28547.
Date Filed: June 18, 2007.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 9, 2007.
Description: Application of First Choice Airways Limited (''First Choice''), requesting an exemption and an amended foreign air carrier permit authorizing First Choice to conduct: (i) Charter foreign air transportation of persons, property and mail from any point(s) behind any European Community Member State via any point(s) in the European Community Member States and intermediate points to any point(s) in the United States and beyond; (ii) charter foreign air transportation of persons, property and mail between any point(s) in the United States and any point(s) in the European Common Aviation Area; (iii) other charters pursuant to Part 212; and (iv) charters as authorized in the future under the U.S.-E.U. Agreement.

Docket Number: OST–2006–26702.
Date Filed: June 18, 2007.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 9, 2007.
Description: Application of Flying Service N.V. (''Flying Service''), requesting an amendment to its foreign air carrier permit for additional authority to the full extent authorized by the US–EC Agreement to enable it to engage in: (i) Foreign air transportation of persons and property from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; and (ii) foreign air transportation of persons and property between any point or points in the United States and any point or points in any member of the European Common Aviation Area. Flying Service further requests corresponding amendment to its exemption to enable it to provide the additional service described above pending issuance of an effective foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

Docket Number: OST–2007–28550.
Date Filed: June 18, 2007.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 9, 2007.
Description: Application of Aer Lingus Limited (''Aer Lingus''), requesting an exemption and an amended foreign air carrier permit authorizing Aer Lingus to conduct operations to and from the United States to the full extent authorized by the recently signed United States-European Union Air Transport Agreement (''U.S.–E.U. Agreement''), for flight operations on or after March 30, 2008, including authority to engage in: (i) Scheduled and charter foreign air transportation of persons, property and mail from any point(s) behind any Member State(s) of the European Community via any point(s) in any Member State(s) and intermediate points to any point(s) in the United States and beyond; (ii) scheduled and charter foreign air transportation of persons, property and mail between any point(s) in the United States and any point(s) in any member of the European Common Aviation Area; (iii) scheduled and charter foreign cargo air transportation between any point(s) in the United States and any other point(s); (iv) other charters pursuant to Part 212; and (v) transportation authorized by any additional route or other right(s) made available to European Community carriers in the future.

Docket Number: OST–1996–923.
Date Filed: June 21, 2007.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 12, 2007.
Description: Application of Virgin Atlantic Airways Ltd. (''Virgin Atlantic''), requesting an amendment to its existing foreign air carrier permit to provide: (i) Foreign scheduled and charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements set forth in Part 212; and transportation authorized by any additional route rights made available to European Community carriers in the future. Virgin Atlantic also requests exemption authority to enable it to provide services covered by its foreign air carrier permit.

Docket Number: OST–2007–28588.
Date Filed: June 22, 2007.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 13, 2007.
Description: Application of Skybus Airlines, Inc., requesting a certificate of public convenience and necessity authorizing it to operate scheduled foreign air transportation of persons, property and mail between Port Columbus International Airport, Columbus, Ohio on the one hand, and Nassau, Bahamas and Cancun, Mexico on the other.

Barbara J. Hairston,

Supervisory Docket Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. E7–14794 Filed 7–30–07; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2007–28350]

Notice of Availability and Public Comment Period for the Draft Air Quality General Conformity Determination (DGCD) for Proposed Southwest Airlines Commercial Air Service at San Francisco International Airport, San Francisco, CA

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

ACTION: Notice of availability of the Draft Air Quality General Conformity Determination and notice of public comment period.

SUMMARY: The FAA is issuing this notice to advise the public that FAA has prepared a Draft General Conformity Determination (DGCD) for Proposed Operations of Southwest Airlines Co. (Southwest) at San Francisco International Airport (SFO). In accordance with Section 176(c) of the Clean Air Act (CAA), FAA has assessed whether the emissions that would result from FAA's action in approving the proposed operation specifications (OpSpec) for Southwest's proposed operations at SFO conform to the California State Implementation Plan (SIP).

DATES: Submit comments on or before August 30, 2007.

ADDRESSES: The DGCD is available for review until August 30, 2007:

1. Electronically on the Department of Transportation's Docket Management System (DMS) at *http://dms.dot.gov/.* Do a simple search for docket number 28350.

2. Hard copies are available for review between 9 a.m. and 4:30 p.m. at SFO at the offices of the City of San Francisco: Planning Design & Construction, Singapore/Delta Building, 710 N.

McDonnell Road, Second Floor, Suite S232, San Francisco, CA 94128.

3. To request mailed hard copies of the DGCD, contact Ms. Joan Seward, All Weather Operations Program Manager ASW–230.1, FAA SW. Region, 2601 Meacham Boulevard, Forth Worth, TX 76137; telephone: 817–222–5256; e-mail: *Joan.M.Seward@faa.gov.*

You may submit comments, identified by docket number FAA–2007–28350, by any of the following methods:

1. By mail to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

2. By hand delivery to Docket Management Facility 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays;

3. By fax to the Docket Management Facility at 202–493–2251; or

4. By electronic submission through the DMS Web site at *http://dms.dot.gov/submit/.* See **SUPPLEMENTARY INFORMATION** for additional information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Seward, telephone: 817–222–5256; e-mail: *Joan.M.Seward@faa.gov.*

SUPPLEMENTARY INFORMATION: On March 2, 2007, Southwest submitted a request to FAA for approval to re-initiate scheduled passenger service at SFO commencing August 26, 2007. Southwest had served SFO until February 2001, but discontinued service. As required by Title 14 of the Code of Federal Regulations (14 CFR 119.51), Southwest applied to the FAA to amend Southwest's OpSpecs to include SFO, thereby authorizing Southwest to conduct scheduled SFO service. The request to the FAA detailed Southwest's startup plans, commencing on August 26, 2007, with 18 daily landing/take-off cycles (LTOs), which would produce emissions below the General Conformity de minimis thresholds, and contained other information for the FAA to conduct the environmental review required under the regulations implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508), Section 176(c) of the Clean Air Act (CAA) (40 CFR 93.150 *et seq.*), and by FAA Order 1050.1E *Environmental Impacts: Policies and Procedures.* FAA issued an OpSpec to Southwest for this initial level of operations accompanied by a NEPA environmental categorical exclusion determining that the 18 daily LTOs were below de minimis thresholds and were not regionally significant. Southwest wishes to grow their operations to 40 LTOs within 2 years.

Comment Filing Instructions

All submissions received must include the agency name and docket number or Regulatory Information Number (RIN).

You may submit comments electronically through the DMS Web site at *http://dms.dot.gov/submit/.* You have the option of submitting comments either by typing your comment into the DMS or by uploading a previously completed comment document as a file. If you upload a file it must be in one of the following file format types: MSWord (versions 95–97); MSWord for Mac (versions 6–8); Rich Text File (RTF); American Standard Code Information Interchange (ASCII)(TXT); Portable Document Format (PDF); or WordPerfect (WPD) (versions 7–8). See the Electronic Submission Help & Guidelines screen at *http://dms.dot.gov/help/es_help.cfm* for additional guidance.

The FAA will accept comments on the DCGD until August 30, 2007. Written comments must be postmarked and electronic submissions received by not later than midnight August 30, 2007. After FAA reviews and addresses all comments, FAA will publish a notice of availability of the Final General Conformity Determination.

Issued in Washington, DC, on July 25, 2007.

Carol E. Giles,

Acting Director, Flight Standards Service.

[FR Doc. 07–3720 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 22, 2007

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–28558.
Date Filed: June 19, 2007.
Parties: Members of the International Air Transport Association.
Subject: Resolution 047a—Provisions for Inclusive Tours except between points in the ECAA, between Canada, USA and Europe.

Resolution 090—Individual Fares for Ship Crews except between points in the ECAA, between Canada, USA and Europe.

Resolution 092—Student Fares except between points in the ECAA, between Canada, USA and Europe.

Resolution 200h—Free and Reduced Fare Transportation for Inaugural Flights except between points in the ECAA, between Canada, USA and Europe.

Intended effective date: 1 July 2007.

Docket Number: OST–2007–28555.
Date Filed: June 19, 2007.
Parties: Members of the International Air Transport Association.
Subject: CAC/35/Meet/008/07 dated Normal Resolutions 801, 801r, 801re, 803, 805, 805ee, 805g, 805zz, 807, 809, 813, 815, 887b.

(Minutes relevant to the Resolutions are included in CAC/35/Meet/006/07 dated 01 May 2007).

Intended effective date: 1 October 2007.

Docket Number: OST–2007–28556.
Date Filed: June 19, 2007.
Parties: Members of the International Air Transport Association.
Subject: Resolution 111aa TC12 Flex Fares between Canada and USA–Europe.

Resolution 044aa—Intermediate/Business Class Flex Fares between Canada and USA–Europe.

Resolution 054aa—First Class Flex Fares between Canada and USA–Europe.

Resolution 064aa—Economy Class Flex Fares between Canada and USA–Europe.

Intended effective date: 1 July 2007.

Docket Number: OST–2007–28568.
Date Filed: June 20, 2007.
Parties: Members of the International Air Transport Association.
Subject: 250n Improved Seating Surcharge.

Expedited effective date: 1 July 2007.

Docket Number: OST–2007–28569.
Date Filed: June 20, 2007.
Parties: Members of the International Air Transport Association.
Subject: 002 Special Amending Resolution between South West Pacific and North America, Caribbean.

111dd South Pacific Flex Fares, South West Pacific-Canada, USA (except between French Polynesia, New Caledonia, New Zealand and USA) via PA.

046dd Intermediate/Business Class Flex Fares, South West Pacific-Canada, USA (except between French Polynesia, New Caledonia, New Zealand and USA) via PA.

056dd First Class Flex Fares, South West Pacific-Canada, USA (except between French Polynesia, New Caledonia, New Zealand and USA) via PA.

066dd Economy Class Flex Fares, South West Pacific-Canada, USA (except between French Polynesia, New Caledonia, New Zealand and USA) via PA.

Intended effective date: 1 July for Implementation.

1 September 2007.

Docket Number: OST–2007–28570.

Date Filed: June 20, 2007.

Parties: Members of the International Air Transport Association.

Subject: 047a Provisions for Inclusive Tours.

090 Individual Fares for Ship Crews.

200h Free and Reduced Fare Transportation for Inaugural Flights.

Intended effective date: 1 September 2007.

Barbara J. Hairston,

Supervisory Docket Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. E7–14771 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Change the Use of Specific of Land From Aeronautical to Non-Aeronautical use on the Baton Rouge Metropolitan Airport, Baton Rouge, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA is publishing notice of a proposed change of status of about 15 +/- acres of land on the Baton Rouge, Louisiana. The FAA invites public comment on the status change of this land under Title 49, United States Code Section 47153(c). The land status change will allow the primary airport access road known as Veteran's Boulevard to be extended from the end that is now found approximately the middle of the airport on to the northern boundary of the airport. No land barter is involved and it shall remain airport property on the Airport Layout Plan. This extension will allow development of the northwest portion of the airport for revenue producing activities. It will also provide public access to the terminal and aeronautical areas from the northern areas of the city of Baton Rouge and other suburban communities.

DATES: Comments must be received on or before August 30, 2007.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration, Southwest Region, Airports Division, LA/NM Airports Development Office, ASW–640, Fort Worth, Texas 76193–0640.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Anthony Marino, Director of Aviation, Baton Rouge Metropolitan Airport, at the following address: Director of Aviation, Baton Rouge Metropolitan Airport 9340 Jackie Cochran Dr., Suite 300, Baton Rouge, LA 70807.

FOR FURTHER INFORMATION CONTACT: Ms. Ilia A. Quinones, Program Manager, Federal Aviation Administration, LA/NM Airports Development Office, ASW–640, 2601 Meacham Blvd. Fort Worth, Texas 76137–4298.

The request to release property may be reviewed in person at this same location.

Issued at Fort Worth, Texas, on July 23, 2007.

James M. Nicely,

Acting Manager, Airports Division.

[FR Doc. 07–3719 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of the Record of Decision (ROD) for the Final Environmental Impact Statement (FEIS) and Section 4(f) Evaluation for Proposed Development Activities at the Juneau International Airport, Juneau, AK

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

ACTION: Notice of approval of the Record of Decision.

SUMMARY: The Federal Aviation Administration is announcing the approval of the Record of Decision (ROD) for the Final Environmental Impact Statement (FEIS) and Section 4(f) Evaluation for Proposed Development Activities at the Juneau International Airport (JNU). The ROD provides final agency determinations and approval for the proposed development.

FOR FURTHER INFORMATION CONTACT: Patti Sullivan, Environmental Specialist, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue #14, Anchorage, AK, 99513–7504. Ms. Sullivan may be contacted during business hours at (907) 271–5454 (phone) and (907) 271–2851 (facsimile).

SUPPLEMENTARY INFORMATION: The ROD is for approval of actions for runway safety area improvements, navigational improvements, a snow removal equipment and maintenance facility, fuel farm access, aviation facilities development, and wildlife hazard management. The ROD also approves connected actions for relocation of the remote communications outlet (RCO) and automated surface observation system (ASOS). The ROD provides the final agency determination and approvals for Federal actions by the FAA related to the selection of alternatives to meet the purpose and need for each action. The ROD also includes required mitigation measures and conditions of approval.

The ROD indicates that the selected actions are consistent with existing environmental policies and objectives set forth in the National Environmental Policy Act (NEPA) of 1969, as amended, as well as federal, state and local statutes, and that the actions will significantly affect the quality of the environment. The FAA's decision is based upon information contained in the FEIS, issued in April 2007, and on all other applicable documents available to the agency and considered by it, which constitutes the administrative record.

The FAA's determination are discussed in the ROD, which was approved on July 6, 2007.

Rod Availability

The ROD may be viewed at the following Web site: *http://www.jnu-eis.org.*

Issued in Anchorage, Alaska, on July 10, 2007.

Debbie Roth,

Acting Manager, Airports Division, Alaskan Region.

[FR Doc. 07–3718 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–29]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's

regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 20, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2001–9128 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.

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Docket:* To read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Eve Adams,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2001–9128.

Petitioner: Aviation System Standards.

Section of 14 CFR Affected: 14 CFR 91.515(a)(2).

Description of Relief Sought: Aviation System Standards (AVN) request relief from § 91.515(a)(2) to allow AVN to deviate from specific flight rules required by subpart B of part 91 while conducting night flight inspections of air navigation facilities and instrument approach procedures.

[FR Doc. E7–14544 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–30]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 20, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2002–12476 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.

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Docket:* To read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Eve Adams,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2002–12476.

Petitioner: United States Powered Paragliding Association.

Section of 14 CFR Affected: 14 CFR 103.1(a).

Description of Relief Sought: United States Powered Paragliding Association (USPPA) seeks relief from § 103.1(a) to allow USPPA to use two-seat tandem powered paragliders for training purposes.

[FR Doc. E7–14545 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–28]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 20, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–28738 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.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, D.C. 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Eve Adams,

Acting Director, Office of Rulemaking.

Petitions For Exemption

Docket No.: FAA–2007–28738.
Petitioner: Wiggins Airways.
Section of 14 CFR Affected: 14 CFR 119.3.
Description of Relief Sought: Wiggins Airways seeks relief from 119.3 to the extent necessary to allow Wiggins Airways to operate Beechcraft Airliners BE–C99 airplanes in all cargo operations under part 121 with a maximum payload of 4500 pounds.

[FR Doc. E7–14546 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28827]

Federal Motor Carrier Safety Regulations; General: Centennial Communications Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application for exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) from Centennial Communications (''Centennial'') for all of its commercial motor vehicles (CMVs) and drivers that operate in interstate commerce. The exemption would allow Centennial's drivers and CMVs to be completely exempt from the FMCSRs. Centennial, a regional provider of telecommunications services, requests a blanket exemption, and believes that if the exemption is not granted, the burden of complying with the regulations will have a negative impact on the company's operations. Centennial contends that there will be no negative safety impact if the exemption is granted, as it maintains that it currently has very thorough safety practices in place. FMCSA requests public comment on the Centennial application for exemption.

DATES: Comments must be received on or before August 30, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2007–28827 using any of the following methods:

- *Web site: http://dmses.dot.gov/submit/.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140, Ground Floor of West Building, 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 Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Instructions:* All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room W12–140, Ground Floor of West Building, 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 Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.
- *Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or

other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations. Telephone: 202–366–4009. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the conducting of any safety analyses. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

The FMCSRs are generally applicable to motor carriers and drivers operating commercial motor vehicles (CMVs), as defined in 49 CFR 390.5. This includes any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or gross vehicle weight or gross combination weight, of 10,001 pounds or more, whichever is greater.

Centennial Communications is a regional provider of telecommunications services with a fleet comprised of 46 Ford F–150 and F–250 trucks based in Fort Wayne, Indiana. According to Centennial, all of its trucks' GVWRs are less than 10,001 pounds. Centennial states that 95% of the time these trucks are used for technical service calls, and during such use all trucks are below the 10,001 pound GVWR threshold limit. However, the remaining 5% of the time, Centennial trucks transport generators, via trailer, to wireless towers around their operating area during emergencies (*e.g.*, areas affected by hurricanes and other major storms). When a Centennial truck hauls a generator, the combined weight—truck GVWR plus trailer and generator—exceeds 10,001 pounds.

Centennial has determined that it would be burdensome to designate specific trucks and drivers for the transporting of generators because when Centennial has to haul generators in an emergency situation, not all of its trucks and drivers may be needed. In some circumstances only a few trucks and drivers may be needed to haul generators, but at other times that number may be increased depending on the severity of the emergency. Therefore, if Centennial only designates a certain number of trucks and trailers, it could easily be in a situation where more than the number of designated trucks and drivers are needed.

Centennial states that, because its vehicles rarely reach the 10,001 pound GVWR or more threshold, it would be safer and more economical to revamp its entire fleet of trucks and trailers so that when hauling generators, the combined weight of the truck/trailer/generator is below 10,001 pounds GVWR. Centennial therefore requests the granting of two-year exemption from the FMCSRs in order to allow time to modify its vehicles.

Centennial is concerned that if an exemption is not granted, ''a significant impact to company operations will be realized.'' This is due to the amount of time required to set up all files and get proper documentation in place regarding the FMCSRs. It estimates that it will take at least one year to get all required records on drivers and vehicles up-to-date. Centennial is further concerned about the restoration of service during natural disasters such as hurricanes, major thunderstorms or ice storms if forced to limit the number of drivers until all of its trucks are under the 10,001 pound GVWR.

Centennial believes that there will be no negative safety impact if an exemption is granted because it already has a very thorough company vehicle safety policy in place with its company ''Engineering Vehicle Policy.'' Excerpts from the ''Engineering Vehicle Policy'' manual state that it is the responsibility of each driver to read and understand the document, and the assigned driver of the company vehicle is responsible for operating and maintaining the vehicle in a safe and cost effective manner. Other sections in this company manual include the Fleet Management Program, Disciplinary Action, Vehicle Accidents, Drugs and Alcohol, Security, and Driver Safety Training. Centennial states that it has also contacted and solicited help from its insurance carriers to ensure that company vehicle safety practices are among the best in the industry.

A copy of Centennial Communications exemption application includes this detailed ''Engineering Vehicle Policy''. The application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Centennial's application for exemption from the FMCSRs. The Agency will consider all comments received by close of business on August 30, 2007. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: July 24, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–14801 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–28821, Notice 1]

Tesla Motors, Inc.; Receipt of Application for a Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208

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

ACTION: Notice of receipt of petition for temporary exemption from provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*.

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Tesla Motors, Inc. (Tesla Motors) has petitioned the agency for a temporary exemption from certain advanced air bag requirements of 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.[1]

This notice of receipt of an application for temporary exemption is published in accordance with the statutory provisions of 49 U.S.C. 30113(b)(2). NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than August 30, 2007.

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.

Comments: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- Fax: 1–202–493–2251
- *Web Site: http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''.
- *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, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

Docket: For access to the docket in order to read background documents or comments received, go to: *http://dms.dot.gov* at any time or to M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit: *http://dms.dot.gov*.

We shall consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we shall also consider comments filed after the closing date.

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.'' [2] 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 are 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 ago. However, because the new requirements were challenging, major air bag suppliers 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 seeking comments on a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of an electric-powered, high-performance sports car.

II. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Tesla Motors, Inc. (Tesla Motors) has petitioned the agency for a temporary exemption from certain advanced air bag requirements of 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. The requested exemption would apply to Tesla Roadster model vehicles and would extend for a period of three years beginning on August 1, 2007. A copy of the petition [3] is available for review and has been placed in the docket for this notice.

III. 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

[1] To view the application, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter the docket number set fourth in the heading of this document.

[2] *See* 65 FR 30680 (May 12, 2000).

[3] The company requested confidential treatment under 49 CFR Part 512 for certain business and financial information submitted as part of its petition for temporary exemption. Accordingly, the information placed in the docket does not contain such information that the agency has determined to be confidential.

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 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, depending on the circumstances. 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 the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

IV. Petition of Tesla Motors

Background. Tesla Motors is a small, start-up motor vehicle manufacturer that was founded in California in July 2003. The company plans to produce its first model, the Tesla Roadster, beginning in August 2007. Tesla Motors is not affiliated with any other automobile manufacturer, and currently employs approximately 170 people in the United States, the United Kingdom, and Taiwan.

This application concerns the Tesla Roadster (the first model of vehicle that Tesla Motors plans to produce) which as the company states will be an electric vehicle that will achieve the performance equivalent to a high performance car. The vehicle utilizes an energy storage system that provides power to the entire vehicle, and Tesla Motors expects the vehicle will be able to travel approximately 200 miles on a single charge. To date, Tesla Motors has not produced any vehicles for sale in the U.S. or other markets.

According to the petition, Tesla Motors had originally planned to produce a vehicle that would comply with the advanced air bag requirements in effect since September 2006. The Tesla Roadster utilizes the chassis and several other systems of the Group Lotus plc (Lotus) Elise, which at the time of design was a vehicle that intended to comply with the advanced air bag requirements by 2006. However, Lotus could not achieve compliance with the requirements by that date, and was granted an exemption for the Elise on August 31, 2006. This deprived Tesla Motors of a FMVSS No. 208-compliant air bag system that could have been used in the Roadster.

The petitioner stated that it first became aware of Lotus's inability to obtain a compliant advanced air bag system in mid-2005, after it had committed to base the Roadster on the Elise platform. Tesla Motors therefore argued that it tried in good faith, but cannot bring the vehicle into compliance with the advanced air bag requirements, and would incur substantial economic hardship if it cannot sell vehicles in the United States.

Eligibility. As discussed in the petition, Tesla Motors is an independent company formed in 2003. The entire organization currently employs approximately 170 people. The Roadster will be manufactured under Tesla Motors' supervision at Lotus's automobile factory in the United Kingdom. However, Lotus has no ownership interest in Tesla Motors, and the reverse is likewise true. No other entity has an ownership interest in Tesla Motors. Stated another way, Tesla Motors is an independent automobile manufacturer which does not have any common control or is otherwise affiliated with any other vehicle manufacturer.

The company is a small volume manufacturer that has never produced any motor vehicles for sale. According to its current forecasts, Tesla Motors anticipates that worldwide production of the Roadster would be approximately 800 vehicles in the first year of production, and projected production would be 3000 vehicles per year in the two years after that. Tesla Motors also expects to produce a second model of automobile, the White Star, beginning in 2010, but believes that the company's total production will be less than 10,000 vehicles per year during the duration of the exemption request.

As indicated earlier, 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). Moreover, 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.

In this case, it appears that Lotus, as well as Tesla Motors, may be considered the manufacturer of the vehicle. Tesla indicated in its petition that in addition to utilizing the chassis and several other systems of the Lotus Elise, ''the Roadster will be manufactured under Tesla Motors'' supervision and direction at a factory owned by Lotus * * *.'' The term ''manufacturer'' is defined as a person ''manufacturing or assembling motor vehicles or motor vehicle equipment'' or ''importing motor vehicles or motor vehicle equipment for resale.'' See 49 U.S.C. 30102. It appears that Lotus is manufacturing or assembling the vehicles at issue in its factory under contract.

We note, however, that Louts is a small manufacturer, and NHTSA granted a temporary exemption regarding this same issue for the Lotus Elise. See 71 FR 52851; September 7, 2006. We believe the combined production of vehicles for Lotus and Tesla Motors is fewer than 10,000 vehicles in the year preceding the petition. Therefore, we believe Tesla Motors to be eligible for a hardship exemption. We also note that as production of the Tesla Motors vehicles proceeds, there could be an issue of whether combined production of Lotus' own vehicles and those it builds under contract may increase to more than 10,000 vehicles per year. The agency requests comments that will assist the agency in further evaluating this situation; specifically, whether it should influence the eligibility for future exemptions, or the duration of the current exemption, if granted.

Requested exemption. Tesla Motors stated that it intends to certify the Tesla Roadster as complying with the rigid barrier belted test requirement using the 50th percentile adult male test dummy set forth in S14.5.1(a) of FMVSS No. 208. The petitioner stated that it previously determined the Tesla Roadster's compliance with rigid barrier unbelted test requirements using tests of prototype vehicles. As such, Tesla Motors is requesting an exemption for the Tesla Roadster from the advanced air bag requirements (S14), with the exception of the belted, rigid barrier provisions of S14.5.1(a); 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); and the requirements to provide protection for infants and children (S19, S21, and S23).

Tesla Motors did not make an explicit statement that it intends to comply with the advanced air bag requirements of the FMVSS upon the expiration of the temporary exemption period. We note, however, that Lotus signaled such an intention in its petition for the Elise,

and the Tesla Roadster uses the Elise's safety system.

Economic hardship. Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the Tesla Roadster project will result in financial losses unless Tesla Motors obtains a temporary exemption. Over the period 2003–2006, Tesla Motors has had net operational losses totaling over $43 million. As of the time of the application, Tesla Motors has invested substantially on the design and development of the Tesla Roadster.

The company has stated that Lotus could not acquire or develop an advanced air bag system for the Elise, on which the advanced air bag system was to be designed, and furthermore that Tesla Motors does not have the technical or financial resources to independently develop an advanced air bag system. As it does not have the ability to independently build or acquire an advanced air bag system, Tesla states that without an exemption, it will have to cancel its pending development of an electric-powered sedan, and would ultimately have to terminate its operations.

Good faith efforts to comply. As stated above, Tesla Motors relies on the inability of Lotus to design or acquire an advanced air bag system, despite a good faith effort to do so, as a basis for Tesla Motors' efforts to comply. Tesla Motors initially planned to produce vehicles that were fully compliant with all FMVSS requirements, but after it had committed to using the design and manufacturing facility of the Lotus Elise, Lotus determined that that vehicle could not be supplied with a compliant advanced air bag system. Tesla Motors bases its petition on Lotus's good faith efforts to comply with the requirements in its September 28, 2005 petition for exemption (Docket NHTSA–2006–25324–3). Tesla Motors states that it does not have the technical or financial resources to develop an advanced air bag system independent of Lotus, and will, therefore, need a similar exemption in order to produce Roadster models for the U.S. market. Tesla Motors makes no further comments on its own independent efforts beyond this statement.

Tesla Motors argues that an exemption would be in the public interest. 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, Tesla Motors argued that the vehicle will have a variant of the bonded aluminum chassis structure of the Lotus Elise, dual standard air bags, and pre-tensioning, load-limiting seat belts. Furthermore, the company emphasized that the Tesla Roadster will comply with all other applicable FMVSSs.

Moreover, the petitioner stated that the requested exemption will have a negligible impact on motor vehicle safety because of the limited number of vehicles sold. Furthermore, Tesla stated that it is unlikely that young children would be passengers in the Roadster, so an exemption from the advanced air bag requirements that are designed to protect children will not create a significant safety issue. In addition, as with the Lotus Elise, the front passenger seat in the Roadster is fixed in its rearmost position, thereby reducing air bag risks to children and other passengers.

Tesla Motors asserted that granting the exemption will benefit U.S. employment, companies, and citizens. Affected individuals include both Tesla Motors' current employees as well as those who are likely to be involved in selling and servicing the Roadster and other future Tesla Motors models. Furthermore, Tesla Motors states that it has plans to open a manufacturing facility in the United States in 2009, with approximately 300 employees, a venture that will likely not go forward if the petition is denied.

V. Issuance of Notice of Final Action

We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: July 25, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–14694 Filed 7–30–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 460X)]

BNSF Railway Company—Abandonment Exemption—in Webster County, NE

On July 11, 2007, BNSF Railway Company (BNSF) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an 8.41-mile line of railroad, extending from milepost 193.60 to milepost 202.01, near Red Cloud, in Webster County, NE. The line traverses United States Postal Service Zip Codes 68952 and 68970, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in BNSF's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 29, 2007.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 20, 2007. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–6 (Sub-No. 460X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Sidney Strickland, Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007. Replies to the petition are due on or before August 20, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 245–0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within

60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov*.

Decided: July 25, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–14695 Filed 7–30–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an information collection titled, ''Interagency Statement on Complex Structured Finance Transactions.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: Comments must be submitted on or before August 30, 2007.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0229, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0229, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Interagency Statement on Complex Structured Finance Transactions.

OMB Control No.: 1557–0229.

Type of Review: Regular review.

Description: The statement describes the types of internal controls and risk management procedures that the agencies (OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and the Securities and Exchange Commission) believe are particularly effective in assisting financial institutions to identify and address the reputational, legal, and other risks associated with complex structured finance transactions.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 21.

Estimated Number of Responses: 21.

Estimated Annual Burden: 525 hours.

Frequency of Response: On occasion.

Comments: The OCC issued a 60-day **Federal Register** notice on May 21, 2007. 72 FR 28553. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 26, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 07–3733 Filed 7–30–07; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Blue Ribbon Panel on VA-Medical School Affiliations; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Blue Ribbon Panel on VA-Medical School Affiliations has scheduled a meeting for September 21, 2007, in Room 542 at 1800 G Street, NW., Washington, DC from 8:30 a.m. until 2 p.m. The meeting is open to the public.

The purpose of the Panel is to advise the Secretary of Veterans Affairs, through the Under Secretary for Health, on issues related to a comprehensive philosophical framework to enhance VA's partnerships with medical schools and affiliated institutions.

The panelists will review VA's current affiliations with medical schools and will receive background presentations and issue papers on various topics that are relevant to the Panel's deliberations.

Interested persons may attend and present oral statements to the Panel. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Panel prior to the meeting or at any time, by e-mail to *Gloria.Holland@va.gov* or by mail to Gloria J. Holland, Ph.D. Special Assistant for Policy and Planning to the Chief Academic Affiliations Officer, 810 Vermont Avenue, NW., (14), Washington, DC 20420.

Dated: July 25, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–3714 Filed 7–30–07; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 72, No. 146

Tuesday, July 31, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

Correction

In notice document E7–14391 beginning on page 40843 in the issue of Wednesday, July 25, 2007, make the following correction:

On page 40843, in the second column, under the heading **DATES**, in the second and third lines, ''July 25, 2007'' should read ''August 24, 2007''.

[FR Doc. Z7–14391 Filed 7–30–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Notice of Intent to Prepare an Environmental Impact Statement for the Disposal of Greater-Than-Class-C Low-Level Radioactive Waste

Correction

In notice document E7–14139 beginning on page 40135 in the issue of Monday, July 23, 2007, make the following correction:

On page 40137, the table is corrected to read as follows:

TABLE 1.—INVENTORY SUMMARY OF ESTIMATED QUANTITIES OF GTCC LLW AND DOE GTCC-LIKE WASTE [a]

Waste type	In storage		Projected		Total stored and projected	
	Volume in cubic meters (m^3)	Activity [b] MCi	Volume m^3	Activity [b] MCi	Volume m^3	Activity [b] MCi
GTCC LLW:						
Activated metal	58	3.5	810	110	870	110
Sealed sources	([c])	([c])	1,700	2.4	1,700	2.4
Other [d]	76	0.0076	1.0	0.00023	77	0.0078
Total GTCC LLW	130	3.5	2,500	110	2,600	110
DOE GTCC-like waste:						
Activated metal	5.0	0.11	29	0.82	34	0.93
Sealed sources	8.7	0.013	25	0.030	34	0.043
Other [d]	860	11	2,000	19	2,900	30
Total DOE GTCC-like waste	870	11	2,100	20	3,000	31
Total GTCC and GTCC-like waste	1,000	15	4,600	130	5,600	140

[a] Values have been rounded to two significant figures.
[b] Radioactivity values are in millions of curies (MCi).
[c] There are sealed sources currently possessed by NRC licensees that may become GTCC LLW when no longer needed by the licensee. The estimated volume and activity of those sources are included in the projected inventory, notwithstanding the lack of information on the current status of the sources (e.g., in use, waste, etc.).
[d] Other GTCC LLW and DOE GTCC-like waste includes contaminated equipment, debris, trash, scrap metal and decontamination and decommissioning waste.

[FR Doc. Z7–14139 Filed 7–30–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–050–1430–EQ–P; AA–081894]

Notice of Realty Action; Issuance of a 5-year Renewable Lease of Public Land, Caribou Lake, Alaska

Correction

In notice document E7–14336 appearing on page 40894 in the issue of Wednesday, July 25, 2007, make the following correction:

The subject is corrected to read as indicated above.

[FR Doc. Z7–14336 Filed 7–30–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–257C]

RIN 1117–AA93

Changes in the Regulation of Iodine Crystals and Chemical Mixtures Containing Over 2.2 Percent Iodine; Correction

Correction

In rules document E7–14317 beginning on page 40238 in the issue of Tuesday, July 24, 2007, make the following correction:

On page 40238, in the third column, under the heading **EFFECTIVE DATES**, in the second line, ''July 24, 2007'' should read ''August 1, 2007''.

[FR Doc. Z7–14317 Filed 7–30–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 31, 2007

Part II

Department of Housing and Urban Development

Supplement to the Fiscal Year (FY) 2007 SuperNOFA for HUD's Discretionary Programs: NOFA for the HOPE VI Revitalization Grants Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5140–N–01]

Supplement to the Fiscal Year (FY) 2007 SuperNOFA for HUD's Discretionary Programs: NOFA for the HOPE VI Revitalization Grants Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of HUD's Fiscal Year (FY) 2007 Notice of Funding Availability for HUD's Discretionary Programs (SuperNOFA): HOPE VI Revitalization Grants Program.

SUMMARY: On March 13, 2007, HUD published its FY2007 SuperNOFA for HUD's Discretionary Programs, which contained 38 funding opportunities. Today's publication supplements the SuperNOFA by adding funding opportunities for the HOPE VI Revitalization program. Although this NOFA was not included in the SuperNOFA announcement, this NOFA is governed by the information and instructions found in the Notice of HUD's Fiscal Year 2007 Notice of Funding Availability Policy Requirements and General Section (General Section) to the SuperNOFA that HUD published on January 18, 2007, the Introduction to the SuperNOFA published on March 13, 2007; and the Supplementary Information and Technical Corrections published on May 11, 2007.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in this program NOFA. Questions regarding the General Section of January 18, 2007 or the Introduction of March 13, 2007, should be directed to the Office of Departmental Grants Management and Oversight at (202) 708–0667 (this is not a toll-free number) or the NOFA Information Center at (800) HUD–8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: Through today's publication, HUD is making available approximately $94.52 million in assistance through the FY2007 HOPE VI Revitalization Grants program. Today's publication is in addition to the $2 billion previously made available through the FY2007 SuperNOFA.

As is HUD's practice in publishing the SuperNOFA, the NOFA published today provides the statutory and regulatory requirements, threshold requirements, and rating factors applicable to funding being made available today (through the HOPE VI Revitalization NOFA). Applicants for the HOPE VI NOFA must also refer to the January 18, 2007, General Section of the FY2007 SuperNOFA; the March 13, 2007, SuperNOFA; and the May 11, 2007, Supplementary Information and Technical Corrections for important application information and requirements, including submission requirements, which have changed this year.

In FY2007, HUD intends to continue to require its applicants to submit their applications electronically through *http://www.grants.gov*. If applicants have questions concerning the registration process, registration renewal, assigning a new Authorized Organization Representative, or have a question about a NOFA requirement, please contact HUD staff identified in this program NOFA. HUD staff cannot help you write your application, but can clarify requirements that are contained in the General Section to the SuperNOFA, this Notice, and in HUD's registration materials.

New applicants should note that they are required to complete a five-step registration process in order to submit their applications electronically. The General Section to the SuperNOFA included in the instructions download materials on Grants.gov provides a step-by-step explanation of the registration process, as well as where to find, on HUD's Web site, materials prepared by HUD to help guide applicants through the registration and application submission process.

Applications and Instructions are posted to Grants.gov as soon as HUD finalizes them. HUD encourages applicants to subscribe to the Grants.gov free notification service. By doing so, applicants will receive an e-mail notification as soon as items are posted to the Web site. The address to subscribe to this service is *http://www.grants.gov/search/email.do*. By joining the notification service, if a modification is made to the NOFA, applicants will receive an e-mail notification that a change has been made.

HUD encourages applicants to carefully read the General Section and program sections of the NOFA. Carefully following the directions provided can make the difference in a successful application submission.

Dated: July 25, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

Overview Information

A. Federal Agency Name. Department of Housing and Urban Development, Office of Public and Indian Housing.

B. Funding Opportunity Title. Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants Fiscal Year 2007.

C. Announcement Type. Initial announcement.

D. Funding Opportunity Number. The **Federal Register** number for this NOFA is FR–5140–N–01. The OMB approval number for this program is: 2577–0208.

E. Catalog of Federal Domestic Assistance (CFDA) Number. The CFDA number for this NOFA is 14–866, ''Demolition and Revitalization of Severely Distressed Public Housing (HOPE VI).''

F. Dates.

Application Deadline Date: The application deadline date is November 7, 2007. Electronic applications must be received and validated by Grants.gov by 11:59:59 p.m. eastern time on the deadline date. See HUD's General Section to the SuperNOFA (FR–5100–N–01), published in the **Federal Register** on January 18, 2007, and Supplemental Information and Technical Corrections published on May 11, 2007, for application submission, faxing instructions, and timely receipt requirements. HUD will not accept an entire application submitted by fax.

G. Additional Overview Content Information.

1. Available Funds. This NOFA announces the availability of approximately $94.52 million in FY 2007 funds for HOPE VI Revitalization Program grants.

2. Proposed Rescission of Funds. The public is hereby notified that although this NOFA announces the availability of Fiscal Year (FY) 2007 HOPE VI Funds, the FY 2008 budget proposes the rescission of the FY 2007 HOPE VI Appropriation. Please note, therefore, that if Congress adopts this portion of the President's budget, this NOFA may be cancelled at a later date and awards made under this NOFA may not ultimately be funded.

3. The maximum amount of each grant award is $20 million. It is anticipated that four or five grant awards will be made.

4. All non-troubled public housing authorities (PHAs) with severely distressed public housing are eligible to apply, subject to the requirements under

Section III of this NOFA. PHAs that manage only a Housing Choice Voucher (HCV) program, tribal PHAs, and tribally designated housing entities are not eligible.

5. A match of at least 5 percent is required.

6. Application materials may be obtained from *http://www.grants.gov/applicants/apply_for_grants.jsp*. Any technical corrections will be published in the **Federal Register** and posted to Grants.gov. Frequently asked questions will be posted on HUD's Web site at *http://www.hud.gov/offices/adm/grants/otherhud.cfm* and *http://www.hud.gov/offices/pih/programs/ph/hope6/*.

7. General Section Reference. Section I, ''Funding Opportunity Description,'' of the General Section to the SuperNOFA for HUD's Discretionary Programs (General Section), Docket No. FR–5100–N–01, published in the **Federal Register** on January 18, 2007, the Introduction to the SuperNOFA published in the **Federal Register** on March 13, 2007, and the Supplementary Information and Technical Corrections published in the **Federal Register** on May 11, 2007, are hereby incorporated by reference.

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description

In accordance with Section 24(a) of the United States Housing Act of 1937 (42 U.S.C. 1437v) (1937 Act), the purpose of HOPE VI Revitalization grants is to assist PHAs to:

1. Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);

2. Revitalize sites (including remaining public housing dwelling units) on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood;

3. Provide housing that will avoid or decrease the concentration of very low-income families; and

4. Build sustainable communities.

B. Authority

1. The funding authority for HOPE VI Revitalization grants under this HOPE VI NOFA is provided by the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5, approved February 15, 2007) under the heading ''Revitalization of Severely Distressed Public Housing (HOPE VI).''

2. The program authority for the HOPE VI program is Section 24 of the 1937 Act, as amended by section 21045 of the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5, approved February 15, 2007).

C. Definitions

1. Public Housing Project. A public housing project is a group of assisted housing units that has a single Project Number assigned by the Director of Public Housing of a HUD Field Office and has, or had (in the case of previously demolished units) housing units under an Annual Contributions Contract.

2. Replacement Housing. Under this HOPE VI NOFA, a HOPE VI replacement housing unit shall be deemed to be any combination of public housing rental units, eligible homeownership units under Section 24(d)(1)(J) of the 1937 Act, and HCV assistance that does not exceed the number of units demolished and disposed of at the targeted severely distressed public housing project.

3. Severely Distressed.

a. In accordance with Section 24(j)(2) of the 1937 Act, the term ''severely distressed public housing'' means a public housing project (or building in a project) that:

(1) Requires major redesign, reconstruction, or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plan of the project;

(2) Is a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood;

(3)(a) Is occupied predominantly by families who are very low-income families with children, have unemployed members, and are dependent on various forms of public assistance;

(b) Has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area; or (c) is lacking in sufficient appropriate transportation, supportive services, economic opportunity, schools, civic and religious institutions, and public services, resulting in severe social distress in the project;

(4) Cannot be revitalized through assistance under other programs, such as the Capital Fund and Operating Fund programs for public housing under the 1937 Act, or the programs under sections 9 or 14 of the 1937 Act (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998)), because of cost constraints and inadequacy of available amounts; and

(5) In the case of an individual building that currently forms a portion of the public housing project targeted by the application to this NOFA:

(a) Is sufficiently separable from the remainder of the project of which the building is part, such that the revitalization of the building is feasible; or

(b) Was part of the targeted public housing project that has been legally vacated or demolished, but for which HUD has not yet provided replacement housing assistance (other than tenant-based assistance). ''Replacement housing assistance'' is defined as funds that have been furnished by HUD to perform major rehabilitation on, or reconstruction of, the public housing units that have been legally vacated or demolished.

b. A severely distressed project that has been legally vacated or demolished (but for which HUD has not yet provided replacement housing assistance, other than tenant-based assistance) must have met the definition of physical distress not later than the day the demolition application approval letter was dated by HUD.

4. Targeted Project. The targeted project is the current public housing project that will be revitalized with funding from this NOFA. The targeted project may include more than one public housing project or be a part of a public housing project. See Section III.C.2 of this NOFA for eligibility of multiple public housing projects and separability of a part of a public housing project.

5. Temporary Relocation. There are no provisions for ''temporary relocation'' under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). See Handbook 1378, Chapter 2, Section 207 for temporary relocation protections provided under the URA regulations and HUD policy. The Handbook can be obtained through HUDClips at *http://www.hudclips.org/*.

6. Universal Design. Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as

many people as possible at little or no extra cost. A universal design benefits people of all ages and abilities. Examples include designing wider doorways, installing levers instead of doorknobs, and putting bathtub/shower grab bars in all units. Computers and telephones can also be set up in ways that enable as many residents as possible to use them. The Department has a publication that contains a number of ideas about how the principles of Universal Design can benefit persons with disabilities. To order a copy of *Strategies for Providing Accessibility and Visitability for HOPE VI and Mixed Finance Homeownership,* go to the publications and resource page of the HOPE VI Web site at *http://www.huduser.org/publications/pubasst/strategies.html*.

II. Award Information

A. Availability of HOPE VI Funds

1. Proposed Rescission of Funds. The public is hereby notified that although this NOFA announces the availability of FY 2007 HOPE VI Funds, the FY 2008 budget proposes the rescission of the FY 2007 HOPE VI Appropriation. Please note, therefore, that if Congress adopts this portion of the President's budget, this NOFA may be cancelled at a later date and awards made under this NOFA may not ultimately be funded.

2. Revitalization Grants. Approximately $94.52 million of the FY 2007 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants and will be awarded in accordance with this NOFA. There will be approximately four or five awards.

3. Requested Amount. The maximum amount you may request in your application for grant award is limited to $20 million or the sum of the amounts in Section IV.E.3., whichever is lower. HCV assistance is in addition to this amount.

4. Housing Choice Voucher (HCV) Assistance. Housing choice voucher (HCV) assistance is available from the tenant protection voucher fund to successful applicants that receive the Revitalization grant awards. The dollar amount of HCV assistance is in addition to the $20 million maximum award amount and will be based upon resident relocation needs. Applicants must prepare their HCV assistance applications for the targeted project in accordance with the requirements of Notice PIH 2007–10 (and any reinstatement of or successor to that Notice) and submit it in its entirety with the HOPE VI Revitalization Application. HUD will process the HCV assistance applications for funded HOPE VI applicants. If you are not funded by this NOFA, the HCV application will not be processed. For applicants who are granted a waiver to the electronic application process, the HCV request should be located with the Standard Forms and Certifications at the back of the application. The notice can be found on the Internet at *http://www.hudclips.org/cgi/index.cgi*.

5. Grant term. The period for completion of construction shall not exceed 54 months from the date the NOFA award is executed by HUD, as described in the grant agreement. See Section IV.E.1. for statutory time limits related to the grant and expenditure of funds.

III. Eligibility Information

A. Eligible Applicants

1. Only PHAs that have severely distressed housing in their inventory and that are otherwise in conformance with the threshold requirements provided in Section III.C. of this NOFA are eligible to apply.

2. HCV Programs Only, Tribal Housing Agencies, and Others. PHAs that administer only HCV/Section 8 programs, tribal housing agencies and tribally designated housing entities, are not eligible to apply. Nonprofit organizations, for-profit organizations, and private citizens and entrepreneurs are not eligible to apply.

3. Troubled Status. If HUD has designated your PHA as troubled pursuant to section 6(j)(2) of the 1937 Act, HUD will use documents and information available to it to determine whether you qualify as an eligible applicant. In accordance with section 24(j) of the 1937 Act, the term ''applicant'' means:

a. Any PHA that is not designated as ''troubled'' pursuant to section 6(j)(2) of the 1937 Act;

b. Any PHA for which a private housing management agent has been selected, or a receiver has been appointed, pursuant to section 6(j)(3) of the 1937 Act; and

c. Any PHA that is designated as ''troubled'' pursuant to section 6(j)(2) of the 1937 Act and that:

(1) Is designated as troubled principally for reasons that will not affect its capacity to carry out a revitalization program;

(2) Is making substantial progress toward eliminating the deficiencies of the agency that resulted in its troubled status;

(3) Has not been found to be in noncompliance with fair housing or other civil rights requirements; or

(4) Is otherwise determined by HUD to be capable of carrying out a revitalization program.

B. Cost Sharing or Matching

1. Match Requirements

a. Revitalization Grant Match. HUD is required by the 1937 Act (42 U.S.C. 1437v(c)(1)(A)) to include the requirement for matching funds for all HOPE VI-related grants. You are required to have in place a match in the amount of 5 percent of the requested grant amount in cash or in-kind donations. Applications that do not demonstrate the minimum 5 percent match will not be considered for funding.

b. Additional Community and Supportive Services (CSS) Match.

(1) In accordance with the 1937 Act (42 U.S.C. 1437v(c)(1)(B)), in addition to the 5 percent Revitalization grant match in section a above, you may be required to have in place a CSS match. Funds used for the Revitalization grant match cannot be used for the CSS match.

(2) If you are selected for funding through this NOFA, you may use up to 15 percent of your grant for CSS activities. However, if you propose to use more than 5 percent of your HOPE VI grant for CSS activities, you must have in place funds (cash or in-kind donations) from sources other than HOPE VI that match the amount between 5 and 15 percent of the grant that you will use for CSS activities. These resources do not need to be new commitments in order to be counted for match.

c. No HOPE VI Funding in Match. In accordance with section 24(c) of the Act, for purposes of calculating the amount of matching funds required by Sections a and b above, you may NOT include amounts from HOPE VI program funding, including HOPE VI Revitalization, HOPE VI Demolition, HOPE VI Neighborhood Networks or HOPE VI Main Street grants. You may include funding from other public housing sources (e.g., Capital Funds, Resident Opportunities and Self-Sufficiency (ROSS) funds), other federal sources, any state or local government source, and any private contributions. You may also include the value of donated material or buildings, the value of any lease on a building, the value of the time and services contributed by volunteers, and the value of any other in-kind services or administrative costs provided.

d. For match documentation requirements, see section III.C.3.pp, Program Requirements that Apply to Match and Leverage.

C. Other

1. Eligible Revitalization Activities. HOPE VI Revitalization grants may be used for activities to carry out revitalization programs for severely distressed public housing in accordance with Section 24(d) of the 1937 Act. Revitalization activities approved by HUD must be conducted in accordance with the requirements of this NOFA. The following is a list of eligible activities.

a. Relocation. Relocation, including reasonable moving expenses, for residents displaced as a result of the revitalization of the project. See sections III.C.3. and V.A. of this NOFA for relocation requirements.

b. Demolition. Demolition of dwelling units or non-dwelling facilities, in whole or in part, although demolition is not a required element of a HOPE VI revitalization plan.

c. Disposition. Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, in accordance with section 18 of the 1937 Act and implementing regulations at 24 CFR part 970. A lease of one year or longer that is not incident to the normal operation of a project is considered a disposition that is subject to section 18 of the 1937 Act.

d. Rehabilitation and Physical Improvement. Rehabilitation and physical improvement of:

(1) Public housing; and

(2) Community facilities, provided that the community facilities are primarily intended to facilitate the delivery of community and supportive services for residents of the public housing project and residents of off-site replacement housing, in accordance with 24 CFR 968.112(b), (d), (e), and (g)–(o), and 24 CFR 968.130 and 968.135(b) and (d) or successor regulations, as applicable.

e. Development. Development of:

(1) Public housing replacement units; and

(2) Other units (e.g., market-rate units), provided a need exists for such units and such development is performed with non-public housing funds.

f. Homeownership Activities. Assistance involving the rehabilitation and development of homeownership units. Assistance may include:

(1) Down payment or closing cost assistance;

(2) Hard or soft second mortgages; or

(3) Construction or permanent financing for new construction, acquisition, or rehabilitation costs related to homeownership replacement units.

g. Acquisition. Acquisition of:

(1) Rental units and homeownership units;

(2) Land for the development of off-site replacement units and community facilities (provided that the community facilities are primarily intended to facilitate the delivery of community and supportive services for residents of the public housing project and residents of off-site replacement housing);

(3) Land for economic development-related activities, provided that such acquisition is performed with non-public housing funds.

h. Management Improvements. Necessary management improvements, including transitional security activities.

i. Administration, Planning, Etc. Administration, planning, technical assistance, and other activities (including architectural and engineering work, program management, and reasonable legal fees) that are related to the implementation of the revitalization plan, as approved by HUD. See Cost Control Standards in Section III.C.3.v. of this NOFA.

j. Community and Supportive Services (CSS).

(1) The CSS component of the HOPE VI program encompasses all activities that are designed to promote upward mobility, self-sufficiency, and improved quality of life for the residents of the public housing project involved.

(2) CSS activities. CSS activities may include, but are not limited to:

(a) Educational activities that promote learning and serve as the foundation for young people from infancy through high school graduation, helping them to succeed in academia and the professional world. Such activities, which include after-school programs, mentoring, and tutoring, must be created with strong partnerships with public and private educational institutions.

(b) Adult educational activities, including remedial education, literacy training, tutoring for completion of secondary or postsecondary education, assistance in the attainment of certificates of high school equivalency, and English as a Second Language courses, as needed.

(c) Readiness and retention activities, which frequently are key to securing private sector commitments to provide jobs.

(d) Employment training activities that include results-based job training, preparation, counseling, development, placement, and follow-up assistance after job placement.

(e) Programs that provide entry-level, registered apprenticeships in construction, construction-related, maintenance, or other related activities. A registered apprenticeship program is one that has been registered with either a State Apprenticeship Agency recognized by the Department of Labor's (DOL) Office of Apprenticeship Training, Employer and Labor Services (OATELS) or, if there is no recognized state agency, by OATELS. See also DOL regulations at 29 CFR part 29.

(f) Training on topics such as parenting skills, consumer education, family budgeting, and credit management.

(g) Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed. The Family Self-Sufficiency program can also be used to promote homeownership, providing assistance with escrow accounts and counseling.

(h) Coordinating with health care providers or providing on-site space for health clinics, doctors, wellness centers, dentists, etc., that will primarily serve the public housing residents. HOPE VI funds may not be used to provide direct medical care to residents.

(i) Substance and alcohol abuse treatment and counseling.

(j) Activities that address domestic violence treatment and prevention.

(k) Child care services that provide sufficient hours of operation to facilitate parental access to education and job opportunities, serve appropriate age groups, and stimulate children to learn.

(l) Transportation, as necessary, to enable all family members to participate in available CSS activities and to commute to their places of employment.

(m) Entrepreneurship training and mentoring, with the goal of establishing resident-owned businesses.

k. Leveraging. Leveraging other resources, including additional housing resources, supportive services, job creation, and other economic development uses on or near the project that will benefit future residents of the site.

2. Threshold Requirements. Applications must meet all threshold requirements in order to be rated and ranked. If an application does not meet all threshold requirements, HUD will not consider the application as eligible for funding and will not rate and rank it. HUD will screen for technical deficiencies and administer a cure period. The subsection entitled, ''Corrections to Deficient Applications,'' in section V.B. of the General Section is incorporated by reference and applies to this NOFA. The thresholds listed below can be cured for technical deficiencies,

except for those indicated as non-curable. If an applicant does not cure all its technical deficiencies that relate to threshold requirements within the cure period, HUD will consider the threshold(s) in question to be failed, will not consider the application as eligible for funding, and will not rate and rank it. Applicants MUST review and follow documentation requirements provided in this Thresholds Requirements Section and the Program Requirements of Section III.C.3. A false statement (or certification) in an application is grounds for denial or termination of an award and grounds for possible prosecution as provided in 18 U.S.C. 1001, 1010, and 1012, and 32 U.S.C. 3729 and 3802. Required forms, certifications and assurances must be included in the HOPE VI application and will be available on the Internet at *http://www.grants.gov/applicants/apply_for_grants.jsp.*

a. Curable Thresholds. The following thresholds may be cured in accordance with the criteria above. Examples of curable (correctable) technical deficiencies include, but are not limited to, inconsistencies in the funding request, failure to submit the proper certifications (e.g., form HUD–2880), and failure to submit a signature and/or date of signature on a certification.

(1) Severe Distress of Targeted Project. The targeted public housing project must be severely distressed. See section I.C. of this NOFA for the definition of ''severely distressed.'' If the targeted project is not severely distressed, your application will not be considered for funding. Applicants must use the severe distress certification form provided with this NOFA and place it in their attachments. The certification must be signed by an engineer or architect licensed by a state licensing board. The license does not need to have been issued in the same state as the severely distressed project. The engineer or architect must include his or her license number and state of registration on the certification. The engineer or architect may not be an employee of the housing authority or the city. See Section IV.B.3.c. of the General Section for information on submitting third party documents.

(2) Site Control. If you propose to develop off-site housing in ANY phase of your proposed revitalization plan, you MUST provide evidence in your application that you (not your developer) have site control of EVERY property. If you propose to develop off-site housing and you do not provide acceptable evidence of site control, your ENTIRE application will be disqualified from further consideration for funding.

(a) Site control documentation may only be contingent upon:

(i) The receipt of the HOPE VI grant;

(ii) Satisfactory compliance with the environmental review requirements of this NOFA;

(iii) The site and neighborhood standards in section III.C.3. of this NOFA; and

(iv) Standard underwriting procedures.

(b) If you demonstrate site control through an option to purchase, the option must extend for at least 180 days after the application deadline date.

(c) Evidence may include an option to purchase the property, a sales agreement, a land swap, or a deed. Evidence may NOT include a letter from the mayor or other official, letters of support from members of the relevant municipal entities, or a resolution evidencing the PHA's intent to exercise its power of eminent domain.

(d) If one or more of your off-site parcels is a public housing property, you still must provide evidence of site control for those properties.

(e) You must include documented evidence of site control in your attachments.

(f) You must include a cover sheet with your documented evidence of site control in the Attachments section. This cover sheet must provide a table that matches the off-site parcels proposed in your application for housing development to the corresponding documented evidence of site control for those parcels. Specifically, this table should provide in one column the name of each parcel, as identified in your application. A second column should contain the name of the documented evidence corresponding to each parcel. A third column should provide the location of the documented evidence in the attachment (page number, etc.) and any other necessary detail about the evidence. If more than one unit will be built on a parcel, this must be identified as well in the table. The purpose of this table is to aid reviewers' ability to determine whether your application complies with this threshold. Accordingly, applicants should provide site control information as clearly and consistently as possible.

(3) Land Use. Your application must include a certification from the appropriate local official (not the Executive Director) documenting that all required land use approvals for developed and undeveloped land have been secured for any off-site housing and other proposed uses, or that the request for such approval(s) is on the agenda for the next meeting of the appropriate authority in charge of land use. In the case of the latter, the certification must include the date of the meeting. You must include this certification in your attachments.

(4) Selection of Developer. You must assure that:

(a) You have initiated a request for quotation (RFQ) by the application deadline date for the competitive procurement of a developer for your first phase of construction, in accordance with 24 CFR 85.36 and 24 CFR 941.602(d) (as applicable). If you change developers after you are selected for funding, HUD reserves the right to rescind the grant; or

(b) You will act as your own developer for the proposed project. If you change your plan and procure an outside developer after you are selected for funding, HUD reserves the right to rescind the grant.

(c) You must demonstrate compliance with this threshold through completion and inclusion of the Assurances for HOPE VI Application document.

(5) Relocation Plan Assurance.

(a) If you have not yet relocated residents, you must assure that:

(i) A HOPE VI Relocation Plan was completed as of the application deadline date. To learn more about HOPE VI Relocation Plans, applicants may review Handbook 1378 and Notice CPD 02–08, ''Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as Amended, in HOPE VI Projects'' and Notice 04–02, ''Revision to *Notice CPD 02–08,* Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as Amended, in HOPE VI Projects;''

(ii) That it conforms to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) requirements; and

(iii) That it implements HOPE VI relocation goals, as described in section V.A.6. of this NOFA. This means your plan must describe how the HOPE VI Relocation Plan incorporates the HOPE VI relocation goals contained in section V.A.6.

(b) If relocation was completed (i.e., the targeted public housing site is vacant) as of the application deadline date, rather than certifying that the HOPE VI Relocation Plan has been completed, you must assure that the relocation was completed in accordance with URA and/or section 18 requirements (depending on which of these requirements applied to the demolition in question).

(c) You must demonstrate compliance with this threshold through completion

and inclusion of the Assurances for HOPE VI Application document.

(6) Resident Involvement in the Revitalization Program Assurance. You must assure that you have involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of your application. If you have not included affected residents in the planning process, your application will not be considered for funding. You MUST follow the resident involvement requirements listed in the Program Requirements section, section III.C.3. of this NOFA. You must demonstrate compliance with this threshold through completion and inclusion of the Assurances for HOPE VI Application document.

(7) Standard Forms and Certifications. The last part of your application will be comprised of standard certifications common to many HUD programs. For the HOPE VI application, the required standard forms and certifications are located in Section IV.B. of this NOFA.

(8) HOPE VI Revitalization Applicant Certifications. You must include in your application a certification from the Chairman of your Board of Commissioners to the requirements listed in the HOPE VI Revitalization Applicant Certifications. You must include this certification in your attachments.

(9) Capital Fund Financing Program (CFFP). This threshold applies to any PHA with an approved CFFP proposal or CFFP proposal submitted and under review by HUD before the announcement of FY 2007 HOPE VI Revitalization grant awards. As the pledges of Capital Funds are general in nature and not project-specific, this threshold applies to all CFFP proposals approved or submitted and under review by HUD for the PHA's public housing portfolio, not just the public housing site targeted by this HOPE VI application. HOPE VI Revitalization applications may not be from PHAs that have CFFPs approved or in process, unless:

(a) The PHA includes in the application an opinion from its legal counsel that the activities proposed under the HOPE VI Revitalization application are permitted under the financing documents, or to the extent required, any approvals required under the financing documents have been obtained; and

(b) The PHA certifies that, to the extent HUD determines that the Capital Fund projections in its CFFP Proposal did not accurately or completely incorporate the reduction in public housing units that would be caused by the HOPE VI activity, if it receives the HOPE VI Revitalization grant, and prior to undertaking the HOPE VI activity, it will use Capital Funds, or other eligible funds to defease, redeem, or otherwise prepay the CFFP financing. This prepayment must be sufficient to maintain the same debt coverage ratio in the year immediately following any reduction in annual contribution contract (ACC) Units related to the HOPE VI grant (based on the then-current year's capital fund allocation, but giving effect to the change in ACC Units in a manner acceptable to HUD) as existed prior to any reductions occurring as a result of the HOPE VI Revitalization grant. This certification may be provided in the form of a letter from the Executive Director.

(c) HUD will consult internal CFFP records to verify which applicants have pending or approved CFFP proposals.

b. Non-Curable Thresholds. The following thresholds may NOT be cured in accordance with the criteria referenced in III.C.2. above.

(1) Number of Applications. Each applicant may submit a maximum of two HOPE VI Revitalization applications, in accordance with the criteria of this NOFA. If an applicant submits two applications, each application must target a different severely distressed public housing project, in accordance with the Contiguous, Single, and Scattered-Site Projects threshold requirement below. If HUD receives multiple applications electronically, HUD will rate and rank the last application for each severely distressed public housing development received and validated by Grants.gov by the application deadline. All other applications will not be considered eligible. In submitting multiple applications, applicants should provide the project name so that HUD's system can distinguish one application from another submitted by the same organization. If applicants find after submitting an application that they want to amend or adjust their application and it is prior to the deadline date, applicants should be aware that they must resubmit the entire application, including all fax transmissions previously sent, to ensure that HUD gets a complete application. HUD also recommends that fax transmissions associated to resubmitted applications be sent following validation by Grants.gov using the fax transmittal cover sheet (form HUD–96011) associated to the application. Submitting the fax transmittal after validation will ensure that your faxes will be associated to the most recent application and not a previously submitted application. HUD's system matches faxes as they come into the system and if a previous application exists prior to the new application arriving, the fax will be associated to the application already in HUD's system. HUD cannot re-associate faxes once they have been attached to an application.

(a) HUD will not consider applications sent entirely by facsimile (See the General Section).

(b) HUD will not accept for review or evaluation any videos submitted as part of the application or appendices.

(c) HUD will not consider any application that does not meet the timely submission requirements for electronic submission, in accordance with the criteria of the General Section.

(2) Appropriateness of Proposal. In accordance with section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal (revitalization plan) in the context of the local housing market relative to other alternatives. You must discuss other possible alternatives in the local housing market and explain why the housing envisioned in the application is more appropriate. This is a statutory requirement and an application threshold. If you do not demonstrate the appropriateness of the proposal (revitalization plan) in the context of the local housing market relative to other alternatives, your application will not be considered for funding. Applicants must demonstrate compliance with this threshold in their narrative. Examples of alternative proposals may include:

(a) Rebuilding or rehabilitating an existing project or units at an off-site location that is in an isolated, non-residential, or otherwise inappropriate area;

(b) Proposing a range of incomes, housing types (rental, homeownership, market-rate, public housing, townhouse, detached house, etc.), or costs that cannot be supported by a market analysis; or

(c) Proposing to use the land in a manner that is contrary to the goals of your PHA.

(3) Contiguous, Single, and Scattered-Site Projects. Except as provided in sections (a) and (b) below, each application must target one severely distressed public housing project. The public housing project(s) may already be vacated and/or demolished but may not be disposed of, as of the application deadline date. You must provide a city map at a scale sufficient to illustrate the current targeted site(s), whether contiguous, single, or scattered-site projects.

(a) Contiguous Projects. Each application may request funds for more than one project if those projects are immediately (i) adjacent to one another or (ii) within a quarter-mile of each other. If you include more than one project in your application, you must provide a map that clearly indicates that the projects are either adjacent or within a quarter-mile of each other. If HUD determines that they are not, your application will not be considered for funding.

(b) Scattered Site Projects. Your application may request funds to revitalize a scattered site public housing project. The sites targeted in an application proposing to revitalize scattered sites (regardless of whether the scattered sites are under multiple project numbers) must fall within an area with a one-mile radius. You may identify a larger site if you can show that all of the targeted scattered site units are located within the hard edges (*e.g.*, major highways, railroad tracks, lakeshore, etc.) of a neighborhood. If you propose to revitalize a project that extends beyond a one-mile radius or is otherwise beyond the hard edges of a neighborhood, your application will not be considered for funding. If you propose to revitalize a scattered site public housing project, you must provide a map that clearly indicates that the projects fall within an area with a one-mile radius or, if larger, are located within the hard edges (e.g., major highways, railroad tracks, lakeshore, etc.) of a neighborhood.

(4) Sites Previously Funded.

(a) You may submit a Revitalization application that targets part of a project that is being, or has been, revitalized or replaced under a HOPE VI Revitalization grant awarded in previous years. You may not apply for new HOPE VI Revitalization funds for units in that project that were funded by the existing HOPE VI Revitalization grant, even if those funds are inadequate to pay the costs to revitalize or replace all of the targeted units. For example, if a project has 700 units and you were awarded a HOPE VI Revitalization grant or other HUD public housing funds to address 300 of those units, you may submit an FY 2007 HOPE VI Revitalization application to revitalize the remaining 400 units. You may not apply for funds to supplement work on the original 300 units. If you request funds to revitalize/replace the units not funded by the previous HOPE VI Revitalization grant, you must provide a listing of which units were funded by the previous grant and which units are being proposed for funding under the current grant application. You must demonstrate compliance with this threshold in your narrative (including as listed above, as relevant). If you request funds to revitalize units or buildings that have been funded by an existing HOPE VI Revitalization grant, your application will not be considered for funding.

(b) You may not request HOPE VI Revitalization grant funds for units currently under construction, in accordance with the section IV(E), Funding Restrictions. You must demonstrate compliance with this threshold in your narrative.

(5) Separability. In accordance with section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only a portion of a project for revitalization, in your narrative you must: (1) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separable from the remainder of the project, of which the building is a part, to make use of the building feasible for revitalization. Separations may include a road, berm, catch basin, or other recognized neighborhood distinction; and (2) Demonstrate that the site plan and building designs of the revitalized portion will provide defensible space for the occupants of the revitalized building(s) and that the properties that remain will not have a negative influence on the revitalized buildings(s), either physically or socially. You must demonstrate compliance with this threshold in your narrative. If you do not propose to target only a portion of a project for revitalization, you may indicate, ''n/a,'' for not applicable, in your narrative.

(6) Desegregation Orders. You must be in full compliance with any desegregation or other court order, and with any voluntary compliance agreements related to Fair Housing (*e.g.*, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973) that affects your public housing program and that is in effect on the date of application submission. If you are not in full compliance, your application will be ineligible for funding. HUD will evaluate your compliance with this threshold.

(7) Dun and Bradstreet Data Universal Numbering System (DUNS) Number Requirement. This threshold is hereby incorporated from the General Section (Section III.C.2.b.). All applicants seeking funding directly from HUD must obtain a DUNS number and include the number in its Application for Federal Assistance submission. Failure to provide a DUNS number will prevent you from obtaining an award, regardless of whether it is a new award or renewal of an existing award. Applicants should read the complete instructions in the General Section for completing the Grants.gov registration process. See the General Section for additional information regarding this requirement.

(8) Compliance with Fair Housing and Civil Rights Laws. This threshold is hereby incorporated from the General Section (Section III.C.2.c.).

(9) Delinquent Federal Debts. This threshold is hereby incorporated from the General Section (Section III.C.2.e). Applicants that at the time of award have federal debt or are in default of an agreement with the Internal Revenue Service (IRS) will not be funded. Applicants selected for funding have an obligation to report to HUD changes in status of a current IRS agreement covering federal debt.

(10) Debarment and Suspension. This threshold is hereby incorporated from the General Section (Section III.C.2.j).

(11) Default. Existing HOPE VI Revitalization Grantees that are in default of the HOPE VI Revitalization grant agreement as of the application deadline date are not eligible for funding under this NOFA. A grantee is in default if it has received a letter from HUD indicating its default status and has not resolved the issues to HUD's satisfaction.

3. Program Requirements.

a. Demolition.

(1) You may not carry out nor permit others to carry out the demolition of the targeted project or any portion of the project until HUD approves, in writing, one of the following ((a)–(c)), and until HUD has also: (i) Approved a Request for Release of Funds submitted in accordance with 24 CFR part 58, or (ii) if HUD performs an environmental review under 24 CFR part 50, has approved the property for demolition, in writing, following its environmental review:

(a) Information regarding demolition in your HOPE VI Revitalization Application, along with Supplemental Submissions requested by HUD after the award of the grant. Section 24(g) of the 1937 Act provides that severely distressed public housing that is demolished pursuant to a revitalization plan is not required to be approved through a demolition application under section 18 of the 1937 Act or regulations at 24 CFR part 970. If you do not receive a HOPE VI Revitalization grant, the information in your application will not be used to process a request for demolition;

(b) A demolition application under section 18 of the 1937 Act. While a section 18 approval is not required for

HOPE VI related demolition, you will not have to wait for demolition approval through your supplemental submissions, as described in section (a) above; or

(c) A section 202 Mandatory Conversion Plan, in compliance with regulations at 24 CFR part 971 and other applicable HUD requirements, if the project is subject to Mandatory Conversion (section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134, approved April 26, 1996). A Mandatory Conversion Plan concerns the removal of a public housing project from a PHA's inventory.

b. Development.

(1) For any standard (non-mixed finance) public housing development activity (whether on-site reconstruction or off-site development), you must obtain HUD approval of a standard development proposal submitted under 24 CFR part 941 (or successor part).

(2) For mixed-finance housing development, you must obtain HUD approval of a mixed finance proposal, submitted under 24 CFR part 941, subpart F (or successor part and subpart).

(3) For new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the project and residents of off-site replacement housing, you must comply with 24 CFR part 941 (or successor part). Information required for this activity must be included in either a standard or mixed finance development proposal, as applicable.

c. Disposition.

(1) Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, may be done in accordance with section 18 of the 1937 Act and implementing regulations at 24 CFR part 970.

(2) The Grantee will comply with the provisions of section 18 of the 1937 Act, 24 CFR part 970, as may be modified or amended from time to time, and the provisions of its approved disposition application (the approved ''Disposition Application''), unless otherwise modified in writing by HUD. The Grantee will also comply with procedures for processing dispositions associated with mixed-finance projects as set forth by HUD.

(3) A lease of one year or more that is not incident to the normal operation of a development is considered to be a disposition that is subject to section 18 of the 1937 Act.

d. Homeownership.

(1) For homeownership replacement units developed under a revitalization plan, you must obtain HUD approval of a homeownership proposal. Your homeownership proposal must conform to either:

(a) Section 24(d)(1)(J) of the 1937 Act; or

(b) Section 32 of the 1937 Act (see 24 CFR part 906). Additional information on this option may be found at *http://www.hud.gov/offices/pih/centers/sac/homeownership.*

(2) The homeownership proposal must be consistent with the Section 8 Area Median Income (AMI) limitations (80 percent of AMI) and any other applicable provisions under the 1937 Act. (HUD publishes AMI tables for each family size in each locality annually. The income limit tables can be found at *http://www.huduser.org/datasets/il/il06/index.html.*)

e. Acquisition.

(1) Acquisition Proposal. Before you undertake any acquisition activities with HOPE VI or other public housing funds, you must obtain HUD approval of an acquisition proposal that meets the requirements of 24 CFR 941.303.

(2) Rental Units. For acquisition of rental units in existing or new apartment buildings, single family subdivisions, etc., with or without rehabilitation, for use as public housing replacement units, you must obtain HUD approval of a Development Proposal in accordance with 24 CFR 941.304 (conventional development) or 24 CFR 941.606 (mixed-finance development).

(3) Land for Off-Site Replacement Units. For acquisition of land for public housing or homeownership development, you must comply with 24 CFR part 941 or successor part.

(4) Land for Economic Development-Related Activities.

(a) Acquisition of land for this purpose is eligible only if the economic development-related activities specifically promote the economic self-sufficiency of residents.

(b) Limited infrastructure and site improvements associated with developing retail, commercial, or office facilities, such as rough grading and bringing utilities to (but not on) the site, are eligible activities with prior HUD approval.

f. Access to Services. For both on-site and any off-site units, your overall Revitalization plan must result in increased access to municipal services, jobs, mentoring opportunities, transportation, and educational facilities; *i.e.*, the physical plan and self-sufficiency strategy must be well-integrated and strong linkages must be established with the appropriate federal, state, and local agencies, nonprofit organizations, and the private sector to achieve such access.

g. Building Standards.

(1) Building Codes. All activities that include construction, rehabilitation, lead-based paint removal, and related activities must meet or exceed local building codes. You are encouraged to visit HUD's Web site on Accessibility Analysis of Model Building Codes at *http://www.hud.gov/offices/fheo/disabilities/modelcodes/.* You are encouraged to read the ''Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code,'' which can be accessed from the webpage above, along with other valuable information on model codes and fair housing accessibility guidelines.

(2) Deconstruction. HUD encourages you to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or ''deconstruction'' of public housing units, recycling of demolition debris, and reusing of salvage materials in new construction. ''A Guide to Deconstruction: An Overview of Destruction with a Focus on Community Development Opportunities'' can be found at *http://www.huduser.org/publications/destech/decon.html.*

(3) Partnership for Advancing Technology in Housing (PATH). HUD encourages you to use PATH technologies in the construction and delivery of replacement housing. PATH is a voluntary initiative that seeks to accelerate the creation and widespread use of advanced technologies to radically improve the quality, durability, environmental performance, energy efficiency, and affordability of our nation's housing.

(a) PATH's goal is to achieve dramatic improvement in the quality of U.S. housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance, and financial industries, and representatives from federal agencies dealing with housing issues to work together to spur housing design and construction innovations. PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction.

(b) Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by:

(i) Reducing costs;

(ii) Improving durability;

(iii) Increasing energy efficiency;

(iv) Improving disaster resistance; and

(v) Reducing environmental impact.

(c) More information, the list of technologies, the latest PATH Newsletter, results from field demonstrations, and PATH projects can be found at *www.pathnet.org.*

(4) Energy Efficiency.

(a) New construction must comply with the latest HUD-adopted Model Energy Code (International Energy Conservation Code (IECC) 2003 or successor codes) issued by the Council of American Building Officials.

(b) HUD encourages you to set higher standards, where cost effective, for energy and water efficiency in HOPE VI new construction, which can achieve utility savings of 30 to 50 percent with minimal extra cost.

(c) You are encouraged to negotiate with your local utility company to obtain a lower rate. Utility rates and tax laws vary widely throughout the country. In some areas, PHAs are exempt or partially exempt from utility rate taxes. Some PHAs have paid unnecessarily high utility rates because they were billed at an incorrect rate classification.

(d) Local utility companies may be able to provide grant funds to assist in energy efficiency activities. States may also have programs that will assist in energy efficient building techniques.

(e) You must use new technologies that will conserve energy and decrease operating costs, where cost effective. Examples of such technologies include:

(i) Geothermal heating and cooling;

(ii) Placement of buildings and size of eaves that take advantage of the directions of the sun throughout the year;

(iii) Photovoltaics (technologies that convert light into electrical power);

(iv) Extra insulation;

(v) Smart windows; and

(vi) Energy Star appliances.

(5) Universal Design. HUD encourages you to incorporate the principles of universal design in the construction or rehabilitation of housing, retail establishments, and community facilities, or when communicating with community residents at public meetings or events.

(6) Energy Star. HUD has adopted a wide-ranging energy action plan for improving energy efficiency in all program areas. As a first step in implementing the energy plan, HUD, the Environmental Protection Agency, and the Department of Energy have signed a joint partnership to promote energy efficiency in HUD's affordable housing efforts and programs. The purposes of the Energy Star partnership are to promote energy efficiency in affordable housing stock and to help protect the environment. Applicants constructing, rehabilitating, or maintaining housing or community facilities are encouraged to promote and adopt energy efficiency in design and operations. They are urged especially to purchase and use Energy Star-labeled products. Applicants providing housing assistance or counseling services are encouraged to promote and adopt Energy Star building by homebuyers and renters. Program activities can include developing Energy Star promotional and information materials, outreach to low- and moderate-income renters and buyers on the benefits and savings when using Energy Star products and appliances, and promoting the designation of community buildings and homes as Energy Star-compliant. For further information about Energy Star, see *http://www.energystar.gov* or call 888–STAR–YES (888–782–7937), or, for the hearing-impaired, call 888–588–9920 TTY. See also the energy efficiency requirements in section III.C.3. above. See section V.A.9.g. of this NOFA for the Energy Star sub-rating factor.

(7) Lead-Based Paint. You must comply with lead-based paint evaluation and reduction requirements as provided for under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You also must comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for lead-based paint evaluation and reduction activities. The National Lead Information Hotline is (800) 424–5323.

h. Labor Standards. The following standards must be implemented as appropriate in regard to HOPE VI grants:

(1) Labor Standards.

(a) Davis-Bacon wage rates apply to development of any public housing rental units or homeownership units developed with HOPE VI grant funds and to demolition followed by construction on the site. Davis-Bacon rates are ''prevailing'' minimum wage rates set by the Secretary of Labor that all laborers and mechanics employed in the development, including rehabilitation, of a public housing project must be paid, as set forth in a wage determination that the PHA must obtain prior to bidding on each construction contract. The wage determination and provisions requiring payment of these wage rates must be included in the construction contract;

(b) HUD-determined wage rates apply to:

(i) Operation (including nonroutine maintenance) of revitalized housing, and

(ii) Demolition followed only by filling in the site and establishing a lawn.

(2) Exclusions. Under section 12(b) of the 1937 Act, wage rate requirements do not apply to individuals who:

(a) Perform services for which they volunteered;

(b) Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and

(c) Are not otherwise employed in the work involved (24 CFR part 70).

(3) If other federal programs are used in connection with your HOPE VI activities, labor standards requirements apply to the extent required by the other federal programs on portions of the project that are not subject to Davis-Bacon rates under the 1937 Act.

i. Operation and Management Principles and Policies, and Management Agreement. HOPE VI Revitalization grantees will be required to develop Management Agreements that describe their operation and management principles and policies for their public housing units. You and your procured property manager, if applicable, must comply (to the extent required) with the provisions of 24 CFR part 966 in planning for the implementation of the operation and management principles and policies described below.

(a) Rewarding work and promoting family stability by promoting positive incentives such as income disregards and ceiling rents;

(b) Instituting a system of local preferences adopted in response to local housing needs and priorities, e. g., preferences for victims of domestic violence, residency preferences, working families, and disaster victims. Note that local preferences for public housing must comply with Fair Housing requirements at 24 CFR 960.206;

(c) Encouraging self-sufficiency by including lease requirements that promote involvement in the resident association, performance of community service, participation in self-sufficiency activities, and transitioning from public housing;

(d) Implementing site-based waiting lists that follow project-based management principles for the redeveloped public housing. Note that site-based waiting lists for public housing must comply with Fair Housing requirements at 24 CFR 903.7(b)(2);

(e) Instituting strict applicant screening requirements such as credit checks, references, home visits, and criminal records checks;

(f) Strictly enforcing lease and eviction provisions;

(g) Improving the safety and security of residents through the implementation of defensible space principles and the installation of physical security systems such as surveillance equipment, control engineering systems, etc.;

(h) Enhancing ongoing efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with federal, state, and local crime prevention programs and entities.

j. Non-Fungibility for Moving To Work (MTW) PHAs. Funds awarded under this NOFA are not fungible under MTW agreements and must be accounted for separately, in accordance with the HOPE VI Revitalization grant Agreement, the requirements in OMB Circulars A–87, ''Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments;'' A–133, ''Audits of States, Local Governments, and Non-Profit Organizations;'' the regulations 24 CFR part 85, ''Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Government'' and generally accepted accounting principles (GAAP).

k. Resident and Community Involvement.

(1) General. You are required to involve the affected public housing residents, state and local governments, private service providers, financing agencies, and developers in the planning process, proposed implementation, and management of your revitalization plan. This involvement must be continuous from the beginning of the planning process through the implementation and management of the grant, if awarded.

(2) Resident Training Session. You must conduct at least one training session for residents of the severely distressed project on the HOPE VI development process. HUD does not prescribe the content of this meeting.

(3) Public Meetings.

(a) You must conduct at least three public meetings with residents and the broader community, in order to involve them in a meaningful way in the process of developing the revitalization plan and preparing the application. One of these meetings must have taken place at the beginning of the planning process.

(b) These three public meetings must take place on different days from each other and from the resident training session.

(c) During these three meetings, you must address the issues listed below (i.e., all issues need not be addressed at each meeting):

(i) The HOPE VI planning and implementation process;

(ii) The proposed physical plan, including site and unit design, and whether the unit design is in compliance with Fair Housing Act and Uniform Federal Accessibility Standards (UFAS) standards;

(iii) The extent of proposed demolition;

(iv) Planned community and supportive service activities;

(v) Other proposed revitalization activities;

(vi) Relocation issues, including relocation planning, mobility counseling, and maintaining the HOPE VI community planning process during the demolition and reconstruction phases, where temporary relocation, i.e., relocation for a reasonable period (less than one year), is involved;

(vii) Reoccupancy plans and policies, including site-based waiting lists; and

(viii) Section 3 and employment opportunities to be created as a result of redevelopment activities.

(4) Accessibility. All training sessions and meetings must be held in facilities that are accessible to persons with disabilities; provide services such as day care, transportation, and sign language interpreters, as needed; and, as practical and applicable, be conducted in English and the language(s) most appropriate for the community.

(5) Allowable Time Period for Training and Meetings.

(a) At least one public meeting, which included representation from both the affected public housing residents and the community, must have been held at the beginning of the revitalization planning period;

(b) At least one training session must have been held after the publication date of this NOFA in the **Federal Register**; and

(c) A minimum of two more public meetings must have been held after the publication date of this NOFA in the **Federal Register**.

(d) The above minimum number of training sessions and meetings is required to meet the Resident Involvement threshold in section III.C.2. of this NOFA. Additional meetings and training sessions will be counted in the rating factors toward demonstration of continual inclusion of the residents and community.

l. CSS Program Requirements.

(1) Term Period. CSS programs and services must last for the life of the grant and must be carefully planned so that they will be sustainable after the HOPE VI grant period ends.

(2) Allowed Funding Mechanisms:

(a) Maximum CSS grant amount. Consistent with sections 24(d)(1)(L) and 24(j)(3) of the 1937 Act, you may use up to 15 percent of the total HOPE VI grant to pay the costs of CSS activities. See section III.B.1. of this NOFA for CSS grant matching requirements. You may spend additional sums on CSS activities using donations; other HUD funds made available for that purpose; and other federal, state, local, PHA, or private-sector donations (leverage).

(b) CSS Endowment Trust. Consistent with section 24(d)(2) of the 1937 Act, you may deposit up to 15 percent of your HOPE VI grant (the maximum amount of the award allowable for CSS activities) into an endowment trust to provide CSS activities. In order to establish an endowment trust, you must first execute with HUD a HOPE VI Endowment Trust Addendum to the grant agreement. When reviewing your request to set up an endowment trust, HUD will take into consideration your ability to pay for current CSS activities with HOPE VI or other funds and the projected long-term sustainability of the endowment trust to carry out those activities.

(3) CSS Team and Partners.

(a) The term ''CSS Team'' refers to PHA staff members and any consultants who will have the responsibility to design, implement, and manage your CSS program.

(b) The term ''CSS Partners'' refers to the agencies and organizations that you will work with to provide supportive services for residents. A partner could be a local service organization such as a Boys or Girls Club that donates its building and staff to the program, or an agency such as the local Temporary Assistance for Needy Families (TANF) agency that works with you to ensure that their services are coordinated and comprehensive.

(c) Partner Agreements. There are several relationships that you may have with your partners including subgrant agreements, contracts, memoranda of understanding (MOUs), memoranda of agreement (MOAs), and/or informal relationships.

(4) Tracking and Case Management. If selected, the grantee is responsible for tracking and providing CSS programs and services to residents currently living on the targeted public housing site and residents already relocated from the site. It is imperative that case management services begin immediately upon award so that residents who will be relocated have time to participate in and benefit from CSS activities before leaving the site, and that residents who have already been relocated are able to participate in and benefit from CSS activities.

(5) CSS Strategy and Objectives Requirements.

(a) Transition to Housing Self-Sufficiency. One of HUD's major priorities is to assist public housing residents in their efforts to become financially self-sufficient and less dependent on direct government housing assistance. Your CSS program must include a well-defined, measurable endeavor that will enable public housing residents to transition to other affordable housing programs and to regular market housing. Family Self-Sufficiency (FSS) and CSS activities that are designed to increase education and income levels are considered a part of this endeavor, as is the establishment of reasonable limits on the length of time any household that is not headed by an elderly or disabled person can reside in a public housing unit within a HOPE VI Revitalization Development.

(b) Neighborhood Networks. All FY2007 Revitalization grantees will be required to establish Neighborhood Networks Centers (NNC) and to promote the inclusion of infrastructure that permits unit-based access to broadband Internet connectivity in all new and replacement public housing units. This program provides residents with on-site access to computer and training resources that create knowledge and experience with computers and the Internet as tools to increase access to CSS, job training, and the job market. Grantees may use HOPE VI funds to establish NNCs and to provide unit-based Internet connectivity. More information on the requirements of the NNC program is available on the Neighborhood Networks Web site at *http://www.hud.gov/nnw/nnwindex.html.* There will not be a separate FY2007-funded NOFA for HOPE VI Neighborhood Networks programs.

(c) Quantifiable Goals. The objectives of your CSS program must be results-oriented, with quantifiable goals and outcomes that can be used to measure progress and make changes in activities as necessary.

(d) Appropriate Scale and Type.

(i) CSS activities must be of an appropriate scale, type, and variety to meet the needs of all residents (including adults, seniors, youth ages 16 to 21, and children) of the severely distressed project, including residents remaining on-site, residents who will relocate permanently to other PHA units or HCV-assisted housing, residents who will relocate temporarily during the construction phase, and new residents of the revitalized units.

(ii) Non-public housing residents may also participate in CSS activities, as long as the primary participants in the activities are residents as described in section (i) above.

(e) Coordination.

(i) CSS activities must be consistent with state and local welfare reform requirements and goals.

(ii) Your CSS activities must be coordinated with the efforts of other service providers in your locality, including nonprofit organizations, educational institutions, and state and local programs.

(iii) CSS activities must be well-integrated with the physical development process, both in terms of timing and the provision of facilities to house on-site service and educational activities.

(f) Your CSS program must provide appropriate community and supportive services to residents prior to any relocation.

m. CSS Partnerships and Resources. The following are examples of the kinds of organizations and agencies (local, state, and federal) that can provide you with resources necessary to carry out and sustain your CSS activities.

(1) Local Boards of Education, public libraries, local community colleges, institutions of higher learning, nonprofit or for-profit educational institutions, and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of young people in the revitalized development, from birth through higher education.

(2) Temporary Assistance for Needy Families (TANF) agencies/welfare departments for TANF and non-TANF in-kind services, and non-TANF cash donations, e.g., donation of TANF agency staff time.

(3) Job development organizations that link private sector or nonprofit employers with low-income prospective employees.

(4) Workforce Development Agencies.

(5) Organizations that provide residents with job readiness and retention training and support.

(6) Economic development agencies such as the Small Business Administration, which provide entrepreneurial training and small business development centers.

(7) National corporations, local businesses, and other large institutions such as hospitals that can commit to provide entry-level jobs. Employers may agree to train residents or commit to hire residents after they complete jobs preparedness or training programs that are provided by you, other partners, or the employer itself.

(8) Programs that integrate employment training, education, and counseling, and where creative partnerships with local boards of education, state charter schools, TANF agencies, foundations, and private funding sources have been or could be established.

(9) Sources of capital such as foundations, banks, credit unions, and charitable, fraternal, and business organizations.

(10) Nonprofit organizations such as the Girl Scouts and the Urban League (each of which has a Memorandum of Agreement (MOA) with HUD). Copies of these MOAs can be found on the Community and Supportive Services page of the HOPE VI Web site at *http://www.hud.gov/hopevi.*

(11) Civil rights and fair housing organizations.

(12) Local area agencies on aging.

(13) Local agencies and organizations serving persons with disabilities.

(14) Nonprofit organizations such as grassroots faith-based and other community-based organizations. HUD encourages you to partner or subgrant with nonprofit organizations, including grassroots faith-based and other community-based organizations, to provide CSS activities. See HUD's Center for Faith-Based and Community Initiatives Web site at *http://www.hud.gov/offices/fbci/index.cfm.*

(a) HUD will consider an organization a ''grassroots'' organization if it is headquartered in the local community to which it provides services; and

(i) Has an annual social services budget of no more than $300,000. This cap includes only the portion of the organization's budget allocated to providing social services. It does not include other portions of the budget such as salaries and expenses; or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered ''grassroots.''

(15) Federal agencies and their community and supportive service-related programs, including youth-related programs. For example, many federal agencies have youth-related programs such as the Department of Justice's Weed and Seed program; the Department of Agriculture's 4–H program; the Department of Labor's Youthbuild program; and programs within the Department of Health and Human Services.

n. Fair Housing and Equal Opportunity Requirements.

(1) Site and Neighborhood Standards for Replacement Housing. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and regulations thereunder. In determining the location of any

replacement housing, you must comply with either the site and neighborhood standards regulations at 24 CFR 941.202(b)–(d) or with the standards outlined in this NOFA. Because the objective of the HOPE VI program is to alleviate distressed conditions at the development and in the surrounding neighborhood, replacement housing under HOPE VI that is located on the site of the existing development or in its surrounding neighborhood will not require independent approval by HUD under Site and Neighborhood Standards. The term ''surrounding neighborhood'' means the neighborhood within a 3-mile radius of the site of the existing development.

(a) HOPE VI Goals Related to Site and Neighborhood Standards. You are expected to ensure that your revitalization plan will expand assisted housing opportunities outside low-income areas and areas of minority concentration and will accomplish substantial revitalization in the project and its surrounding neighborhood. You are also expected to ensure that eligible households of all races and ethnic groups will have equal and meaningful access to the housing.

(b) Objectives in Selecting HUD-Assisted Sites. The fundamental goal of HUD's fair housing policy is to make full and free housing choice a reality. Housing choice requires that all households may choose the type of neighborhood where they wish to reside; that minority neighborhoods are no longer deprived of essential public and private resources; and that stable, racially mixed neighborhoods are available as a meaningful choice for all. To make full and free housing choice a reality, sites for HUD-assisted housing investment should be selected so as to advance two complementary goals:

(i) Expand assisted housing opportunities in non-minority neighborhoods, opening up choices throughout the metropolitan area for all assisted households; and

(ii) Reinvest in minority neighborhoods, improving the quality and affordability of housing there to represent a real choice for assisted households.

(c) Nondiscrimination and Equal Opportunity Requirements. In determining the location of any replacement housing, you must comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and implementing regulations.

(d) Grantee Election of Requirements. You may, at your election, separately with regard to each site you propose, comply with the development regulations regarding Site and Neighborhood Standards (24 CFR 941.202(b)–(d)), or with the Site and Neighborhood Standards contained in this section.

(e) Replacement housing located on-site or in the surrounding neighborhood. Replacement housing under HOPE VI that is located on the site of the existing project or in its surrounding neighborhood will not require independent approval under Site and Neighborhood Standards, since HUD will consider the scope and impact of the proposed revitalization to alleviate severely distressed conditions at the public housing project and its surrounding neighborhood, in assessing the application to be funded under this NOFA.

(f) Off-Site Replacement Housing Located Outside the Surrounding Neighborhood. Unless you demonstrate that there are already significant opportunities in the metropolitan area for assisted households to choose non-minority neighborhoods (or that these opportunities are under development), HOPE VI replacement housing not covered by section (e) above may not be located in an area of minority concentration (as defined in paragraph (g) below) without the prior approval of HUD. Such approval may be granted if you demonstrate to the satisfaction of HUD that:

(i) You have made determined and good faith efforts, and found it impossible with the resources available, to acquire an appropriate site(s) in an area not of minority concentration; or

(ii) The replacement housing, taking into consideration both the CSS activities or other revitalizing activities included in the revitalization plan, and any other revitalization activities in operation or firmly planned, will contribute to the stabilization or improvement of the neighborhood in which it is located, by addressing any serious deficiencies in services, safety, economic opportunity, educational opportunity, and housing stock.

(g) Area of Minority Concentration. The term ''area of minority concentration'' is any neighborhood in which:

(i) The percentage of households in a particular racial or ethnic minority group is at least 20 percentage points higher than the percentage of that minority group for the housing market area; i.e., the Metropolitan Statistical Area (MSA) in which the proposed housing is to be located;

(ii) The neighborhood's total percentage of minority persons is at least 20 percentage points higher than the total percentage of all minorities for the MSA as a whole; or

(iii) In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

(2) Housing and Services for Persons with Disabilities.

(a) Accessibility Requirements. HOPE VI developments are subject to the accessibility requirements contained in several federal laws. All applicable laws must be read together and followed. PIH Notice 2003–31, available at *http://www.hud.gov/offices/pih/publications/notices/*, and subsequent updates or successor notices, provide an overview of all pertinent laws and implementing regulations pertaining to HOPE VI. All HOPE VI multifamily housing projects, whether they involve new construction or rehabilitation, are subject to the section 504 accessibility requirements described in 24 CFR part 8. See, in particular, 24 CFR 8.20–8.24. In addition, under the Fair Housing Act, all new construction of covered multifamily buildings must contain certain features of accessible and adaptable design. Units covered are all those in elevator buildings with four or more units and all ground floor units in buildings without elevators. The relevant accessibility requirements are provided on HUD's Fair Housing and Equal Opportunity (FHEO) Web site at *http://www.hud.gov/groups/fairhousing.cfm.*

(b) Specific Fair Housing requirements are:

(i) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100.

(ii) The prohibitions against discrimination on the basis of disability, including requirements that multifamily housing projects comply with the Uniform Federal Accessibility Standards, and that you make reasonable accommodations to individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8.

(iii) Title II of the Americans with Disabilities Act (42 U.S.C 12101 *et seq.*) and its implementing regulations at 28 CFR part 35.

(iv) The Architectural Barriers Act of 1968 (42 U.S.C. 4151) and the regulations at 24 CFR part 40.

(c) Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any federal grant awarded. It includes, but is not limited

to, computers (hardware, software, word processing, e-mail, and web pages), facsimile machines, copiers, and telephones. When developing, procuring, maintaining, or using EIT, grantees must ensure that the EIT allows:

(i) Employees with disabilities to have access to and use information and data that are comparable to the access and use of data by employees who do not have disabilities; and

(ii) Members of the public with disabilities seeking information or service from a grantee must have access to and use of information and data that are comparable to the access and use of data by members of the public who do not have disabilities. If these standards impose an undue burden on a grantee, they may provide an alternative means to allow the individual to use the information and data. No grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services are generally provided.

o. Relocation Requirements.

(1) Requirements.

(a) You must carry out relocation activities in compliance with a relocation plan that conforms to the following statutory and regulatory requirements, as applicable:

(i) Relocation or temporary relocation carried out as a result of rehabilitation under an approved revitalization plan is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), the URA regulations at 49 CFR part 24, and regulations at 24 CFR 968.108 or successor part.

(ii) Relocation carried out as a result of acquisition under an approved revitalization plan is subject to the URA and regulations at 24 CFR 941.207 or successor part.

(iii) Relocation carried out as a result of disposition under an approved revitalization plan is subject to section 18 of the 1937 Act, as amended.

(iv) Relocation carried out as a result of demolition under an approved revitalization plan is subject to the URA regulations at 49 CFR part 24.

(b) You must provide suitable, accessible, decent, safe, and sanitary housing for each family required to relocate as a result of revitalization activities under your revitalization plan. Any person (including individuals, partnerships, corporations, or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity, is covered by federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the URA, and the implementing government-wide regulation at 49 CFR part 24 and Handbook 1378. These relocation requirements cover any person who moves permanently from real property or moves personal property from real property directly because of acquisition, rehabilitation, or demolition for an activity undertaken with HUD assistance.

(2) Relocation Plan. Each applicant must complete a HOPE VI Relocation plan, in accordance with the requirements stated in section III.C.2. of this NOFA.

(a) The HOPE VI Relocation plan is intended to ensure that PHAs adhere to the URA and that all residents who have been or will be temporarily or permanently relocated from the site are provided with CSS activities such as mobility counseling and direct assistance in locating housing. Your HOPE VI Relocation plan must serve to minimize permanent displacement of current residents of the public housing site who wish to remain in or return to the revitalized community. Your HOPE VI Relocation plan must also furnish alternative permanent housing for current residents of the public housing site who do not wish to remain in or return to the revitalized community. Your CSS program must provide for the delivery of community and supportive services to residents prior to any relocation, temporary or permanent.

(b) You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, nonprofit, and other organizations, and individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. HUD will view favorably innovative programs such as community mentors, support groups, and the like.

(c) If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

p. Design. HUD is seeking excellence in design. You must carefully select your architects and planners, and enlist local affiliates of national architectural and planning organizations such as the American Institute of Architects, the American Society of Landscape Architects, the American Planning Association, the Congress for the New Urbanism, and the department of architecture at a local college or university to assist you in assessing qualifications of design professionals or in participating on a selection panel that results in the procurement of excellent design services. You should select a design team that is committed to a process in which residents, including young people and seniors, the broader community, and other stakeholders participate in designing the new community.

Your proposed site plan, new units, and other buildings must be designed to be compatible with and enrich the surrounding neighborhood. Local architecture and design elements and amenities should be incorporated into the new or rehabilitated homes so that the revitalized sites and structures will blend into the broader community and appeal to the market segments for which they are intended. Housing, community facilities, and economic development space must be well integrated. You must select members of your team who have the ability to meet these requirements.

q. Internet Access. You must have access to the Internet and provide HUD with e-mail addresses of key staff and contact people.

r. Non-Public Housing Funding for Non-Public Housing or Replacement Units. Public housing funds may only be used to develop Replacement Housing. You may not use public housing funds, which include HOPE VI funds, to develop retail or commercial space, economic development space, or housing units that are not Replacement Housing, as defined in this NOFA.

s. Market-Rate Housing and Economic Development. If you include market-rate housing, economic development, or retail structures in your revitalization plan, such proposals must be supported by a market assessment from an independent third party, credentialed market research firm, or professional. This assessment should describe its assessment of the demand and associated pricing structure for the proposed residential units, economic development or retail structures, based on the market and economic conditions of the project area.

t. Eminent Domain and Public Use. Section 726 of the FY 2007 HUD Appropriations Act, under which this NOFA is funded, prohibits any use of these funds ''to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is used only for a public use.'' The term ''public use'' is expressly stated *not* ''to include economic development that primarily

benefits private entities.'' Accordingly, applications under this NOFA may not propose mixed-use projects in which housing is complemented appreciably with commercial facilities (i.e., economic development), if eminent domain is used for the site.

u. Cost Control Standards. (1) Your hard development costs must be realistically developed through the use of technically competent methodologies, including cost estimating services, and should be comparable to industry standards for the kind of construction to be performed in the proposed geographic area.

(2) Your cost estimates must represent an economically viable preliminary plan for designing, planning, and carrying out your proposed activities, in accordance with local costs of labor, materials, and services.

(3) Your projected soft costs must be reasonable and comparable to industry standards. Upon award, soft costs will be subject to HUD's ''Safe Harbor'' cost control standards. For rental units, these safe harbors provide specific limitations on such costs as developer's fees (between 9 and 12 percent), PHA administration/consultant cost (no more than 3 to 6 percent of the total project budget), contractor's fee (6 percent), overhead (2 percent), and general conditions (6 percent). HUD's Cost Control and Safe Harbor Standards can be found on HUD's HOPE VI Web site.

(4) If you are eligible for funding, HUD will delete any unallowable items from your budget and may reduce your grant accordingly.

v. Timeliness of Development Activity. Grantees must proceed within a reasonable timeframe, as indicated below. In determining reasonableness of such timeframe, HUD will take into consideration those delays caused by factors beyond your control. These timeframes must be reflected in the form of a program schedule, in accordance with the timeframes below:

(1) Grantees must submit Supplemental Submissions within 90 days from the date of HUD's written request.

(2) Grantees must submit CSS work plans within 90 days from the execution of the grant agreement.

(3) Grantees must start construction within 12 months from the date of HUD's approval of the Supplemental Submissions, as requested by HUD after grant award. This time period may not exceed 18 months from the date the grant agreement is executed.

(4) Grantees must submit the development proposal (i.e., whether mixed-finance development, homeownership development, etc.) for the first phase of construction within 12 months of grant award. The program schedule must indicate the date on which the development proposal for each phase of the revitalization plan will be submitted to HUD.

(5) The closing of the first phase must take place within 15 months of grant award. For this purpose, ''closing'' means all financial and legal arrangements have been executed and actual activities (construction, etc.) are ready to commence.

(6) Grantees must complete construction within 48 months from the date of HUD's approval of your Supplemental Submissions. This time period for completion may not exceed 54 months from the date the grant agreement is executed.

(7) All other required components of the revitalization plan and any other submissions not mentioned above must be submitted in accordance with the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

w. HOPE VI Endowment Trust Addendum to the Grant Agreement. This document must be executed between the grantee and HUD in order for the grantee to use CSS funds in accordance with this NOFA.

x. Revitalization Plan. After HUD conducts a post-award review of your application and makes a visit to the site, you will be required to submit components of your revitalization plan to HUD, as provided in the HOPE VI Revitalization Grant Agreement. These components include, but are not limited to:

(a) Supplemental Submissions, including a HOPE VI Program Budget;

(b) A Community and Supportive Services work plan, in accordance with guidance provided by HUD;

(c) A standard or mixed-finance development proposal, as applicable;

(d) A demolition and disposition application, as applicable; and

(e) A homeownership proposal, as applicable.

y. Pre-Award Accounting System Surveys. This requirement is hereby incorporated from Section III.C. of the General Section.

z. Name Check Review. This requirement is hereby incorporated from Section III.C. of the General Section.

aa. False Statements. A false statement in an application is grounds for denial or termination of an award and possible punishment as provided in 18 U.S.C. 1001.

bb. Prohibition Against Lobbying Activities. This requirement is hereby incorporated from Section III.C. of the General Section.

cc. Conducting Business in Accordance with Core Values and Ethical Standards. This requirement is hereby incorporated from Section III.C. of the General Section.

dd. Providing Full and Equal Access to Grassroots Faith-Based and Other Community-Based Organizations in HUD Program Implementation. This requirement is hereby incorporated from Section III.C. of the General Section.

ee. Number of Units. The number of units that you plan to develop should reflect your need for replacement units, the need for other affordable units, and the market demand for market units, along with financial feasibility. The number of planned new construction public housing units may not result in a net increase from the number of public housing units owned, assisted, or operated by the PHA on October 1, 1999, including any public housing units demolished as part of any revitalization effort. The total number of units to be developed may be less than, or more than, the original number of public housing units in the targeted public housing project. HUD will review requests to revitalize projects with small numbers of units on an equal basis with those with large numbers of units.

ff. Environmental Requirements.

(1) HUD Approval. HUD notification that you have been selected to receive a HOPE VI grant constitutes only preliminary approval. Grant funds may not be released under this NOFA (except for activities that are excluded from environmental review under 24 CFR part 58 or 50) until the responsible entity, as defined in 24 CFR 58.2(a)(7), completes an environmental review and you submit and obtain both HUD approval of a request for release of funds and the responsible entity's environmental certification, in accordance with 24 CFR part 58 (or HUD has completed an environmental review under 24 CFR part 50, where HUD has determined to conduct the environmental review).

(2) Responsibility. If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity must assume the environmental review responsibilities for projects being funded by HOPE VI. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing, or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing, or compatibility

of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

(3) Phase I and Phase II Environmental Site Assessments. If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the ASTM Standards E 1527–05, as amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(4) Request for Release of Funds. You, and any participant in the development process, may not undertake any actions with respect to the project that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you, and any participant in the development process, may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50. In addition, you must carry out any mitigating/remedial measures required by the responsible entity (or HUD). If a remediation plan, where required, is not approved by HUD and a fully funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(5) If the environmental review is completed before HUD approval of the HOPE VI Supplemental Submissions and you have submitted your Request for Release of Funds (RROF), the supplemental submissions approval letter shall state any conditions, modifications, prohibitions, etc., required as a result of the environmental review, including the need for any further environmental review. You must carry out any mitigating/remedial measures required by HUD, or select an alternate eligible property, if permitted by HUD. If HUD does not approve the remediation plan and a fully funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(6) If the environmental review is not completed and you have not submitted the RROF before HUD approval of the supplemental submissions, the letter approving the supplemental submissions will instruct you and any participant in the revitalization process to refrain from undertaking, obligating, or expending HUD or non-HUD funds on physical activities or other choice-limiting actions until HUD approves your RROF and the related certification of the responsible entity (or HUD has completed the environmental review). The supplemental submissions approval letter also will advise you that the approved supplemental submissions may be modified on the basis of the results of the environmental review.

(7) There must not be any open issues or uncertainties related to environmental issues, public policy factors (such as sewer moratoriums), proper zoning, availability of all necessary utilities, or clouds on title that would preclude development in the requested locality. You will certify to these facts when signing the HOPE VI Revitalization Grant Application Certifications.

(8) HUD's environmental Web site is located at *http://www.hud.gov/offices/cpd/environment/index.cfm.*

gg. Match Donations and Leverage Resources—Post Award. After award, during review of grantee mixed-finance, development, or homeownership proposals, HUD will evaluate the nature of Match and Leverage resources to assess the conditions precedent to the availability of the funds to the grantee. HUD will assess the availability of the participating party(ies)'s financing, the amount and source of financing committed to the proposal by the participating party(ies), and the firm commitment of those funds. HUD may require an opinion of the PHA's and the owner entity's counsel (or other party designated by HUD) attesting that counsel has examined the availability of the participating party's financing, and the amount and source of financing committed to the proposal by the participating party(ies), and has determined that such financing has been firmly committed by the participating party(ies) for use in carrying out the proposal, and that such commitment is in the amount required under the terms of the proposal.

hh. Evidence of Use. Grantees will be required to show evidence that matching resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of matching funds may be substituted after grant award, as long as the dollar requirement is met.

ii. Grantee Enforcement. Grantees must pursue and enforce any commitment (including commitments for services) obtained from any public or private entity for any contribution or commitment to the project or surrounding area that was part of the match amount.

jj. LOCCS Requirements. The grantee must record all obligations and expenditures in LOCCS.

kk. Final Audit. Grantees are required to obtain a complete final closeout audit of the grant's financial statements by a certified public accountant, in accordance with generally accepted government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance. Grant recipients must comply with the requirements of 24 CFR part 84 or 24 CFR part 85, as stated in OMB Circulars A–110, A–87, and A–122, as applicable.

ll. Section 3. HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very-Low-Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. Information about section 3 can be found at HUD's section 3 Web site at *http://www.hud.gov/offices/fheo/section3/section3.cfm.*

mm. General Section References. The following subsections of section III.C. of the General Section are hereby incorporated by reference:

(1) The Americans with Disabilities Act of 1990;

(2) Affirmatively Furthering Fair Housing;

(3) Economic Opportunities for Low- and Very Low-Income Persons (section 3);

(4) Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency (LEP);

(5) Accessible Technology;

(6) Procurement of Recovered Materials;

(7) Participation in HUD-Sponsored Program Evaluation;

(8) Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects;

(9) OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs; and

(10) Drug-Free Workplace.

nn. Program Requirements that Apply to Match. See Section III.B.1.

oo. Program Requirements that Apply to Match and Leverage. Applicants must follow these requirements in compiling and documenting their match and leverage resources for purposes of the NOFA.

(1) You must actively enlist other stakeholders who are vested in and can provide significant financial assistance to your revitalization effort, both for match and leverage, and for physical development and CSS.

(2) Types of Resources. HUD seeks to fund mixed-finance developments that use HOPE VI funds to match funds requested and leverage the maximum amount of other funds, particularly from private sources, that will result in revitalized public housing, other types of assisted and market-rate housing, and private retail and economic development. There are four types of resources: Development, CSS, Anticipatory, and Collateral. Development and CSS match and leverage are program requirements, the types of resources for which are discussed below. Anticipatory and Collateral leverage are included only in the Leverage rating factor, but follow the requirements below for purposes of scoring.

(3) General Requirements. These general requirements apply to all match and leverage resource commitments.

(a) Firmly Committed. All resources for match and leverage must be firmly committed. ''Firmly committed'' means that the amount of the resource and its dedication to HOPE VI Revitalization activities must be explicit, in writing, and signed by a person authorized to make the commitment.

(b) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form. As noted above, resources must be firmly committed.

(c) Commitment letters must detail the dollar amount and term of the commitment (e.g., Agency X has committed to the residents of the public housing development $100,000 for each of 5 years, for a total of $500,000). Letters that do not include specific dollar amounts or terms will not be counted.

(d) Signature. Resource commitments must be written and be signed by the appropriate official.

(e) Dating. Match and leverage commitment letters must represent valid and accurate commitments. Resource commitment letters dated prior to 5 years before the NOFA publication date will not be accepted.

(f) If the commitment document for any match or leverage funds/in-kind services is not included in the application and provided before the NOFA deadline date, the related match or leverage will not be considered.

(g) Depending upon the specific Memorandum of Understanding (MOU), an MOU alone may not firmly commit funds, e.g., when an MOU states that a donation agreement may be discussed in the future. If an MOU does firmly commit funds, MOU language that does so should be highlighted or mentioned in the application. To ensure inclusion of funds, MOUs should be accompanied by commitment letters or contracts.

(h) The PHA's staff time and benefits are not an eligible match or leverage resource.

(4) Development Resources.

(a) Types of Development Resources. Types of Development Resources may include:

(i) Private mortgage-secured loans, insured loans and other debt.

(*a*) Where there is both a construction loan and a permanent take-out loan that will replace that construction loan, you must provide documentation of both, but only the value of the permanent loan will be counted.

(*b*) If you have obtained a construction loan but not a permanent loan, the value of the acceptably documented construction loan will be counted.

(*c*) Your application or commitment letters must include each loan's interest rate, expected term maturity, and the frequency of repayment.

(*d*) For privately financed homeownership, acceptable documentation of construction loans only will be considered. Permanent financing will not be counted as a development resource.

(ii) Donations and contributions.

(iii) Housing trust funds.

(iv) Net sales proceeds from a completed homeownership project.

Homeownership down payments from homebuyers will not be counted. Down payment assistance may be counted as a physical development resource if it is provided by a third-party entity not related to the homebuyer.

(v) Funds committed to build private sector housing in direct connection with the HOPE VI Revitalization plan.

(vi) Tax Increment Financing (TIF). A TIF will only be considered for match/leverage scoring under this NOFA if, as documented in a letter from the unit of local government responsible for approving the TIF: The TIF district has been formally created; the unit of local government responsible for approving the TIF has issued an approval (as of the application deadline) allowing the TIF to benefit the HOPE VI project; and the letter includes an estimate of the amount of resources anticipated to be generated by the TIF in relation to the HOPE VI.

(vii) Tax Exempt Bonds. Your application must include a description of the use and term.

(viii) Other Public Housing Funds. Other public housing sources include HOPE VI Revitalization funds from other grants, HOPE VI Demolition funds, HOPE VI Neighborhood Networks funds, HOPE VI Main Street funds, Capital Fund program funds, and proposals to use operating subsidy for debt service. These HUD public housing funds will NOT be counted for points under CSS, Development, and Collateral leverage in this NOFA. (However, they can be used as part of your revitalization plan.) Other public housing funds, except for HOPE VI Revitalization funds, will be counted toward your leverage rating for Anticipatory leverage. You may NOT include amounts from HOPE VI program funding, including HOPE VI Revitalization, HOPE VI Demolition, HOPE VI Neighborhood Networks, or HOPE VI Main Street grants, toward your match requirement. (Capital Funds may be counted for match; see Section III.B.1 for information on match).

(ix) Other Federal Funds. Other federal sources may include non-public housing funds provided by HUD.

(x) Sale of Land. The value of land may be included as a development resource only if this value is a sales proceed. Absent a sales transaction, the value of land may not be counted.

(xi) Donations of Land. Donations of land may be counted as a development resource, only if the donating entity owns the land to be donated. Donating entities may include a city, county/parish, church, community organization, etc. The application must include documentation of this ownership, signed by the appropriate authorizing official.

(xii) Low-Income Housing Tax Credits (LIHTC).

(*a*) Low-Income Tax Credits are authorized by section 42 of the IRS

Code, which allows investors to receive a credit against federal tax owed in return for providing funds to developers to help build or renovate housing that will be rented only to lower-income households, for a minimum period of 15 years.

(*b*) There are two types of credits, both of which are available over a 10-year period: A 9 percent credit on construction/rehab costs, and a 4 percent credit on acquisition costs and all development costs financed partially with below-market federal loans (e.g., tax-exempt bonds). Tax credits are generally reserved annually through State Housing Finance Agencies, a directory of which can be found at *http://www.ncsha.org/section.cfm/4/39/187*.

(*c*) Only LIHTC commitments that have been secured as of the application deadline date will be considered for match/leverage scoring under this NOFA. LIHTC commitments that are not secured (i.e., documentation in the application does not demonstrate they have been reserved by the state or local housing finance agency) will not be counted for match/leverage scoring. Only tax credits that have been reserved specifically for revitalization performed through this NOFA will be counted.

(*d*) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form.

(*e*) If you propose to include LIHTC equity as a development resource for any phase of development, your application must include a LIHTC reservation letter from your state or local housing finance agency in order to have the tax credit amounts counted in match/leverage scoring. This letter must constitute a firm commitment and can only be conditioned on the receipt of the HOPE VI grant. HUD acknowledges that, depending on the housing finance agency, documentation for 4 percent tax credits may be represented in the form of a tax-exempt bond award letter. Accordingly, it will be accepted for match/leverage scoring purposes under this NOFA if you demonstrate that this is the only available evidence of 4 percent tax credits, and assuming that this documentation clearly indicates that tax-exempt bonds have been committed to the project.

(b) Sources of Development Resources. Sources of Development Resources may include:

(i) Public, private, and nonprofit entities, including LIHTC purchasers;

(ii) State and local housing finance agencies;

(iii) Local governments;

(iv) The city's housing and redevelopment agency or other comparable agency. HUD will consider this to be a separate entity with which you are partnering if your PHA is also a redevelopment agency or otherwise has citywide responsibilities.

(v) You may seek a pledge of Community Development Block Grant (CDBG) funds for improvements to public infrastructure such as streets, water mains, etc. related to the revitalization effort. CDBG funds are awarded by HUD by formula to units of general local government and to states, which may then award a grant or loan to certain other entities for revitalization activities. As a general rule, CDBG funds may not be used for the construction of new permanent housing. More information about the CDBG at *http://www.hud.gov/offices/cpd/index.cfm*.

(vi) The city, county/parish, or state may provide HOME funds to be used for the development of housing units assisted with HOPE VI funds. The HOME Investment Partnership program provides funds for affordable housing that are distributed from HUD to units of general local governments and states. Funds may be used for new construction, rehabilitation, acquisition of standard housing, assistance to homebuyers, and tenant-based rental assistance. HOME-assisted rental housing units are subject to HOME rent limits, income limits, property standards, leases, tenant selection, and long-term affordability requirements. HOME funds may be used for the development of units assisted with HOPE VI funds, but they may not be used for housing assisted with public housing capital funds under section 9(d) of the 1937 Act. Information about the HOME program can be found at *http://www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm*.

(vii) Foundations;

(viii) Government Sponsored Enterprises such as the Federal Home Loan Bank, Fannie Mae, and Freddie Mac;

(ix) HUD and other federal agencies;

(x) Financial institutions, banks, or insurers; and

(xi) Other private funders.

(5) Community and Supportive Services Resources.

a. General.

(1) HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other resources to support CSS activities in order to ensure the successful transformation of the lives of residents and the sustainability of the revitalized public housing development. Match and leveraging of HOPE VI CSS funds with other funds and services is critical to the sustainability of CSS activities so that they will continue after the HOPE VI funds have been expended. Commitments of funding or in-kind services related to the provision of CSS activities may be counted as CSS resources and toward match and the calculation of CSS leverage, in accordance with the requirements below.

(a) For CSS leverage (not match), include only funds/in-kind services that will be newly generated for HOPE VI activities. If an existing service provider significantly increases the level of services provided at the site, the increased amount of funds may be counted, except for TANF cash benefits. HUD will not count any funds for leverage points that have already been provided on a routine basis, such as TANF cash benefits and in-kind services that have been supporting ongoing CSS-type activities.

(b) Existing and newly generated TANF cash benefits will not count as leverage. Newly generated non-cash services provided by TANF agencies will count as leverage.

(c) Even though an in-kind CSS contribution may count as a resource, it may not be appropriate to include on the sources and uses attachment. Each source on the sources and uses attachment must be matched by a specific and appropriate use. For example, donations of staff time may not be used to offset costs for infrastructure.

(d) Note that wages projected to be paid to residents through jobs or projected benefits (e.g., health/insurance/retirement benefits) related to projected resources to be provided by CSS partners may not be counted.

(e) Resources must be directly applicable to the revitalization of the targeted public housing project and the transformation of the lives of residents of the targeted public housing project. Resources that are committed to individuals other than the residents of the targeted public housing development cannot be counted.

(2) Types of Community and Supportive Services Resources. Types of Community and Supportive Services resources may include, but are not limited to:

(a) Materials;

(b) A building;

(c) A lease on a building;

(d) Other infrastructure;

(e) Time and services contributed by volunteers;

(f) PHA staff salaries and benefits;

(g) Supplies;

(h) The value of supportive services provided by a partner agency, in accordance with the eligible CSS activities described in section III.C.1.

(3) Sources of Community and Supportive Services Resources. In order to achieve quantifiable self-sufficiency results, you must form partnerships with organizations that are skilled in the delivery of services to residents of public housing and that can provide commitments of resources to support those services. You must actively enlist as partners other stakeholders who are vested in and can provide commitments of funds and in-kind services for the CSS portion of your revitalization effort. See Section III.C.3.m. above for examples of the kinds of organizations and agencies that can provide you with resources necessary to carry out and sustain your CSS activities.

IV. Application and Submission Information

A. Addresses To Request Application Package

This section describes how applicants may obtain application packages and request technical assistance. Copies of the published NOFA and application forms for HUD programs are made available at Grants.gov at the following Web site: *http://www.grants.gov/applicants/apply_for_grants.jsp*.

1. Technical Assistance and Resources for Electronic Grant Applications

a. Grants.gov Customer Support. Applicants having difficulty accessing the application and instructions or having technical problems can receive customer support from Grants.gov by calling (800) 518-GRANTS (this is a toll-free number) or by sending an e-mail to *support@grants.gov*. The customer support center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday, except federal holidays. The customer service representatives will assist applicants in accessing the information and addressing technology issues.

b. Desktop Users Guide for Submitting Electronic Grant Applications. HUD has published on its Web site a detailed Desktop Users Guide that walks applicants through the application submission process, beginning with finding a funding opportunity, completing the registration process, and downloading and submitting the electronic application. The guide includes helpful step-by-step instructions, screen shots, and error-proof tips to assist applicants in becoming familiar with submitting applications electronically. The guide is available online at *http://www.hud.gov/offices/adm/grants/deskuserguide.pdf*.

c. HUD's Registration Brochure. HUD has a registration brochure that provides detailed information on the registration process. See *http://www.hud.gov/offices/adm/grants/regbrochure.pdf*.

d. HUD's Finding and Applying for Grant Opportunities Brochure. HUD also has a brochure that will guide you through the process of finding and applying for grants. See HUD's Finding and Applying for Grant Opportunities brochure at *http://www.hud.gov/offices/adm/grants/findapplybrochure.pdf*.

e. HUD's NOFA Information Center. Applicants that do not have Internet access and need to obtain a copy of a NOFA can contact HUD's NOFA Information Center toll-free at (800) HUD–8929. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. The NOFA Information Center is open between 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

f. HUD Staff. HUD staff will be available to provide you with general guidance and technical assistance about this notice or about individual program NOFAs. However, HUD staff is not permitted to help prepare your application. Following selection of applicants, but before announcement of awards are made, HUD staff is available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or annual contributions contract (ACC) by HUD. If you have program-related questions, contact the agency contact listed in this NOFA.

B. Content and Form of Application Submission

1. Instructions on How To Register for Electronic Application Submission

Applicants must submit their applications electronically through Grants.gov. Before you can do so, you must complete several important steps to register as a submitter. The registration process can take approximately 2 to 4 weeks to complete. Therefore, registration should be done in sufficient time before you submit your application. See Section IV.B. of the General Section for detailed information regarding the Grants.gov registration process.

2. Instructions on How To Download an Application Package and Application Instructions

a. The Application Package and Application Instructions. The general process for downloading, completing, submitting, and tracking grant application packages is described at *http://www.grants.gov/applicants/apply_for_grants.jsp*. See Section IV.B. of the General Section for additional information on this topic.

3. Instructions on How To Complete the Selected Grant Application Package

See Section IV.B. of the General Section for detailed information on this topic.

4. Application Submission

a. Paper Application Submissions. HUD's regulations allow for a waiver of the electronic submission requirement for cause. If your organization is granted a waiver, you should follow the instructions below regarding paper application submissions. Unless otherwise indicated, the executive director of the applicant PHA, or his or her designee, must sign each form or certification that is required to be submitted with the application, whether part of an attachment or a standard certification; signatures need not be original in the duplicate Headquarters copy and the duplicate field office copy.

b. Application Layout. These criteria apply to all applicants, unless otherwise noted.

(1) Double-space your narrative pages. Single-spaced pages will be counted as two pages;

(2) Use 8½ × 11-inch paper (one side only, if you receive a waiver of the electronic submission). Only the city map may be submitted on an 8½ by 14-inch sheet of paper. Larger pages will be counted as two pages;

(3) All margins should be approximately one inch. If any margin is smaller than ½ inch, the page will be counted as two pages;

(4) Use 12-point, Times New Roman font;

(5) Any pages marked as sub-pages (e.g., with numbers and letters such as 75A, 75B, 75C), will be treated as separate pages;

(6) If a section is not applicable, indicate n/a;

(7) Mark each Exhibit and Attachment with the appropriate tab/title page, as listed below. No material on the tab/title page will be considered for review purposes;

(8) No more than one page of text may be placed on one sheet of paper; i.e., you may not shrink pages to get two or more on a page. Shrunken pages, or pages where a minimized/reduced font are used, will be counted as multiple pages;

(9) Do not format your narrative in columns. Pages with text in columns will be counted as two pages;

(10) If you are granted a waiver from the electronic submission requirement: The applications (copy and original) should each be packaged in a three-ring binder; and

(11) Narrative pages must be numbered. HUD recommends that applicants consecutively number the pages of the Attachments section to ensure proper assembly of their application if submitted electronically.

c. Application Page Count. These criteria apply to all applicants.

(1) Narrative Exhibits.

(a) The first part of your application will be comprised of narrative exhibits. Your narratives will respond to each rating factor in the NOFA and will also respond to threshold requirements. Among other things, your narratives must describe your overall planning activities, including, but not limited to, relocation, community, and supportive services, and development issues.

(b) Each HOPE VI Revitalization application must contain no more than 100 pages of narrative exhibits. Any pages after the first 100 pages of narrative exhibits will not be reviewed. Although submitting pages in excess of the page limitations will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure of a threshold. Text submitted at the request of HUD to correct a technical deficiency will not be counted in the 100-page limit.

(2) Attachments.

(a) The second part of your application will be comprised of Attachments. These documents will also respond to the rating factors in the NOFA, as well as threshold and mandatory documentation requirements. They will include documents such as maps, photographs, letters of commitment, application data forms, various certifications unique to HOPE VI Revitalization, and other certifications.

(b) Each HOPE VI Revitalization application must contain no more than 125 pages of attachments. Any pages after the first 125 pages of attachments will not be considered. Although submitting pages in excess of the page limit will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

(3) Exceptions to page limits. The documents listed below constitute the only exceptions and are not counted in the page limits listed in Sections (1) and (2) above:

(a) Additional pages submitted at the request of HUD in response to a technical deficiency.

(b) Attachments that provide documentation of commitments from Development, CSS, Collateral, and Anticipatory resource providers (Attachments 19–22).

(c) Attachments that provide documentation of site control and site acquisition, in accordance with Section III of this NOFA (Attachment 18).

(d) Narratives and Attachments, as relevant, required to be submitted only by existing HOPE VI Revitalization grantees, in accordance with Sections V.A. of this NOFA (Capacity).

(e) Information required of MTW applicants only.

(f) Standard forms (Attachment 33).

(g) Blank/extra pages generated as part of standard forms.

(h) Tabs/title pages that are blank or display a title/header.

d. Electronic Submissions: Additional Format and Title Instructions.

(1) Exhibits. Exhibits are as listed below in Section IV.B.6. of this NOFA. Each Exhibit should be contained in a separate file and section of the application. Each file should contain one title page. Do not create title pages separately from the document it goes with.

(a) Exhibit Title Pages. HUD will use title pages as tabs when it downloads and prints the application. Provided the information on the title page is limited to the list in Section (b) below, the title pages will not be counted when HUD determines the length of each Exhibit, or the overall length of the Exhibits.

(i) Each title page should only contain:

(*A*) The name of the Exhibit, as described below in section IV.B.6. of this NOFA, e.g., ''Narrative Exhibit A: Summary Information;''

(*B*) The name of the applicant; and

(*C*) The name of the file that contains the Exhibit.

(b) Exhibit File Names and Types.

(i) All Exhibit files in the application must be contained in one Exhibit ZIP file.

(ii) Each file within the ZIP file must be formatted so it can be read by Microsoft Word (.doc (version 9)).

(iii) Each file name must include the information below, in the order stated:

(*A*) Short version of the applicant's name, e.g., town, city, county/parish, etc., and state; and

(*B*) The word ''Exhibit'' and the Exhibit letter (A through I), as listed in section IV.B.6. of this NOFA;

(*C*) An example of an Exhibit file name is, ''Atlanta GA Exhibit A.''

(2) Attachments. Attachments are as listed below in section IV.B.6. of this NOFA. Each Attachment should be contained in a separate file and section of the application. Each Attachment that is not a HUD form should contain one title page.

(a) Attachment Title Pages. HUD will use title pages as tabs if it downloads and prints the application. Provided the information on the title page is limited to the list in section (b) below, the title pages will not be counted when HUD determines the length of each Attachment or the overall length of the Attachments. HUD forms do not require title pages.

(i) Each title page should only contain:

(*A*) The name of the Attachment, as described below in section IV.B.6. of this NOFA, e.g., ''Attachment 10: Extraordinary Site Costs Certification;''

(*B*) The name of the applicant; and

(*C*) The name of the file that contains the Attachment.

(b) Attachment File Names and Types.

(i) All Attachments that are not listed separately on grants.gov and are formatted as PureEdge forms, e.g., SF–424, must be contained in one (or more as needed) Attachment ZIP file.

(ii) Each file within the ZIP file must be formatted so it can be read by Microsoft Word (.doc (version 9)), Microsoft Excel 2000 (.xls), or Acrobat (.pdf) format compatible with Adobe Reader 6.0 or later. Grants.gov does not accept Vista or Microsoft Office 2007 formats.

(A) Attachments that are downloaded from grants.gov in MS Excel format may be submitted in Excel format.

(B) Attachments that are downloaded from grants.gov in text format, e.g., certifications, should be submitted in Adobe Acrobat (.pdf) format.

(C) Third-party documents, e.g., leverage commitment letters, pictures, etc., should be scanned and attached to your electronic application in Adobe Acrobat (.pdf) format or may be submitted via facsimile using form HUD–96011, Third Party Documentation Facsimile Transmittal (''Facsimile Transmittal Form'' on Grants.gov). Also:

(iii) Each file name must include the information below, in the following order:

(A) A short version of the applicant's name, e.g., the town, city, county/parish, etc., and state; and

(B) The word ''Attachment'' and the Attachment number, as listed in section IV.B.6. of this NOFA;

(C) An example of an Exhibit file name is, ''Atlanta GA Attachment 1.''

5. Documentation requirements are provided in the ''Threshold

Requirements'' section (Section III.C.2.), ''Program Requirements'' section (Section III.C.3), and ''Rating Factors'' section (Section V.A) of this NOFA. Applicants must carefully review and follow documentation requirements.

6. Application Content. The following is a list of narrative exhibits, attachments, and instructions for each, that are required as part of the application. Non-submission of these items may lower your rating score or make you ineligible for award under this NOFA. Review the threshold requirements in section III.C. and the Rating Factors of section V.A. to ascertain the effects of non-submission. HUD forms required by this NOFA are included in the electronic application at *http://www.grants.gov/applicants/apply_for_grants.jsp*. Applicants that are granted a waiver to the electronic submission requirement must include the narrative exhibits and attachments in the application in the order listed below. Here is the order for the Table of Contents and the order in which paper applications must be submitted, if you are granted a waiver to the electronic application submission requirement:

(1) Acknowledgment of Application Receipt, form HUD–2993 (applies only if you are granted a waiver to the electronic submission requirement);

(2) Application for Federal Assistance, Standard Form SF–424; and

(3) HOPE VI Revitalization Application Table of Contents.

a. Narrative Exhibits

(1) Narrative Exhibit A: Summary Information

(2) Narrative Exhibit B: Capacity

(3) Narrative Exhibit C: Need

(4) Narrative Exhibit D: Resident and Community Involvement

(5) Narrative Exhibit E: Community and Supportive Services

(6) Narrative Exhibit F: Relocation

(7) Narrative Exhibit G: Fair Housing and Equal Opportunity

(8) Narrative Exhibit H: Well-Functioning Communities

(9) Narrative Exhibit I: Soundness of Approach

b. Attachments

(1) Attachments 1 through 7: HOPE VI Application Data Form, form HUD–52860–A

(2) Attachment 8: HOPE VI Budget, form HUD–52825–A

(3) Attachment 9: TDC–Grant Limitations Worksheet, form HUD–52799

(4) Attachment 10: Extraordinary Site Costs Certification, if applicable

(5) Attachment 11: City Map

(6) Attachment 12: Assurances for a HOPE VI Application: for Developer, HOPE VI Revitalization Resident Training & Public Meeting Certification, Relocation Plan (whether relocation is completed or is yet to be completed)

(7) Attachment 13: Program Schedule

(8) Attachment 14: Certification of Severe Physical Distress

(9) Attachment 15: Photographs of the Severely Distressed Housing

(10) Attachment 16: Neighborhood Conditions

(11) Attachment 17: Preliminary Market Assessment Letter, if relevant

(12) Attachment 18: Documentation of Site Control for Off-Site Public Housing

(13) Attachments 19 through 22: HOPE VI Revitalization Leverage Resources, form HUD–52797

(14) Attachment 23: Documentation of Environmental, and Neighborhood Standards

(15) Attachment 24: Land Use Certification or Documentation

(16) Attachment 25: Evaluation Commitment Letter(s)

(17) Attachment 26: Current Site Plan

(18) Attachment 27: Photographs of Architecture in the Surrounding Community

(19) Attachment 28: Conceptual Site Plan

(20) Attachment 29: Conceptual Building Elevations

(21) Attachment 30: HOPE VI Revitalization Application Certifications

(22) Attachment 31: HOPE VI Revitalization Project Readiness Certification, form HUD–52787

(23) Attachment 32: Capital Fund Financing Program Threshold: Legal Counsel Opinion and Executive Director Certification, if applicable

(24) Attachment 33: Standard Forms and Certifications

(a) Application for Federal Assistance (SF–424);

(b) Acknowledgment of Application Receipt (form HUD–2993), applicable ONLY if the applicant obtains a waiver from the electronic submission requirement;

(c) Disclosure of Lobbying Activities (SF–LLL), if applicable;

(d) Applicant/Recipient Disclosure/Update Report (form HUD–2880) (''HUD Applicant Recipient Disclosure Report'' on Grants.gov);

(e) Program Outcome Logic Model (form HUD–96010);

(f) America's Affordable Communities Initiative (form HUD–27300) (and supporting documentation);

(g) If applicable, Funding Application for Housing Choice Voucher Assistance prepared in accordance with Notice PIH 2007–10 (and any reinstatement of or successor to that Notice), including the Section 8 Tenant-Based Assistance Rental Certificate Program and the Rental Voucher Program, form HUD–52515;

(h) form HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (''Facsimile Transmittal Form'' on Grants.gov), if applicable.

Further Documentation Guidance on Narrative Exhibits and Attachments. Please be sure to carefully review sections III, IV, and V for program and documentation requirements for all the elements below.

a. Exhibit A. Verify that you have included information relating to the following exhibits.

(1) Executive Summary. Provide an Executive Summary, not to exceed three pages. Describe your Revitalization plan, as clearly and thoroughly as possible. Do not argue for the need for the HOPE VI grant, but explain what you would do if you received such a grant. Briefly describe why the targeted project is severely distressed, provide the number of units, and indicate how many of the units are occupied. Describe specific plans for the revitalization of the site. Include income mix, basic features (such as restoration of streets), and any mixed use or non-housing components. If you are proposing off-site replacement housing, provide the number and type of units and describe the off-site locations. Describe any homeownership components included in your Plan, including the numbers of units. Briefly summarize your plans for community and supportive services. State the amount of HOPE VI funds you are requesting and list the other major funding sources you will use for your mixed-finance development. Identify whether you have procured a developer or whether you will act as your own developer.

(2) Physical Plan. Describe your planned physical revitalization activities:

(a) Rehabilitation of severely distressed public housing units, in accordance with sections I(C) and III(C) of the NOFA;

(b) Development of public housing replacement rental housing, both on-site and off-site, in accordance with sections I(C) and III(C) of the NOFA;

(c) Indicate whether you plan to use PATH technologies and Energy Star in the construction of replacement housing, in accordance with section III(C) of the NOFA;

(d) Market rate housing units (see sections III(C));

(e) Units to be financed with low-income housing tax credits;

(f) Replacement homeownership assistance for displaced public housing residents or other public housing-

eligible low-income families, in accordance with sections I(C) and III(C) of the NOFA. Also describe any market-rate homeownership units planned, sources, and uses of funds. Describe the relationship between the HOPE VI activities and costs and the development of homeownership units, both public housing and market rate. If you are selected for funding, you will be required to submit a Homeownership Proposal (homeownership term sheet);

(g) Rehabilitation or new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the targeted development and residents of off-site replacement housing, in accordance with sections I(C) and III(C). Describe the type and amount of such space and how the facilities will be used in CSS program delivery or other activities;

(h) Zoning, land acquisition, and infrastructure and site improvements. Note that HOPE VI grant funds may not be used to pay hard development costs or to buy equipment for retail or commercial facilities;

(3) Hazard Reduction. Review sections I(C), III(C), and IV(E) of the NOFA. For units to be rehabilitated or demolished, describe the extent of any required abatement of environmentally hazardous materials such as asbestos.

(4) Demolition. Review sections I(C) and III(C) of the NOFA. Describe your plans for demolition, including the buildings (dwelling and non-dwelling units) proposed to be demolished, the purpose of the demolition, and the use of the site after demolition. If the proposed demolition was previously approved as a section 18 demolition application, state the date the section 18 demolition application was submitted to HUD and the date it was approved by HUD. Indicate whether you plan to implement the concept of Deconstruction, as described in section III(C) of the NOFA.

(5) Disposition. Review sections I(C) and III(C) of the NOFA. Describe the extent of any planned disposition of any portion of the site. Cite the number of units or acreage to be disposed, the method of disposition (sale, lease, trade), and the status of any disposition application made to HUD.

(6) Site Improvements. Review sections I(C), III(C), and IV(E) of the NOFA. Describe any proposed on-site improvements, including infrastructure requirements, changes in streets, etc. Describe all public improvements needed to ensure the viability of the proposed project with a narrative description of the sources of funds available to carry out such improvements.

(7) Site Conditions. Review sections I(C), III(C), and IV(E) of the NOFA. Describe the conditions of the site to be used for replacement housing. Listing all potential contamination or danger sources (e.g., smells, fire, heat, explosion, and noise) that might be hazardous or cause discomfort to residents, PHA personnel, or construction workers. List potential danger sources, including commercial and industrial facilities, brownfields and other sites with potentially contaminated soil, commercial airports, and military airfields. Note any facilities and/or activities within one mile of the proposed site.

(8) Separability. See Section III(C) of the NOFA. If applicable, address the separability of the revitalized building(s) within the targeted project. This is a threshold.

(9) Proximity. If applicable, describe how two contiguous projects meet the requirement of section III(C) of the NOFA, or how scattered sites meet the requirements of section III(C) of the NOFA.

b. Exhibit B. Capacity. Verify that you have included information relating to the following exhibits:

(1) PHAS, Maintenance, and SEMAP. Respond to the Rating Factors at V(A)(1)(g), V(A)(1)(h), and V(A)(1)(i) of the NOFA.

(2) Development Capacity of Developer. Respond to Rating Factor V(A)(1)(a).

(3) Development Capacity of Applicant. Respond to Rating Factor V(A)(1)(b).

(4) Capacity of Existing HOPE VI Revitalization grantees. Respond to Rating Factor V(A)(1)(c) of the NOFA. This rating factor applies only to PHAs with existing HOPE VI Revitalization grants from FYs 1993 to 2003. Expenditure information will be taken from Line of Credit Control System (LOCCS) as of the application deadline date.

(5) CSS Program Capacity. Respond to Rating Factor V(A)(1)(d) of the NOFA.

(6) Property Management Capacity. Respond to Rating Factor V(A)(1)(e) of the NOFA.

(7) PHA or MTW Plan. Respond to Rating Factor V(A)(1)(f) of the NOFA.

c. Exhibit C. Need. Verify that you have included information relating to the following:

(1) Need for Revitalization: Severe Physical Distress of the Public Housing Site. Respond to Rating Factor V(A)(2)(a) of the NOFA.

(2) Need for Revitalization: Impact of the Severely Distressed Site on the Surrounding Neighborhood. Respond to Rating Factor V(A)(2)(b) of the NOFA.

(3) Need for HOPE VI Funding (Obligation of Capital Funds). Respond to Rating Factor V(A)(2)(c) of the NOFA.

(4) Previously Funded Sites. Respond to section III(C)(2) of the NOFA. This is a threshold requirement.

(5) Need for Affordable, Accessible Housing in the Community. Respond to Rating Factor V(A)(2)(d) of the NOFA.

(6) Need for Affordable Accessible Housing in the Nation. Respond to Rating Factor V(A)(2)(e) of the NOFA.

d. Exhibit D. Resident and Community Involvement. Verify that you have included information relating to the following. Discuss your communications about your development plan and HUD communications with residents, community members, and other interested parties. Include the resident training attachment. Review program requirements in section III and respond to Rating Factor V(A)(4).

e. Exhibit E. Community and Supportive Services. Respond to section V(A)(5). Verify that you have included information relating to the following: *Endowment Trust*. If you plan to place CSS funds in an Endowment Trust, review section III(C) and section V(A)(5), and state the dollar amount and percentage of the entire grant that you plan to place in the Trust.

f. Exhibit F. Relocation. Verify that you have included information relating to the following:

(1) *Housing Choice Voucher (HCV) Needs*. Review section III(C) and V(A)(6) of the NOFA. State the number of HCVs that will be required for relocation if this HOPE VI application is approved, both in total and the number needed for FY 2007. Indicate the number of units and the bedroom breakout. Applicants must prepare their HCV assistance applications for the targeted project in accordance with the requirements of Notice PIH 2007–10 (and any reinstatement of or successor to that Notice) and submit it in its entirety with the HOPE VI Revitalization Application (not just form HUD 52515). This application should be placed at the back of the application with the other Standard Forms and Certifications. HUD will process the HCV assistance applications for funded HOPE VI applicants.

(2) *Relocation Plan*. Review sections III(C)(2) and III(C)(3) of the NOFA and respond to Rating Factor V(A)(6). For additional guidance, refer to Handbook 1378 and form HUD–52774.

g. Exhibit G. Fair Housing and Equal Opportunity. Verify that you have

included information relating to the following:

(1) Accessibility. Respond to Rating Factor V(A)(7)(a)(1).

(2) Universal Design. Respond to Rating Factor V(A)(7)(a)(2).

(3) Fair Housing. Respond to Rating Factor V(A)(7)(b).

(4) Section 3. Respond to Rating Factor V(A)(7)(c).

h. Exhibit H. Verify that you have included information relating to the following:

(1) Unit Mix and Need for Affordable Housing. Respond to Rating Factor V(A)(8)(a);

(2) Off-Site Housing. Respond to Rating Factor V(A)(8)(b); and

(3) Homeownership Housing. Respond to Rating Factor V(A)(8)(c).

i. Exhibit I. Verify that you have included information relating to the following:

(1) Appropriateness of Proposal. Respond to the threshold requirement in section III(C)(2).

(2) Appropriateness and Feasibility of the Plan. Respond to Rating Factor V(A)(9)(b);

(3) Neighborhood Impact and Sustainability of the Plan. Respond to Rating Factor V(A)(9)(c);

(4) Project Readiness. Respond to Rating Factor V(A)(9)(d) by completing the certification form provided;

(5) Program Schedule. Respond to Rating Factor V(A)(9)(e);

(6) Design. Describe the features of your proposed design and respond to Rating Factor V(A)(9)(f);

(7) Energy Star. Respond to Rating Factor V(A)(9)(g); and

(8) Evaluation. Respond to Rating Factor V(A)(9)(h).

j. Attachments 1 through 7. These attachments are required in all applications. For instruction on how to fill out Attachments 1 through 7, see Appendix 1, Instructions for the HOPE VI Application Data Forms.

k. Attachment 8. This attachment is required in all applications. In addition to the instructions included in the HOPE VI Budget form, general guidance on *preparing* a HOPE VI budget can be found on the Grant Administration page of the HOPE VI Web site, *http://www.hud.gov/offices/pih/programs/ph/hope6/*.

l. Attachment 9. Form HUD–52799, ''TDC/Grant Limitations Worksheet.'' This attachment is required in all applications. The Excel workbook will assist you in determining your TDC limits required in section IV.E.

m. Attachment 10. Extraordinary Site Costs Certification. This attachment is applicable only if you request funds to pay for extraordinary site costs, outside the TDC limits. See section IV.E.

n. Attachment 11. City Map. This attachment is required in all applications. Review section III(C). Provide a to-scale city map that clearly identifies the following in the context of existing city streets, the central business district, other key city sites, and census tracts:

(1) the existing development;

(2) replacement neighborhoods, if available;

(3) off-site properties to be acquired, if any;

(4) the location of the federally designated Empowerment Zone or Enterprise Community (if applicable); and

(5) other useful information to place the project in the context of the city, county/parish, or municipality, and other revitalization activity underway or planned.

If you request funds for more than one project or for scattered site housing, the map must clearly show that the application meets the NOFA's site and unit requirements. If you have received a waiver from the electronic submission requirement, this map may be submitted on 8½″ by 14″ paper.

o. Attachment 12. Assurances for a HOPE VI Application: for Developer, HOPE VI Revitalization Resident Training and Public Meeting Certification, and Relocation Plan (whether relocation is completed or is yet to be completed). Please complete this assurance document. Do not sign; a signature is not required.

p. Attachment 13. Program Schedule. Review Rating Factor V.A.9.e.

q. Attachment 14. Certification of Severe Physical Distress. This attachment is required in all applications. In accordance with sections I(C) and III(C)(2) and (3), an engineer or architect must complete Attachment 14. No backup documentation is required for this certification.

r. Attachment 15. Photographs of the Severely Distressed Housing. This attachment is required in all applications. Review Rating Factor V(A)(2)(a). Submit photographs of the targeted severely distressed public housing that illustrate the extent of physical distress.

s. Attachment 16. Neighborhood Conditions. This attachment is required in all applications. Submit documentation described in Rating Factor V(A)(2)(b). Documentation may include crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and other indications of neighborhood distress and/or disinvestment.

t. Attachment 17. Preliminary Market Assessment Letter, if relevant. This is applicable if you include market rate housing in your application, in accordance with section V.9., Soundness of Approach.

u. Attachment 18. Documentation of Site Control for Off-Site Public Housing. This is applicable if your plan includes off-site housing or other development. If applicable, provide evidence of site control for rental replacement units or land, in accordance with section III(C)(2). See section IV(B) for documentation requirements. You must include a cover sheet with your documented evidence of site control in the Attachments section. This cover sheet must provide a table that matches the off-site parcels proposed in your application for housing development to the corresponding documented evidence of site control for those parcels. Specifically, this table should provide in one column the name of each parcel, as identified in your application. A second column should contain the name of the documented evidence corresponding to each parcel. A third column should provide the location of the documented evidence in the attachment (page number, etc.) and any other necessary detail about the evidence. If more than one unit will be built on a parcel, this must also be identified in the table. The purpose of this table is to aid reviewers' ability to determine whether your application complies with this threshold. Accordingly, applicants should provide site control information as clearly and consistently as possible.

v. Attachments 19 through 22. HOPE VI Revitalization Leverage Resources, form HUD–52797. These attachments are included in form HUD–52797, ''HOPE VI Revitalization Leverage Resources'' and are required in all applications.

(1) Physical Development Resources. In accordance with Rating Factor V(A)(3)(b), complete Attachment 19, as provided in the application, by entering the dollar value of each resource that will be used for physical development. For each resource entered, you must submit backup documentation in Attachment 19. See section III.C, ''Program Requirements'' and ''Program Requirements that Apply to Match and Leverage'' for resource and documentation requirements.

(2) CSS Resources. In accordance with Rating Factor V(A)(3)(c), complete this Attachment 20, as provided in the application, by entering the dollar value of all resources that will be used for CSS

activities. For each resource entered, submit backup documentation in Attachment 20. See section III.C, ''Program Requirements'' and ''Program Requirements that Apply to Match and Leverage'' for resource and documentation requirements.

(3) Anticipatory Resources. Complete Attachment 21, as provided in the Application, by entering the dollar value of all anticipatory resources as described in Rating Factor V(A)(3)(d). For each resource entered, submit backup documentation in Attachment 21. See section III.C, ''Program Requirements'' and ''Program Requirements that Apply to Match and Leverage'' for resource and documentation requirements.

(4) Collateral Resources. Complete Attachment 22, as provided in the Application, by entering the dollar value of all collateral resources as described in Rating Factor V(A)(3)(e). For each resource entered, submit backup documentation behind Attachment 22. See section III.C, ''Program Requirements'' and ''Program Requirements that Apply to Match and Leverage'' for resource and documentation requirements.

w. Attachment 23. Documentation of Environmental, and Neighborhood Standards. This is applicable if your plan includes off-site housing or other off-site development. Provide a certification that the site(s) acquired for off-site *public* housing meet environmental and site and neighborhood standards, as provided in section V(A)(8)(b)(2). This certification may be in the form of a letter.

x. Attachment 24. Land Use Certification or Documentation. Complete this certification in accordance with the land use threshold in section III(C)(2). This attachment may be a certification or copies of the actual land use documentation. The certification may be in the form of a letter.

y. Attachment 25. Evaluation Commitment Letter(s). This attachment is required in all applications. Review section V(A)(9)(h) and provide the requested commitment letter(s) that addresses the indicated evaluation areas.

z. Attachment 26. Current Site Plan. This attachment is required in all applications. The Site Plan shows the targeted public housing site's various buildings and identifies which buildings are to be rehabilitated, demolished, or disposed of. Demolished buildings should be shown and labeled as such.

aa. Attachment 27. Photographs of Architecture in the Surrounding Community. This attachment is required in all applications. Provide photographs to demonstrate that your plan conforms to the Design requirements of section III.C.3. and Rating Factor V(A)(9)(f).

bb. Attachment 28. Conceptual Site Plan. This attachment is required in all applications. The Conceptual Site Plan indicates where your plan's proposed construction *and* rehabilitation activities will take place and any planned acquisition of adjacent property and/or buildings. Review the design requirements of section III.C.3. and Rating Factor V(A)(9)(f).

cc. Attachment 29. Conceptual Building Elevations. This attachment is required in all applications. Review the design requirements of section III.C.3. and Rating Factor V(A)(9)(f). Include building elevation drawings for the various types of your proposed housing.

dd. Attachment 30. HOPE VI Revitalization Application Certifications. This attachment is required in all applications. This form is contained in the electronic application at *http://www.grants.gov/applicants/apply_for_grants.jsp.* Note that these certifications (four page document) must be signed by the chairman of the board of the PHA, NOT the executive director.

ee. Attachment 31. HOPE VI Revitalization Project Readiness Certification, form HUD–52787. This attachment is required in all applications. Complete Attachment 31 by indicating which of the items in Rating Factor V(A)(9)(d) of the NOFA have been completed.

ff. Attachment 32. Capital Fund Financing Program Threshold: Legal Counsel Opinion and Executive Director Certification, if applicable. Review the CFFP threshold requirement in section III.C. and provide an opinion from your legal counsel and certification from the executive director, if applicable.

gg. Attachment 33. Standard Forms and Certifications.

(a) Application for Federal Assistance (SF–424). **Note:** Applicants must enter their legal name in box 8.a. of the SF–424 as it appears in the Central Contractor Register (CCR). See the General Section regarding CCR registration. This form will be placed at the front of your application;

(b) Acknowledgment of Application Receipt (form HUD–2993), which is applicable ONLY if the applicant obtains a waiver from the electronic submission requirement; this will be placed at the front of your application;

(c) Disclosure of Lobbying Activities (SF–LLL), if applicable;

(d) Applicant/Recipient Disclosure/Update Report (form HUD–2880) (''HUD Applicant Recipient Disclosure Report'' on Grants.gov);

(e) Program Outcome Logic Model (form HUD–96010);

(f) America's Affordable Communities Initiative (form HUD–27300) and supporting documentation;

(g) If applicable, Funding Application for Housing Choice Voucher Assistance prepared in accordance with Notice PIH 2007–10 (and any reinstatement of or successor to that Notice), including Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program, and form HUD–52515. It is applicable only if you are requesting HCVs that are related to your proposed plan. In preparing the request for vouchers, applicants must follow PIH Notice 2007–10 and any successor notices;

(h) Form HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (''Facsimile Transmittal Form'' on Grants.gov), if applicable.

C. Submission Dates and Times

1. Applications submitted through Grants.gov must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. Because there are several steps in the upload and receipt process, applicants are advised to submit their applications at least 48 to 72 hours in advance of the deadline date and when the Grants.gov help desk is open, so that any issues can be addressed prior to the deadline date and time. HUD recommends uploading your application using Internet Explorer or Netscape.

2. See the General Section for detailed information regarding the following topics:

a. Confirmation of Submission to Grants.gov.

b. Application Submission Validation Check.

c. Application Validation and Rejection Notification.

d. Late applications.

D. Intergovernmental Review/State Points of Contact (SPOC)

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct federal development. HUD's implementing regulations are published at 24 CFR part 52. The executive order allows each state to designate an entity to perform a state review function. Applicants can find the official listing of State Points of

Contact (SPOCs) for this review process at *http://www.whitehouse.gov/omb/grants/spoc.html*. States not listed at that web address have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your state has a SPOC, you should contact the SPOC to see if it is interested in reviewing your application before submission to HUD.

Please make sure that you allow ample time for SPOC review when developing and submitting your applications. If your state does not have a SPOC, you can submit your application directly to HUD using Grants.gov.

E. Funding Restrictions

1. Statutory Time Limits

a. Required Obligation Date. Funds appropriated for the HOPE VI program for FY 2007 must be obligated on or before September 30, 2008. Any funds that are not obligated by that date will be recaptured by the Treasury, and thereafter will not be available for obligation for any purpose.

b. Required Expenditure Date. In accordance with 31 U.S.C. 1552, all FY 2007 HOPE VI funds must be expended by September 30, 2013. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

2. Ineligible Activities

a. You may not use HOPE VI Revitalization grant funds to pay for any revitalization activities carried out on or before the date of the letter announcing the award of the HOPE VI Grant.

b. Market-Rate Units. HOPE VI funds may not be used to develop market-rate units or affordable housing units that do not qualify as public housing or homeownership replacement units.

c. Retail or Commercial Development. HOPE VI funds may not be used for hard construction costs related to, or for the purchase of equipment for, retail, commercial, or non-public housing office facilities.

3. Total Development Cost (TDC)

a. The ''TDC Limit'' (24 CFR 941.306, Notice PIH 2007–19 (HA), or extending Notice) refers to the maximum amount of HUD funding that HUD will approve for development of specific public housing and other eligible replacement housing units to be developed under a HOPE VI Revitalization grant and/or under an Annual Contributions Contract for public housing development and modernization of public housing under the Capital Fund. The TDC limit applies only to the costs of development of public housing that are paid directly with HUD public housing funds, including HOPE VI funds; a PHA may exceed the TDC limit using non-public housing funds such as CDBG, HOME, low-income housing tax credit equity, etc.

b. The HUD TDC Cost Tables are issued for each calendar year for the building type and bedroom distribution for the public housing replacement units. When making your TDC calculations, use the TDC limits in effect at the time this HOPE VI NOFA is published. TDC definitions and limits in the final rule are summarized as follows:

(1) The total cost of development, which includes relocation costs, is limited to the sum of:

(a) Up to 100 percent of HUD's published TDC limits for the costs of demolition and new construction, multiplied by the number of HOPE VI public housing replacement units; and

(b) Ninety percent of the TDC limits, multiplied by the number of public housing units after substantial rehabilitation and reconfiguration.

(2) The TDC limit for a project is made up of the following components:

(a) Housing Cost Cap (HCC): HUD's published limit on the use of public housing funds for the cost of constructing the public housing units, which includes unit hard costs, builder's overhead and profit, utilities from the street, finish landscaping, and a hard cost contingency. Estimates should take into consideration the Davis-Bacon minimum wage rate and other requirements as described in ''Labor Standards,'' section III.C. of this NOFA. You may not request HOPE VI Revitalization grant funds for units currently under construction.

(b) Community Renewal (CR): The balance of funds remaining within the project's TDC limit after the housing construction costs described in (a) above are subtracted from the TDC limit. This is the amount of public housing funds available to pay for PHA administration, planning, infrastructure and other site improvements, community and economic development facilities, acquisition, relocation, demolition, and remediation of units to be replaced on-site, and all other development costs.

(3) CSS. You may request an amount not to exceed 15 percent of the total HOPE VI grant to pay the costs of CSS activities, as described in section III.C. of this NOFA. These costs are in addition to, i.e., excluded from, the TDC calculation above.

(4) Demolition and Site Remediation Costs of Unreplaced On-site Units. You may request an amount necessary for demolition and site remediation costs of units that will not be replaced on-site. This cost is in addition to (i.e., excluded from) the TDC calculation above.

(5) Extraordinary Site Costs.

(a) You may request a reasonable amount to pay extraordinary site costs, which are construction costs related to unusual pre-existing site conditions that are incurred, or anticipated to be incurred. If such costs are significantly greater than those typically required for similar construction, are verified by an independent, certified engineer or architect (see section IV.B. for documentation requirements), and are approved by HUD, they may be excluded from the TDC calculation above. Extraordinary site costs may be incurred in the remediation and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: Abatement of extraordinary environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, etc.; and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint from structures are normal demolition costs. Extraordinary measures to remove lead-based paint that has leached into the soil would constitute an extraordinary site cost.

(b) Extraordinary site costs must be justified and verified by a licensed engineer or architect who is not an employee of the PHA or the city. The engineer or architect must provide his or her license number and state of registration. If this certification is not included in the application after the cure period described in section IV.B.4. of the General Section, extraordinary site costs will not be allowed in the award amount. In that case, the amount of the extraordinary site costs included in the application will be subtracted from the grant amount.

4. Cost Control Standards

See the Cost Control Standards in Section III.C.3.u.

5. Withdrawal of Grant Amounts

In accordance with section 24(i) of the 1937 Act, if a grantee does not proceed within a reasonable timeframe, as described in section III.C.3.w.

(Timeliness of Development Activities) of this NOFA, HUD shall withdraw any unobligated grant amounts. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the Revitalization plan of the original grantee.

F. Other Submission Requirements

1. Waiver of Electronic Submission Requirement. Applicants interested in applying for funding under this NOFA must submit their applications electronically or request a waiver from the electronic submission process. Waiver requests must be submitted in writing and sent via fax (followed in the mail by the original signed request). Waiver requests must be submitted (received via fax) no later than 15 days prior to the application deadline date and should be addressed to Ms. Dominique Blom, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4130, Washington, DC 20410, and faxed to the attention of Ms. Leigh van Rij at (202) 401–2370. The original version of the request must follow in the mail, sent to the above address. If you are granted a waiver from the electronic submission process, your application must be received by HUD no later than 11:59:59 p.m. eastern time on the application deadline date. See the General Section for additional information.

If you are granted a waiver from the electronic application submission requirement, your waiver approval will provide the information on the number of copies of the application you are required to submit and where to submit the application. Paper applications must be received in the designated HUD office by the application deadline date.

2. Proof of Timely Submission. All applicants must submit their applications via grants.gov *http://www.grants.gov/applicants/apply_for_grants.jsp* in time for receipt and validation by 11:59:59 p.m. eastern time on the application deadline date. Because validation can take up to 72 hours, applicants should submit with ample time for the process to be completed. Applicants are also advised to submit with sufficient time to correct any deficiencies that would prevent the acceptance of their application by Grants.gov. (Refer to the General Section for specific procedures regarding proof of timely submission of applications.)

V. Application Review Information

A. Criteria

1. Rating Factor: Capacity—23 Points Total

a. Capacity of the Development Team—5 Points

Address this Rating Factor through your narrative. This rating factor looks at the capacity of the development team as a whole. The term ''your Team'' includes PHA staff who will be involved in HOPE VI grant administration, and any alternative management entity that will manage the revitalization process and be responsible for meeting construction time tables and obligating amounts in a timely manner. This includes any developer partners, program managers, property managers, subcontractors, consultants, attorneys, financial consultants, and other entities or individuals identified and proposed to carry out program activities.

(1) You will receive up to 5 points if your application demonstrates that:

(a) Your developer or other team members have extensive, recent (within the last 5 years), and successful experience in the redevelopment of public housing, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(b) Your developer or other team members have extensive, recent (within the last five years), and successful experience in mixed-finance and mixed-income development, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(c) You propose development using low-income tax credits, and your developer or other team members have relevant tax credit experience; and

(d) If homeownership, rent-to-own, cooperative ownership, or other major development components are proposed, your developer or other team member has relevant, successful experience in development, sales, or conversion activities.

(2) You will receive up to 3 points if your developer or other team members have some but not extensive experience in the factors described above.

(3) You will receive zero points if your developer or other team members do not have the experience described above and the application does not demonstrate that it has the capacity to carry out your Revitalization plan. You will also receive zero points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

b. Development Capacity of Applicant—5 Points

Address this Rating Factor through your narrative. This rating factor looks at the development capacity of ONLY the applicant (not other members of the development team).

(1) You will receive up to 5 points if your application demonstrates that:

(a) Separate from your team, you have extensive, recent (within the last 5 years), and successful experience in the redevelopment of public housing, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(b) Separate from your team, you have extensive, recent (within the last 5 years), and successful experience in mixed-finance and mixed-income development, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(c) As relevant, you have identified potential gaps in your current staffing in relation to development activities, and you have plans to fill such gaps, internally or externally, in a timely manner in order to implement successfully your Revitalization plan;

(d) You have demonstrated that physical development activities will proceed as promptly as possible following grant award, and you will be able to begin significant construction within 18 months of the award of the grant. Applicants must provide a program schedule, developed in accordance with the timeframes in section III.C. (Timeliness of Development) and V.A.9.e., in order to demonstrate this criterion.

(1) You will receive up to 3 points if you have some but not extensive experience in the factors described above.

(2) You will receive zero points if you do not have the experience described and the application does not demonstrate that it has the capacity to carry out your Revitalization plan. You will also receive zero points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. Capacity of Existing HOPE VI Revitalization Grantees

HUD will use data from the Quarterly Reports to evaluate this Rating Factor.

(1) This section applies only to applicants that have received HOPE VI Revitalization grants for FYs 1993 to 2003. If an applicant has more than one HOPE VI Revitalization grant, each will be rated separately, not averaged, and

the highest deduction will be made. Applicants with HOPE VI Revitalization grants only from FY 2004, 2005 or FY 2006, or no existing HOPE VI Revitalization grants are not subject to this section.

(2) As indicated in the following tables, up to 5 points will be deducted if a grantee has failed to achieve adequate progress in relation to expenditure of HOPE VI Revitalization grant funds. Expenditure data will be taken from LOCCS as of the application deadline date.

Percent of HOPE VI Revitalization grant funds Expended	Points deducted
Grants Awarded in FY 1993–1999	
Less than 100 Percent	5 Points
Grants Awarded in FY2000	
90–100 Percent	0 Points.
80–89 Percent	1 Point.
75–79 Percent	2 Points.
70–74 Percent	3 Points.
65–69 Percent	4 Points.
Less than 65 Percent	5 Points.
Grants Awarded in FY2001	
80–100 Percent	0 Points.
70–79 Percent	1 Point.
60–69 Percent	2 Points.
50–59 Percent	3 Points.
40–49 Percent	4 Points.
Less than 40 Percent	5 Points.
Grants Awarded in FY2002	
60–100 Percent	0 Points.
50–59 Percent	1 Point.
40–49 Percent	2 Points.
30–39 Percent	3 Points.
20–29 Percent	4 Points.
Less than 20 Percent	5 Points.
Grants Awarded in FY2003	
25–100 Percent	0 Points.
20–24 Percent	1 Point.
15–19 Percent	2 Points.
10–14 Percent	3 Points.
5–9 Percent	4 Points.
Less than 5 Percent	5 Points.

d. CSS Program Capacity—3 Points

See sections I. and III. of this NOFA for detailed information on CSS activities. Address this Rating Factor through your narrative.

(1) You will receive 2 points if your application demonstrates one of the following. If you fail to demonstrate one of the following, you will receive zero points:

(a) If you propose to carry out your CSS plan in-house and you have recent, quantifiable, successful experience in planning, implementing, and managing the types of CSS activities proposed in your application, or

(b) If you propose that a member(s) of your team will carry out your CSS plan; that this procured team member(s) has the qualifications and demonstrated experience to plan, implement, manage, and coordinate the types of activities proposed; and that you have the capacity to manage that team member, including a plan for promptly hiring staff or procuring this team member.

(2) You will receive 1 point if your application demonstrates that:

(a) You have an existing HOPE VI grant and your current CSS team will be adequate to implement a new program, including new or changing programs, without weakening your existing team.

(b) You do not have an existing HOPE VI Revitalization grant and you demonstrate how your proposed CSS team will be adequate to implement a new program, including new or changing services, without weakening your existing staffing structure.

e. Property Management Capacity—3 Points

Address this Rating Factor through your narrative.

(1) Property management activities may be the responsibility of the PHA or another member of the team, which may include a separate entity that you have procured or will procure to carry out property management activities. In your application you will describe the number of units and the condition of the units currently managed by you or your property manager, your annual budget for those activities, and any awards or recognition that you or your property manager have received.

(2) Past Property Management Experience—2 Points.

(a) You will receive 2 points if your application demonstrates that you or your property manager currently have extensive knowledge and recent (within the last 5 years), successful experience in property management of the housing types included in your revitalization plan. This may include market-rate rental housing, public housing, and other affordable housing, including rental units developed with low-income housing tax credit assistance. If your Revitalization plan includes cooperatively owned housing, rent-to-own units, or other types of managed housing, in order to receive the points for this factor, you must demonstrate recent, successful experience in the management of such housing by the relevant member(s) of your team.

(b) You will receive one point if your application demonstrates that you or your property manager has some but not extensive experience of the kind required for your Revitalization plan.

(c) You will receive zero points if your application does not demonstrate that you or your property manager have the experience to manage your proposed plan, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

(3) Property Management Plan—1 Point.

(a) You will receive one point if your application describes how you or your property manager will administer the following elements of a property management plan:

(i) Property maintenance
(ii) Rent collection
(iii) Public and Indian Housing Information Center (PIC) 50058 reporting
(iv) Site-based management experience
(v) Tenant grievances
(vi) Evictions
(vii) Occupancy rate
(viii) Unit turnaround
(ix) Preventive maintenance
(x) Work order completion
(xi) Project-based budgeting
(xii) Management of homeownership and rent-to-own programs
(xiii) Energy Audits
(xiv) Utility/Energy Incentives

(b) You will receive zero points if your application does not describe how you or your property manager will administer all the elements of a property management plan as listed above, or if there is not sufficient information provided to evaluate this factor.

f. PHA or MTW Plan—1 Point

(1) You will receive one point if your application demonstrates that you have incorporated the revitalization plan described in your application into your most recent PHA plan or MTW Annual plan (whether approved by HUD or pending approval). In order to qualify as ''incorporated'' under this factor, your PHA or MTW plan must indicate the intent to pursue a HOPE VI Revitalization grant and the public housing development for which it is targeted.

(2) You will receive zero points if you have not incorporated the revitalization plan described in your application into your PHA or MTW plan, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

g. Public Housing Assessment System (PHAS)—2 Points

(1) If you have been rated as an Overall High Performer for your most

recent PHAS review as of the application deadline date, you will receive 2 points.

(2) If you have been rated as an Overall Standard Performer for your most recent PHAS review as of the application deadline date, you will receive one point.

(3) If you have been rated as a Troubled Performer that is either Troubled in One Area or Overall Troubled as of the application deadline date, you will receive zero points.

(4) For this rating factor, MTW PHA applicants will be rated on their compliance with their MTW Agreements.

(a) If you are in compliance with your MTW Agreement, you will receive 2 points.

(b) If you are not in compliance with your MTW Agreement, you will receive zero points.

h. Regular Maintenance—2 Points

(1) Through PHAS, HUD measures the prevalence of items that need to be fixed (defects) in PHAs' public housing developments. PHAs receive a report entitled ''Comparison of the Top 20 Observed Defects (Projected).'' HUD conducts analyses related to this report. In these analyses, HUD separates the regular maintenance projected defects from the total projected defects (other categories of defects include capital and life threatening/exigent health and safety), applies them across all units in the PHA's inventory and develops a rate of defects per unit. HUD will compare the PHA's most recent PHAS-projected number of regular maintenance defects per unit to the previous projected number of regular maintenance defects per unit.

(a) You will receive 2 points if your projected number of regular maintenance defects per unit has improved.

(b) You will receive zero points if your projected number of regular maintenance defects per unit have not improved.

(2) MTW PHA. For this rating factor, MTW PHA applicants will be rated on their compliance with their MTW Agreements.

(a) If you are in compliance with your MTW Agreement, you will receive 2 points.

(b) If you are not in compliance with your MTW Agreement, you will receive zero points.

i. Section 8 Management Assessment Program (SEMAP)—2 Points

(1) If you have been rated as a High Performer for your most recent SEMAP rating as of the application deadline date, you will receive 2 points.

(2) If you have been rated as Standard for your most recent SEMAP rating as of the application deadline date, you will receive one point.

(3) If you have been rated as Troubled for your most recent SEMAP rating as of the application deadline date, you will receive zero points.

(4) For this rating factor, MTW PHA applicants will be rated on their compliance with their MTW Agreements.

(a) If you are in compliance with your MTW Agreement, you will receive 2 points.

(b) If you are not in compliance with your MTW Agreement, you will receive zero points.

2. Rating Factor: Need—20 Points Total

a. Severe Physical Distress of the Public Housing Development—6 Points

(1) HUD will evaluate the extent of the severe physical distress of the targeted public housing development. If the targeted units have already been demolished, HUD will evaluate your description of the extent of the severe physical distress of the site as of the day the demolition application was approved by HUD. You will receive points for the following separate subfactors, as indicated.

(a) You will receive up to 2 points if your application demonstrates that there are major deficiencies in the project's infrastructure, including roofs, electrical, plumbing, heating and cooling, mechanical systems, settlement, and other deficiencies in Housing Quality Standards.

(b) You will receive up to 2 points if your application demonstrates that there are major deficiencies in the project site, including poor soil conditions, inadequate drainage, deteriorated laterals and sewers, and inappropriate topography.

(c) You will receive up to 2 points if your application demonstrates that there are major design deficiencies, including inappropriately high population density, room, and unit size and configurations; isolation; indefensible space; significant utility expenses caused by energy conservation deficiencies that may be documented by an energy audit; and inaccessibility for persons with disabilities with regard to individual units (less than 5 percent of the units are accessible), entranceways, and common areas.

b. Severe Distress of the Surrounding Neighborhood—3 Points

(1) HUD recognizes that public housing developments that meet the criteria of severe distress (as defined in the Definitions section) have a negative impact on their surrounding neighborhood. HUD will evaluate the extent of the distress existing in the surrounding neighborhood, as of the NOFA publication date, in order to identify those public housing development neighborhoods in greatest need. HUD will evaluate this by looking at physical decline of, and disinvestment by, public and private entities in the surrounding neighborhood; crime statistics; poverty levels; socio-economic data; trends in property values; evidence of property deterioration and abandonment; evidence of underutilization of surrounding properties; indications of neighborhood disinvestment; and photographs of the surrounding neighborhood. This information must be provided by the applicant in their narrative and attachments.

(2) You will receive 3 points if your application demonstrates that the surrounding neighborhood has a severe level of distress, based on the items above. Every item above must be addressed in order to earn full points.

(3) You will receive 2 points if your application demonstrates the surrounding neighborhood has a moderate level of distress, based on the items above.

(4) You will receive zero points if your application does not demonstrate that the surrounding neighborhood is distressed, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. Need for HOPE VI Funding—3 Points

(1) HUD will evaluate the extent to which you could undertake the proposed revitalization activities without a HOPE VI grant. Large amounts of available FY 2002 to 2006 Capital Funds (but not Replacement Housing Factor funds (RHF)) for purposes of this NOFA indicate that the revitalization could be carried out without a HOPE VI grant. Available Capital Funds are defined as non-obligated funds that have not been earmarked for other purposes in your PHA Plan. Funds earmarked in the PHA Plan for uses other than the revitalization proposed in this application will not be considered as available. Based on the above definition, to determine the amount of available FY 2002 to 2006 Capital Funds, applicants must indicate in their application the amount in the narrative of their application. See section IV.B. of this NOFA for documentation requirements.

(2) You will receive 3 points if your available Capital Funds balance is up to 20 percent of the amount of HOPE VI funds requested.

(3) You will receive 2 points if your available balance is 21 to 45 percent of the amount of HOPE VI funds requested.

(4) You will receive 1 point if your available balance is 46 to 80 percent of the amount of HOPE VI funds requested.

(5) You will receive zero points if your available balance is more than 80 percent of the amount of HOPE VI funds requested.

d. Need for Affordable Accessible Housing in the Community—3 Points

(1) Your application must demonstrate the need for other housing available and affordable to families receiving tenant-based assistance under Section 8 (HCV), as described below and must be the most recent information available at the time of the application deadline.

(2) For purposes of this factor, the need for affordable housing in the community will be measured by HCV program utilization rates or public housing occupancy rates, whichever of the two reflects the most need. In figuring the HCV utilization rate, determine and provide the percentage of HCV units out of the total number authorized or the percentage of HCV funds expended out of the total amount authorized, whichever percentage is higher. In figuring the public housing occupancy rate, provide the percentage of units occupied out of the total in your federal public housing inventory, excluding the targeted public housing site. You should base your calculation only on the federal public housing units you manage. You may not exclude units in your public housing inventory that are being reserved for relocation needs related to other HOPE VI Revitalization grant(s); or units in your public housing inventory that are being held vacant for uses related to a section 504 voluntary compliance agreement. If you are a non-MTW site, you must use information consistent with the Section Eight Management Assessment Program (SEMAP) and/or the Public Housing Assessment System (PHAS) submissions. If you are an MTW site, and do not report into SEMAP and/or PHAS, you must demonstrate your utilization and/or occupancy rate using similar methods and information sources in order to earn points under this rating factor.

(3) You will receive 3 points if your application demonstrates that the higher of:

(a) The utilization rate of your HCV program is 97 percent or higher; or

(b) The occupancy rate of your public housing inventory is 97 percent or higher.

(c) HUD will use the higher of the two rates to determine your score.

(4) You will receive 2 points if your application demonstrates that the higher of:

(a) The utilization rate of your HCV program is between 95 and 96 percent; or,

(b) The occupancy rate of your public housing inventory is between 95 and 96 percent.

(c) HUD will use the higher of the two rates to determine your score.

(5) You will receive one point if your application demonstrates that the higher of:

(a) The utilization rate of your HCV program is between 93 and 94 percent; or

(b) The occupancy rate of your public housing inventory is between 93 and 94 percent.

(c) HUD will use the higher of the two rates to determine your score.

(6) You will receive zero points if both the utilization rate of your Housing Choice Voucher program and the occupancy rate of your public housing inventory are less than 93 percent.

e. Need for Affordable Housing in the Nation—5 Points Total

(1) HUD will award 5 points to each application for which the targeted public housing development(s) is located in a Gulf Opportunity (GO) Zone (either Katrina only, Rita only, or Rita and Katrina). The applicant must demonstrate this in their narrative, as certified to via the SF–424. This information will be verified by HUD. For more information on GO Zones, see *http://www.hud.gov/offices/cpd/economicdevelopment/programs/rc/index.cfm.*

(2) If the targeted public housing development(s) is not located in a Gulf Opportunity Zone, the application will earn zero points for this rating factor.

3. Rating Factor: Leveraging—16 Points Total

a. Leverage

Although related to match, leverage is strictly a rating factor. Leverage consists of firm commitments of funds and other resources. HUD will rate your application based on the amount of funds and other resources that will be leveraged by the HOPE VI grant as a percentage of the amount of HOPE VI funds requested. There are four types of Leverage: Development and CSS, as described in the ''Program Requirements'' in section III.C.3. of this NOFA; Anticipatory and Collateral, as described in this rating factor. Each resource may be used for only one leverage category. Any resource listed in more than one category will be disqualified from all categories. In determining Leverage ratios, HUD will include as Leverage the match amounts that are required by section III.C.2. of this NOFA. Applicants must follow the Program Requirements for Match and Leverage section of section III.C.3. of this NOFA when preparing their leverage documentation. If leverage sources and amounts are not documented in accordance with sections III.C.3., they will not be counted toward your leverage amounts.

b. Development Leveraging—7 Points

For each commitment document, HUD will evaluate the strength of commitment and add the amounts that are acceptably documented. HUD will then calculate the ratio of the amount of HUD funds requested to the amount of funds that HUD deems acceptably documented. HUD will round figures to two decimal points, using standard rounding rules. See section III.C.3, Program Requirements, and Program Requirements for Match and Leverage for resource and documentation requirements. These requirements MUST be followed in order to earn points under the leverage rating factor.

(1) You will receive 7 points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS, administration, or relocation) to the dollar value of documented, committed development resources from other sources is 1:3 or higher.

(2) You will receive 6 points if the ratio is between 1:2.50 and 1:2.99

(3) You will receive 5 points if the ratio is between 1:2.0 and 1:2.49.

(4) You will receive 4 Points if the ratio is between 1:1.50 and 1:1.99.

(5) You will receive 3 points if the ratio is between 1:1.0 and 1:1.49.

(6) You will receive 2 points if the ratio is between 1:0.50 and 1:0.99.

(7) You will receive one point if the ratio is between 1:0.25 and 1:0.49.

(8) You will receive zero points if the ratio is less than 1:0.25, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible. You will receive 0 Points if your application does not request HOPE VI funds for CSS purposes.

c. CSS Leveraging—5 Points

See section III.C.3., Program Requirements, Program Requirements for Match and Leverage for resource and

documentation requirements. These requirements MUST be followed in order to earn points under the leverage rating factor.

(1) You will receive 5 points if the ratio of the amount of HOPE VI funds requested for CSS activities to the dollar value of documented, committed CSS resources leveraged from other sources is 1:2 or higher.

(2) You will receive 4 points if the ratio is between 1:1.75 and 1:1.99.

(3) You will receive 3 points if the ratio is between 1:1.5 and 1:1.749.

(4) You will receive 2 points if the ratio is between 1:1.25 and 1:1.49.

(5) You will receive one point if the ratio is between 1:1 and 1:1.249.

(6) You will receive zero points if the ratio is less than 1:1, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible. You will receive zero points if your application does not request HOPE VI funds for CSS purposes.

d. Anticipatory Resources Leveraging—2 Points

Anticipatory Resources relate to activities that have taken place in the past and that were conducted in direct relation to a HOPE VI Revitalization grant. In many cases, PHAs, cities, or other entities may have carried out revitalization activities (including demolition) in previous years in anticipation of your receipt of a HOPE VI Revitalization grant. These expenditures, if documented, may be counted as leveraged anticipatory resources. They cannot duplicate any other type of resource and cannot be counted towards match. Public Housing funds other than HOPE VI Revitalization, e.g., HOPE VI Demolition grant funds, HOPE VI Neighborhood Networks grant funds, HOPE VI Main Street grant funds, and Capital Fund Program, may be included, and will be counted, toward your Anticipatory Resources rating below. For Anticipatory Resources ratios, ''HOPE VI funds requested for physical development activities'' is defined as your total requested amount of funds minus your requested CSS, administration amounts, and relocation. HUD will presume that your combined CSS, administration, and relocation amounts are the total of Budget Line Items 1408 (excluding non-CSS Management Improvements), 1410, and 1495 on the form HUD–52825-A, ''HOPE VI Budget,'' that is included in your application. See section III.C.3, Program Requirements, Program Requirements for Match and Leverage for resource and documentation requirements. These requirements MUST be followed as relevant in order to earn points under the leverage rating factor.

(1) You will receive 2 points if the ratio of the amount of HOPE VI funds requested for physical development activities to the amount of your documented anticipatory resources is 1:0.1 or higher.

(2) You will receive zero points if the ratio of the amount of HOPE VI funds requested for physical development activities to the amount of your documented anticipatory resources is less than 1:0.1.

e. Collateral Investment Leveraging—2 Points

Collateral investment includes physical redevelopment activities that are currently underway, or have yet to begin but are projected to be completed before October 1, 2010. The expected completion time must be addressed in your application. In order for a leverage source to be counted as collateral investment, your application must demonstrate that the related activities will directly enhance the new HOPE VI community, but will occur whether or not a Revitalization grant is awarded to you and the public housing project is revitalized. This includes economic or other kinds of development activities that would have occurred with or without the anticipation of HOPE VI funds. These resources cannot duplicate any other type of resource and cannot be counted as match. Examples of collateral investments include local schools, libraries, subways, light rail stations, improved roads, day care facilities, and medical facilities. See section III.C.3, Program Requirements, and Program Requirements for Match and Leverage for resource and documentation requirements. These requirements MUST be followed as relevant in order to earn points under the leverage rating factor.

(1) You will receive 2 points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is 1:1.0 or higher.

(2) You will receive zero points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is less than 1:1.0.

4. Rating Factor: Resident and Community Involvement—3 Points Total

a. HUD will evaluate the nature, extent, and quality of the resident and community outreach and involvement you have achieved by the time your application is submitted, as well as your plans for continued and additional outreach and involvement beyond the minimum threshold requirements. See section III.C. of this NOFA for Resident and Community Involvement requirements.

b. Resident and Community Involvement—3 Points

You will receive one point for each of the following criteria met in your application, which are *over and above* the threshold requirements listed in section III.C. of this NOFA.

(1) Your application demonstrates that you have communicated regularly and significantly with affected residents, state and local governments, private service providers, financing entities, developers, and other members of the surrounding community about the development of your revitalization plan by giving residents and community members information about your actions regarding the revitalization plan and providing a forum where residents and community members can contribute recommendations and opinions with regard to the development and implementation of the revitalization plan.

(2) Your application demonstrates your efforts, past and proposed, to make appropriate HUD communications about HOPE VI available to affected residents and other interested parties, e.g., a copy of the NOFA, computer access to the HUD Web site, etc.

(3) Your application demonstrates your plans to provide affected residents with reasonable training on the general principles of development, technical assistance, and capacity building so that they may participate meaningfully in the development and implementation process.

5. Rating Factor: Community and Supportive Services—12 Points Total

a. CSS Program Requirements. See section III.C.3. for CSS program requirements. In your application, you will describe your CSS plan, including any plans to implement a CSS Endowment Trust. Each of the following subfactors will be rated separately.

b. Case Management—2 points.

(1) You will receive 2 points if your application (including the Logic Model) demonstrates that you are already providing case management services to

the targeted residents by this proposal as of the application deadline;

(2) You will receive one point if your application (including the Logic Model) demonstrates that you will be able to provide case management within 30 days from the date of the grant award letter so that residents who will be relocated have time to participate and benefit from CSS activities before leaving the site.

(3) You will receive zero points if your application (including the Logic Model) does not demonstrate either of the above criteria, or if your application does not include sufficient information to be able to evaluate this factor.

c. Needs Assessment and Results—3 Points

(1) You will receive 3 points if your application (including the Logic Model) demonstrates that a comprehensive resident needs assessment has been completed as of the application deadline date and that this needs assessment is the basis for the CSS program proposed in the application. You must describe and quantify the results of the needs assessment.

(2) You will receive up to 2 points if your application (including the Logic Model) demonstrates that a resident needs assessment has been completed as of the application deadline date, but does not show that the needs assessment was comprehensive and clearly linked to the proposed CSS program, and/or does not describe and quantify the results of the needs assessment.

(3) You will receive zero points if your application (including the Logic Model) does not demonstrate any of the above criteria, or if your application does not include sufficient information to be able to evaluate this factor.

d. Transition to Housing Self-Sufficiency—5 Points

You will receive up to 5 points if you address the methods you will use to assist public housing residents in their efforts to transition to other affordable and market-rate housing, i.e., to gain ''housing self-sufficiency.'' Please see section III(C)(3)(l) for information on transition to housing self-sufficiency.

(1) You will receive up to 5 points if your application (including the Logic Model) demonstrates that your CSS program includes and addresses all three of the below items. Your CSS Program:

(a) Provides measurable outcomes for this endeavor;

(b) Describes in detail how your other CSS and FSS activities relate to the transition of public housing residents to housing self-sufficiency; and

(c) Specifically addresses the grassroots, community-based and faith-based organizations, etc. that will join you in the endeavor.

(2) You will receive up to 2 points if your application (including the Logic Model) demonstrates that your CSS program includes and addresses at least two of the above three items (a) through (c) above.

(3) You will receive zero points if your application (including the Logic Model) demonstrates that your CSS Program includes and addresses less than two of the above items in (a) through (c) above.

e. Quality and Results Orientation in CSS Program—2 Points

(1) You will receive 2 points if you have proposed in your application (including the Logic Model) a comprehensive, high quality, results-oriented CSS program that is based on a case management system and that provides services/programs to meet the needs of all residents groups (e.g., youth, adult, elderly, disabled) targeted by the application. These services/programs may be provided directly or by partners. They must be designed to assist residents affected by the revitalization in transforming their lives and becoming self-sufficient, as relevant.

(2) You will receive up to 1 point if you have proposed in your application (including the Logic Model) a CSS program that meets some but not all of the criteria in the paragraph above;

(1) You will receive zero points if your application (including the Logic Model) does not demonstrate any of the above criteria, or if your application does not include sufficient information to be able to evaluate this factor.

6. Rating Factor: Relocation—5 Points Total

See sections III.C. of this NOFA for Relocation and Relocation Plan requirements. For all applicants, whether you have completed, or have yet to complete, relocation of all residents of the targeted project, your HOPE VI Relocation Plan must include the three goals set out in section 24 of the 1937 Act, as described in sections a.(1), a.(2), and a.(3) below.

a. You will receive up to 5 points for this Factor if you describe thoroughly how your Relocation Plan:

(1) Includes a description of specific activities that have minimized, or will minimize, permanent displacement of residents of the units that will be rehabilitated or demolished in the targeted public housing site, provided that those residents wish to remain in or return to the revitalized community;

(2) Includes a description of specific activities that will give existing residents priority over other families for future occupancy of public housing units in completed HOPE VI Revitalization Development projects, or, for existing residents that can afford to live in non-public housing HOPE VI units, priority for future occupancy of those planned units; and

(3) Includes a description of specific CSS activities that will be provided to residents prior to any relocation;

b. You will receive up to 3 points for this Factor if your Relocation Plan complies with some but not all of the criteria above.

c. You will receive zero points for this Factor if: (1) Your Relocation Plan does not comply with any of the requirements above; or (2) Your application does not provide sufficient information to evaluate this rating factor.

7. Rating Factor: Fair Housing and Equal Opportunity—6 Points Total

a. FHEO Disability Issues—3 Points Total

(1) Accessibility—2 Points.

(a) Over and above the accessibility requirements listed in section III.C.3. of this NOFA, you will receive 2 points if your application demonstrates that you have a *detailed* plan to:

(i) Provide accessibility in homeownership units (e.g., setting a goal of constructing a percentage of the homeownership units as accessible units for persons with mobility impairments; promising to work with prospective disabled buyers on modifications to be carried out at a buyer's request; exploring design alternatives that result in townhouses that are accessible to persons with disabilities);

(ii) Provide accessible units for all eligible populations ranging from one-bedroom units for non-elderly single persons with disabilities through units in all bedroom sizes to be provided;

(iii) Provide for accessibility modifications, where necessary, to HCV-assisted units of residents who relocate from the targeted project to private or other public housing due to revitalization activities. The Department has determined that the costs of such modifications are eligible costs under the HOPE VI program;

(iv) Where playgrounds are planned, propose ways to make them accessible to children with disabilities, over and above statutory and regulatory requirements; and

(v) Where possible, design units with accessible front entrances.

(b) You will receive one point if your application demonstrates that you have a detailed plan to implement from one to four of the accessibility priorities stated above, explaining why and how you will implement the identified accessibility priorities.

(c) You will receive zero points if your application does not demonstrate that you have a detailed plan that meets the specifications above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

(2) Universal Design—1 Point.

(a) You will receive one point if your application demonstrates that you have a specific plan to meet:

(i) The adaptability standards adopted by HUD at 24 CFR 8.3 that apply to those units not otherwise covered by the accessibility requirements. Adaptability is the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. For example, the wiring for visible emergency alarms may be installed so that a unit can be made ready for occupancy by a hearing-impaired person (For information on adaptability, see *http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf*); and

(ii) The visitability standards recommended by HUD that apply to units not otherwise covered by the accessibility requirements. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. See *http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf* for information on visitability. The two standards of visitability are:

(A) At least one entrance at grade (no steps), approached by a sidewalk; and

(B) The entrance door and all interior passage doors are at least 2 feet, 10 inches wide, allowing 32 inches of clear passage space.

(b) You will receive zero points if your application does not demonstrate that you have specific plans to implement both (i) and (ii) as specified above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

b. Fair Housing and Affirmative Marketing—1 Point Total

(1) Fair Housing—one point

(a) You will receive one Point if your application demonstrates that:

(i) You have made and will make specific efforts to attract families from all segments of the population on a nondiscriminatory basis and with a broad spectrum of incomes to the revitalized site through intensive affirmative marketing efforts and how these efforts contribute to the deconcentration of low-income neighborhoods;

(ii) You have made and will make specific efforts to target your marketing and outreach activities to those persons and groups least likely to know about these housing opportunities, in order to promote housing choice and opportunity throughout your jurisdiction and contribute to the deconcentration of both minority and low-income neighborhoods. In your application, you must describe how your outreach and marketing efforts will reach out to persons of different races and ethnic groups, families with or without children, persons with disabilities and able-bodied persons, and the elderly; and

(iii) The specific steps you plan to take through your proposed activities to affirmatively further fair housing. These steps can include, but are not limited to:

(A) Addressing impediments to fair housing choice relating to your operations;

(B) Working with local jurisdictions to implement their initiatives to affirmatively further fair housing;

(C) Implementing, in accordance with Departmental guidance, relocation plans that result in increased housing choice and opportunity for residents affected by HOPE VI revitalization activities funded under this NOFA;

(D) Implementing admissions and occupancy policies that are nondiscriminatory and help reduce racial and national origin concentrations; and

(E) Initiating other steps to remedy discrimination in housing and promote fair housing rights and fair housing choice.

(b) You will receive zero points if you do not address all of the above issues, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. Economic Opportunities for Low- and Very Low-Income Persons (Section 3)—2 Points

(1) HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very-Low-Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. Information about section 3 can be found at HUD's section 3 Web site at *http://www.hud.gov/offices/fheo/section3/section3.cfm*.

(2) You will receive 2 points if your application demonstrates that you have a feasible plan to implement section 3 that not only meets the minimum requirements described in section (1) above but also exceeds those requirements. Your plan must include your goals by age group, types of jobs, and other opportunities to be provided, and plans for tracking and evaluation. Section 3 firms must be in place quickly so that residents are trained in time to take advantage of employment opportunities such as jobs and other contractual opportunities in the pre-development, demolition, and construction phases of the revitalization. Your section 3 plan must demonstrate that you will, to the greatest extent feasible, direct training, employment, and other economic opportunities to:

(a) Low- and very low-income persons, particularly those who are recipients of government assistance for housing; and

(b) Business concerns which provide economic opportunities to low- and very low-income persons.

(3) You will receive zero points if your plan to implement section 3 does not meet the standards listed in section (1) and (2) above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

8. Rating Factor: Well-Functioning Communities—8 Points Total

a. Affordable Housing—Up to 3 Points

(1) Housing Definitions. For the purposes of this rating section, housing units are defined differently than in PIH housing programs, as follows:

(a)''Project-based affordable housing units'' are defined as on-site and off-site housing units where there are affordable-housing use restrictions on the unit, e.g., public housing, project-based HCV (Section 8) units, LIHTC units, HOME units, affordable homeownership units, etc.

(b)''Public housing'' is defined as rental units that will be subject to the ACC.

(2) Unit Mix and Need for Affordable Housing.

(a) Your proposed unit mix should sustain or create more project-based

affordable housing units that will be available to persons eligible for public housing in markets where the plan shows there is demand for the maintenance or creation of such units. While it is up to you to determine the unit mix that is appropriate for your site, it is essential that this unit mix include a sufficient amount of public housing rental units and other project-based affordable units. To the extent that the local market shows there is a demand for it, applicants are encouraged to create additional project-based affordable housing units to be made available for persons eligible for public housing.

(b) For purposes of this factor, HUD will determine whether you need project-based affordable housing by using your HCV program utilization rate or public housing occupancy rate, whichever of the two reflects the least need. In figuring the HCV utilization rate, determine and provide the percentage of HCV units out of the total number authorized or the percentage of HCV funds expended out of the total amount authorized, whichever percentage is higher. In figuring the public housing occupancy rate, provide the percentage of units occupied out of the total in your federal public housing inventory, excluding the units in the targeted project. You should base your calculation only on the federal public housing units you manage. You may not exclude units in your public housing inventory that are being reserved for relocation needs related to other HOPE VI Revitalization grant(s); or units in your public housing inventory that are being held vacant for uses related to a section 504 voluntary compliance agreement. If you are a non-MTW site, you must use information consistent with the Section Eight Management Assessment Program (SEMAP) and/or the Public Housing Assessment System (PHAS) submissions. If you are an MTW site, and do not report into SEMAP and/or PHAS, you must demonstrate your utilization and/or occupancy rate using similar methods and information sources in order to earn points under this rating factor.

(3) Scoring when there will be *No Need* for More Affordable Housing after the Targeted Project is Demolished—1 Point.

(a) You will receive 1 point for this factor if your application demonstrates that either:

(i) The utilization rate of your HCV program is less than 95 percent; or

(ii) The occupancy rate of your public housing inventory is less than 95 percent.

(iii) If either (i) or (ii) above is less than 95 percent, the other percentage will be disregarded.

(4) Scoring when there *Will be Need* for More Affordable Housing after the Targeted Project is Demolished—up to 3 Points.

(a) For this factor, HUD considers you in need of project-based affordable housing if both:

(i) The utilization rate of your HCV program is 95 percent or more; and

(ii) The occupancy rate of your public housing inventory is 95 percent or more.

(iii) If either (i) or (ii) above are less than 95 percent, you do not need affordable housing. You qualify for (3) above, not this section (4).

(b) The percentages below are defined as the number of planned project-based affordable units divided by the number of public housing units that the targeted project contains or contained;

(c) You will receive 3 points if your application demonstrates that the number of project-based affordable units in your plan is 125 percent or more of the number of public housing units that the targeted project contains or contained;

(d) You will receive 2 points if your application demonstrates that the number of project-based affordable units in your plan is 110 to 124 percent of the number of public housing units that the targeted project contains or contained;

(e) You will receive 1 point if your application demonstrates that the number of project-based affordable units in your plan is 100 to 109 percent of the number of public housing units that the targeted project contains or contained.

(f) You will receive zero points if your application demonstrates that the number of project-based affordable units in your plan is less than the number of public housing units that the targeted project contains or contained or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

b. Off-Site Housing—1 Point

(1) Factor Background.

(a) Although not required, you are encouraged to consider development of replacement housing in locations other than the original severely distressed site (i.e., off-site housing). Locating off-site housing in neighborhoods with low levels of poverty and low concentrations of minorities will provide maximized housing alternatives for low-income residents who are currently on-site and advance the goal of creating desegregated, mixed-income communities. The effect on-site will be to assist in the deconcentration of low-income residents and increase the number of replacement units.

(b) Although it is acknowledged that off-site housing is not appropriate in some communities, if you do not propose to include off-site housing in your Revitalization plan, you are not eligible to receive this point.

(c) If you propose an off-site housing component in your application, you must be sure to include that component when you discuss other components (e.g., on-site housing, homeownership housing, etc.). Throughout your application, your unit counts and other numerical data must take into account the off-site component.

(2) Scoring. You will receive one point if you propose to develop an off-site housing component(s) and document that: (a) You have site control of the property(ies) in accordance with Section III.C.2; (b) the site(s) does not suffer from any known or suspected environmental hazards or have any open issues or uncertainties related to public policy factors (such as sewer moratoriums), proper zoning, availability of all necessary utilities, or clouds on title that would preclude development in the requested locality; and (c) the site(s) meets site and neighborhood standards, in accordance with Section III.C.3 of this NOFA.

c. Homeownership Housing—4 Points

The Department has placed the highest priority on increasing homeownership opportunities for low- and moderate-income persons, persons with disabilities, the elderly, minorities, and families where English may be a second language. Too often these individuals and families are shut out of the housing market through no fault of their own. HUD encourages applicants to work aggressively to open up the realm of homeownership.

(1) Your application will receive 4 points if it demonstrates that your revitalization plan includes homeownership and that you have a feasible, well-defined plan for homeownership. In order to demonstrate this, your application should include descriptions of the following:

(a) The purpose of your homeownership program;

(b) The number of units planned and their location(s);

(c) A description and justification of the families that will be targeted for the program;

(d) The proposed source of your construction and permanent financing of the units; and

(e) A description of the homeownership counseling you or a

HUD-approved housing counseling agency will provide to prospective families, including such subjects as the homeownership process, housing in non-impacted areas, credit repair, budgeting, home maintenance, home financing, and mortgage lending.

(2) You will receive 2 points for this factor if you address in your description one to four of the items listed under (1) above.

(3) You will receive zero points for this factor if you do not propose to include homeownership units in your Revitalization plan, if your proposed program is not feasible and well defined, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

9. Rating Factor: Soundness of Approach—30 Points Total

a. Quality and Consistency of the Application—2 Points

(1) The information and strategies described in your application must be well organized, coherent, and internally consistent. Numbers and statistics in your narratives must be consistent with the information provided in the attachments. Also, the physical and CSS aspects of the application must be compatible and coordinated with each other. Pay particular attention to the data provided for:

(a) Types and numbers of units;

(b) Budgets;

(c) Other financial estimates, including sources and uses; and

(d) Numbers of residents affected.

(2) You will receive 2 points if your application demonstrates a high level of quality and consistency.

(3) You will receive one point if your application has a high level of quality, but contains minor internal discrepancies;

(4) You will receive zero points if your application fails to demonstrate an acceptable level of quality and consistency.

b. Appropriateness and Feasibility of the Plan—5 Points

(1) You will receive 5 points if your application demonstrates the following about your revitalization plan:

(a) It is appropriate and suitable, in the context of the community and other revitalization options, in accordance with the Appropriateness of Proposal threshold in section III.C. of this NOFA;

(b) Fulfills the needs that your application demonstrated for Rating Factor 2;

(c) Is marketable, in the context of local conditions;

(d) If you include market-rate housing, economic development, or retail structures in your revitalization plan, you must provide a signed letter from an independent, third party, credentialed market research firm, or professional that describes its assessment of the demand and associated pricing structure for the proposed residential units, economic development, or retail structures, based on the market and economic conditions of the project area.

(e) Is financially feasible, as demonstrated in the financial structure(s) proposed in the application;

(f) Does not propose to use public housing funds for non-public housing uses;

(g) If extraordinary site costs have been identified, a certification of these costs has been provided in the application;

(h) Describes the cost controls that will be used in implementing the project, in accordance with the Funding Restrictions and Program Requirements sections of this NOFA;

(i) Includes a completed TDC/Grant Limitations Worksheet in the application and follows the Funding Restrictions and Program Requirements sections of this NOFA.

(2) You will receive 3 points if your application demonstrates some but not all of the criteria above.

(3) You will receive zero points if your application does not demonstrate the criteria above or your application does not provide sufficient information to evaluate this factor.

c. Neighborhood Impact and Sustainability of the Plan—5 Points

(1) You will receive up to 5 points if your application demonstrates your revitalization plan, including plans for retail or office space, or other economic development activities, as appropriate, will:

(a) Result in a revitalized site that will enhance the neighborhood in which the project is located;

(b) Spur outside investment into the surrounding community;

(c) Enhance economic opportunities for residents; and

(d) Remove an impediment to continued redevelopment or start a community-wide revitalization process.

(2) You will receive up to 3 points if your application demonstrates that your revitalization plan will have only a moderate effect on activities in the surrounding community, as described in (1)(a) through (d) above.

(3) You will receive zero Points if your application does not demonstrate that your revitalization plan will have an effect on the surrounding community, as described in (a) through (d) above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

d. Project Readiness—7 Points

HUD places top priority on projects that will be able to commence immediately after grant award. You will receive the following points for each applicable subfactor certified in your application.

(1) You will receive 2 points if the targeted severely distressed public housing site is completely vacant, *i.e.*, all residents have been relocated.

(2) You will receive 2 points if the targeted severely distressed public housing site is cleared, *i.e.*, all buildings are demolished, or your revitalization plan only includes rehabilitation and no demolition of public housing units.

(3) You will receive one point if a Master Development Agreement (MDA) has been developed and is ready to be submitted to HUD. However, in cases where the PHA (not an affiliate/subsidiary/instrumentality) will act as its own developer for all components of the revitalization plan, an MDA is not needed and the one point will be awarded automatically.

(4) You will receive one point if your preliminary site design is complete.

(5) You will receive one point if you have held five or more public planning sessions leading to resident acceptance of the plan.

e. Program Schedule—5 Points

You will receive 5 points if the program schedule provided in your application incorporates all the timelines/milestones required in Section III.C.3.v., ''Timeliness of Development Activity,'' paragraphs (1)–(6). If your schedule does not incorporate all the timelines/milestones, you will earn zero points.

f. Design—3 Points

(1) You will receive up to 3 points if your proposed site plan, new dwelling units, and buildings demonstrate that:

(a) You have proposed a site plan that is compact, pedestrian-friendly, with an interconnected network of streets and public open space;

(b) Your proposed housing, community facilities, and economic development facilities are thoroughly integrated into the community through the use of local architectural tradition, building scale, grouping of buildings, and design elements; and

(c) Your plan proposes appropriate enhancements of the natural

environment that are appropriate to the site's soils and microclimate.

(2) You will receive one point if your proposed site plan, new dwelling units, and buildings demonstrate design that adequately addresses one or two, but not all three of the elements in (1) above.

(3) You will receive zero points if your proposed design is perfunctory or otherwise does not address the elements in (1) above. You will also receive zero points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

g. Energy Star—1 Point

(1) Promotion of Energy Star compliance is a HOPE VI Revitalization program requirement. See section III.C.3. of this NOFA.

(2) You will receive one point if your application demonstrates that you will:

(a) Use Energy Star-labeled products;

(b) Promote Energy Star design of replacement units; and

(c) Include Energy Star in homeownership counseling.

(3) You will receive zero points if your application does not demonstrate that you will perform (2)(a) through (c) above.

h. Evaluation—2 Points

You are encouraged to work with your local university(ies), other institutions of learning, foundations, or others to evaluate the performance and impact of their HOPE VI revitalization plan over the life of the grant. The proposed methodology must measure success against goals you set at the outset of your revitalization activities. Evaluators must establish baselines and provide ongoing interim reports that will allow you to make changes as necessary as your project proceeds. Where possible, you are encouraged to form partnerships with Historically Black Colleges and Universities (HBCUs); Hispanic-Serving Institutions (HSIs); Community Outreach Partnership Centers (COPCs); the Alaskan Native/Native Hawaiian Institution Assisting Communities Program (as appropriate); and others in HUD's University Partnerships Program.

(1) You will receive 2 points if your application includes a letter(s) from an institution(s) of higher learning, foundations, or other organization that specializes in research and evaluation that provides a commitment to work with you to evaluate your program and describes its proposed approach to carry out the evaluation if your application is selected for funding. The letter must provide the extent of the commitment and involvement, the extent to which you and the local institution of higher learning will cooperate, and the proposed approach. The commitment letter must address all of the following areas for evaluation in order to earn full points:

(a) The impact of your HOPE VI effort on the lives of the residents;

(b) The nature and extent of economic development generated in the community;

(c) The effect of the revitalization effort on the surrounding community, including spillover revitalization activities, property values, etc.; and

(d) Your success at integrating the physical and CSS aspects of your strategy.

(2) You will receive zero points if your application does not include a commitment letter that addresses each of the areas above (paragraphs(1) (a)–(d)).

10. Rating Factor: Incentive Criteria on Regulatory Barrier Removal—2 Points Total

a. Description

Applicants must follow the guidance provided in the General Section under section V.B. concerning the Removal of Regulatory Barriers to Affordable Housing in order to earn points under this rating factor. Information from the General Section V.B. is provided below, in part. In FY 2007, HUD continues to make removal of regulatory barriers a policy priority. Through the Department's America's Affordable Communities Initiative, HUD is seeking input into how it can work more effectively with the public and private sectors to remove regulatory barriers to affordable housing. Increasing the affordability of rental and homeownership housing continues to be a high priority of the Department. Addressing these barriers to housing affordability is a necessary component of any overall national housing policy. Under this policy priority, higher rating points are available to (1) governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing and (2) nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. To obtain the policy priority points for efforts to successfully remove regulatory barriers, applicants must complete form HUD–27300, ''Questionnaire for HUD's Initiative on Removal of Regulatory Barriers.'' Copies of HUD's notices published on this issue can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* Form HUD–27300 is included in the electronic application for this program available at *http://www.grants.gov/applicants/apply_for_grants.jsp.*

b. Scoring

(1) Local jurisdictions and counties/parishes with land use and building regulatory authority applying for funding, as well as PHAs, nonprofit organizations, and other qualified applicants applying for funds for projects located in these jurisdictions, are invited to answer the 20 questions under Part A.

(2) State agencies or departments applying for funding, as well as PHAs, nonprofit organizations, and other qualified applicants applying for funds for projects located in unincorporated areas or areas not otherwise covered in Part A are invited to answer the 15 questions under Part B.

(3) Applicants that will be providing services in multiple jurisdictions may choose to address the questions in either Part A or Part B for that jurisdiction in which the preponderance of services will be performed if an award is made.

(4) In no case will an applicant receive more than 2 points for barrier removal activities under this policy priority.

(5) Under Part A, an applicant that scores at least five in column 2 will receive one point in the NOFA evaluation. An applicant that scores 10 or more in column 2 will receive 2 points in the NOFA evaluation.

(6) Under Part B, an applicant that scores at least four in Column 2 will receive one point in the NOFA evaluation. An applicant that scores eight or greater will receive a total of 2 points in the respective evaluation.

(7) A limited number of questions on form HUD–27300 expressly request the applicant to provide brief documentation with its response. Other questions require that, for each *affirmative* statement made, the applicant supply a reference, Internet address, or brief statement indicating where the back-up information may be found and a point of contact, including a telephone number or e-mail address. To obtain an understanding of this policy priority and how it can affect their score, applicants are encouraged to read HUD's three notices, which are available at *http://www.hud.gov/initiatives/affordablecom.cfm.* Applicants that do not provide the Internet addresses, references, or documentation will not get the policy priority points.

B. Reviews and Selection Process

HUD's selection process is designed to ensure that grants are awarded to eligible PHAs that submit the most meritorious applications. HUD will consider the information you submit by the application deadline date. After the application deadline date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you or any third party may want to provide.

1. Application Screening

a. HUD will screen each application to determine if:

(1) It meets the threshold criteria listed in section III.C. of this NOFA; and

(2) It is deficient, i.e., contains any Technical Deficiencies.

b. See section III.C. of this NOFA for case-by-case information regarding thresholds and technical deficiencies. See section IV.B. of this NOFA for documentation requirements that will support threshold compliance and will avoid technical deficiencies.

c. Corrections to Deficient Applications—Cure Period. The subsection entitled, ''Corrections to Deficient Applications,'' in section V.B. of the General Section is incorporated by reference and applies to this NOFA, except that clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the deadline date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.)

d. Applications that will not be rated or ranked. HUD will not rate or rank applications that are deficient at the end of the cure period stated in section V.B. of the General Section or that have not met the thresholds described in section III.C. of this NOFA. Such applications will not be eligible for funding.

2. Preliminary Rating and Ranking

a. Rating.

(1) HUD staff will preliminarily rate each eligible application, SOLELY on the basis of the rating factors described in section V.A. of this NOFA.

(2) When rating applications, HUD reviewers will not use any information included in any HOPE VI application submitted in a prior year.

(3) HUD will assign a preliminary score for each rating factor and a preliminary total score for each eligible application.

(4) The maximum number of points for each application is 125.

b. Ranking.

(1) After preliminary review, applications will be ranked in score order.

3. Final Panel Review

a. A Final Review Panel made up of HUD staff will:

(1) Review the Preliminary Rating and Ranking documentation to:

(a) Ensure that any inconsistencies between preliminary reviewers have been identified and rectified; and

(b) Ensure that the Preliminary Rating and Ranking documentation accurately reflects the contents of the application.

(2) Assign a final score to each application; and

(3) Recommend for selection the most highly rated applications, subject to the amount of available funding, in accordance with the allocation of funds described in section II of this NOFA.

4. HUD reserves the right to make reductions in funding for any ineligible items included in an applicant's proposed budget.

5. In accordance with the FY 2007 HOPE VI appropriation, HUD may not use HOPE VI funds to grant competitive advantage in awards to settle litigation or pay judgments.

6. Tie Scores

If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for the Soundness of Approach Rating Factor. If a tie remains, HUD will select for funding the application(s) with the highest score for the Capacity Rating Factor. HUD will select further tied applications with the highest score for the Need Rating Factor.

7. Remaining Funds

a. HUD reserves the right to reallocate remaining funds from this NOFA to other eligible activities under section 24 of the 1937 Act.

(1) If the total amount of funds requested by all applications found eligible for funding under section V.B. of this NOFA is less than the amount of funds available from this NOFA, all eligible applications will be funded and those funds in excess of the total requested amount will be considered remaining funds.

(2) If the total amount of funds requested by all applications found eligible for funding under this NOFA is greater than the amount of funds available from this NOFA, eligible applications will be funded until the amount of non-awarded funds is less than the amount required to feasibly fund the next eligible application. In this case, the funds that have not been awarded will be considered remaining funds.

8. The following sub-sections of section V. of the General Section are hereby incorporated by reference:

a. HUD's Strategic Goals;

b. Policy Priorities;

c. Threshold Compliance;

d. Corrections to Deficient Applications;

e. Rating; and

f. Ranking.

VI. Award Administration Information

A. Award Notices

1. Initial Announcement. The HUD Reform Act prohibits HUD from notifying you as to whether or not you have been selected to receive a grant until it has announced all grant recipients. If your application has been found to be ineligible or if it did not receive enough points to be funded, you will not be notified until the successful applicants have been notified. HUD will provide written notification to all applicants, whether or not they have been selected for funding.

2. Award Letter. The notice of award letter is signed by the Assistant Secretary for Public and Indian Housing (grants officer) and will be delivered by fax and the U.S. Postal Service.

3. Revitalization Grant Agreement. When you are selected to receive a Revitalization grant, HUD will send you a HOPE VI Revitalization grant agreement, which constitutes the contract between you and HUD to carry out and fund public housing revitalization activities. Both you and HUD will sign the cover sheet of the grant agreement, form HUD–1044. It is effective on the date of HUD's signature, which is the second signature. The grant agreement differs from year to year. Past Revitalization grant agreements can be found on the HOPE VI Web site at *http://www.hud.gov/hopevi.*

4. Applicant Debriefing. Upon request, HUD will provide an applicant a copy of the total score received by their application and the score received for each rating factor.

5. General Section References. The following sub-section of section VI.A. of the General Section is hereby incorporated by reference: Adjustments to Funding.

B. Administrative and National Policy Requirements

1. Program Requirements. See the Program Requirements in section III.C.3. of this NOFA for information on HOPE VI program requirements that grantees must follow.

2. Conflict of Interest in Grant Activities.

a. *Prohibition.* In addition to the conflict-of-interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of a grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

b. *HUD-Approved Exception.*

(1) Standard. HUD may grant an exception to the prohibition above on a case-by-case basis when it determines that such an exception will serve to further the purposes of HOPE VI and its effective and efficient administration.

(2) Procedure. HUD will consider granting an exception only after the grantee has provided a disclosure of the nature of the conflict, accompanied by:

(a) An assurance that there has been public disclosure of the conflict;

(b) A description of how the public disclosure was made; and

(c) An opinion of the grantee's attorney that the interest for which the exception is sought does not violate state or local laws.

(d) Consideration of Relevant Factors. In determining whether to grant a requested exception as discussed, HUD will consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Revitalization plan and demolition activities that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class intended to be the beneficiaries of the Revitalization plan and Demolition plan, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with respect to the specific activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in section (iii) above;

(vi) Whether undue hardship will result either to the grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

3. Salary Limitation for Consultants. Unless specifically authorized by law, FY 2007 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant, whether retained by the federal government or the grantee, at a rate more than the equivalent of the high pay for members of the Senior Executive Service (SES). For information on the Executive Pay Band levels, please see the Office Personnel Management (OPM) Web site band paid for level IV of the Executive Schedule, at *http://www.opm.gov/oca/06tables/html/es.asp.*

4. Flood Insurance. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), your application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

a. The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

b. Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a grant agreement.

5. Coastal Barrier Resources Act. In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), your application may not target properties in the Coastal Barrier Resources System.

6. Policy Requirements.

a. OMB Circulars and Administrative Requirements. You must comply with the following administrative requirements related to the expenditure of federal funds. OMB circulars can be found at *http://www.whitehouse.gov/omb/circulars/index.html.* Copies of the OMB circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 20503; telephone (202) 395–7332 (this is not a toll-free number). The Code of Federal Regulations can be found at *http://www.gpoaccess.gov/cfr/index.html.*

(1) Administrative requirements applicable to PHAs are:

(a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments), as modified by 24 CFR part 941 or successor part, subpart F, relating to the procurement of partners in mixed-finance developments.

(b) OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments); and

(c) 24 CFR 85.26 (audit requirements).

(2) Administrative requirements applicable to nonprofit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations);

(b) OMB Circular A–122 (Cost Principles for Nonprofit Organizations); and

(c) 24 CFR 84.26 (audit requirements).

(3) Administrative requirements applicable to for profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations);

(b) 48 CFR part 31 (contract cost principles and procedures); and

(c) 24 CFR 84.26 (audit requirements).

C. Reporting

1. Quarterly Report.

a. If you are selected for funding, you must submit a quarterly report to HUD.

(1) HUD will provide training and technical assistance on the filing and submitting of quarterly reports.

(2) Filing of quarterly reports is mandatory for all grantees, and failure to do so within the required timeframe will result in suspension of grant funds until the report is filed and approved by HUD.

(3) Grantees will be held to the milestones that are reported on the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

(4) Grantees must also report obligations and expenditures in LOCCS, or its successor system, on a quarterly basis.

2. Logic Model Reporting.

a. The reporting shall include submission of a completed Logic Model indicating results achieved against the proposed output goal(s) and proposed outcome(s), which you stated in your approved application and agreed upon with HUD. The submission of the Logic Model and required information should be in accord with the reporting timeframes as identified in your grant agreement.

b. The goals and outcomes that you include in the Logic Model should reflect your major activities and accomplishments under the grant. For example, you would include unit construction, demolition, etc., from the ''bricks-and-mortar'' portion of the grant. As another example, for the CSS portion of the grant, you may include the number of jobs created or the number of families that have reached self-sufficiency, but you would not include information on specific job training and self-sufficiency courses.

c. As a condition of the receipt of financial assistance under this NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors performing HUD-funded research and evaluation studies.

3. Final Report.

a. The grantees shall submit a final report, which will include a financial report and a narrative evaluating overall performance against its HOPE VI Revitalization plan. Grantees shall use quantifiable data to measure performance against goals and objectives outlined in its application, as well as against the responses to the Management Questions contained in the Logic Model. The financial report shall contain a summary of all expenditures made from the beginning of the grant agreement to the end of the grant agreement and shall include any unexpended balances.

b. Racial and Ethnic Data. HUD requires that funded recipients collect racial and ethnic beneficiary data. It has adopted the OMB's Standards for the Collection of Racial and Ethnic Data. In view of these requirements, you should use form HUD–27061, Racial and Ethnic Data Reporting Form (instructions for its use), included in the electronic application for this program available at *http://www.grants.gov/applicants/apply_for_grants.jsp,* a comparable program form, or a comparable electronic data system for this purpose.

c. The final narrative and financial report shall be due to HUD 90 days after either the full expenditure of funds, or when the grant term expires, whichever comes first.

VII. Agency Contacts

A. Technical Assistance

1. Before the application deadline date, HUD staff will be available to provide you with general guidance and technical assistance. However, HUD staff is not permitted to assist in preparing your application. If you have a question or need a clarification, you may call or send an e-mail message to the Office of Public Housing Investments, Attention: Leigh van Rij, at (202) 402–5788 (this is not a toll-free number), *leigh_e._van_rij@hud.gov.* The mailing address is: Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000; telephone numbers (202) 401–8812; fax (202) 401–2370 (these are not toll-free numbers). Persons with hearing or speech impairments may access these telephone numbers through a text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339.

2. Frequently Asked Questions and General HOPE VI Information. Before the application deadline date, frequently asked questions (FAQs) on the NOFA will be posted to HUD's grants Web site at *http://www.hud.gov/offices/adm/grants/otherhud.cfm.*

3. You may obtain general information about HUD's HOPE VI programs from HUD's HOPE VI Web site at *http://www.hud.gov/offices/pih/programs/ph/hope6/.*

B. Technical Corrections to the NOFA

1. Technical corrections to this NOFA will be posted on the Grants.gov Web site.

2. Any technical corrections will also be published in the **Federal Register**.

3. You are responsible for monitoring these sites during the application preparation period.

VIII. Other Information

A. Waivers. Any HOPE VI-funded activities at public housing projects are subject to statutory requirements applicable to public housing projects under the 1937 Act, other statutes, and the annual contributions contract (ACC). Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed public housing projects. You may request, for the revitalized project, a waiver of HUD regulations, subject to statutory limitations and a finding of good cause under 24 CFR 5.110, if the waiver will permit you to undertake measures that enhance the long-term viability of a project revitalized under this program. HUD will assess each request to determine whether good cause is established to grant the waiver.

B. Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made for this notice, in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. in the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

C. General Section References. The following sub-sections of section VIII of the General Section are hereby incorporated by reference:

1. Executive Order 13132, Federalism;

2. Public Access, Documentation, and Disclosure;

3. Section 103 of the HUD Reform Act.

D. Paperwork Reduction Act Statement. The information collection requirements contained in this document have been approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0208. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The public reporting burden for the collection of information is estimated to average 190 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, quarterly reports, and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

[FR Doc. 07–3713 Filed 7–27–07; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Tuesday,
July 31, 2007

Part III

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, and 24
Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages; Proposed Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, and 24

[Notice No. 73; Ref: Notice No. 41]

RIN 1513–AB07

Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its regulations to require a statement of alcohol content, expressed as a percentage of alcohol by volume, on all alcohol beverage products. This statement may appear on any label affixed to the container. TTB also proposes to require a Serving Facts panel on alcohol beverage labels, which would include a statement of calories, carbohydrates, fat, and protein. Industry members may also choose to disclose on the Serving Facts panel the number of U.S. fluid ounces of pure alcohol (ethyl alcohol) per serving as part of a statement that includes alcohol content expressed as a percentage of alcohol by volume. The proposed regulations would also specify new reference serving sizes for wine, distilled spirits, and malt beverages based on the amount of beverage customarily consumed as a single serving. However, TTB is not defining a standard drink in this document. TTB proposes to make these new requirements mandatory three years after the date of publication of the final rule in the **Federal Register**. The agency proposes these amendments to ensure that alcohol beverage labels provide consumers with adequate information about the product.

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

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (Federal e-rulemaking portal; follow the instructions for submitting comments); or
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about this proposal at *http://www.regulations.gov.* A direct link to the appropriate Regulations.gov docket is also available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* In addition, you also may view copies of this notice and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, telephone (202) 927–2400.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone (301) 290–1460; or Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 45797, Philadelphia, PA 19149; telephone (215) 333–7050.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Alcohol and Tobacco Tax and Trade Bureau (TTB) and its predecessor agencies have considered the issue of requiring calorie and nutrient information on alcohol beverage labels in the past. As a result of a rulemaking initiative in 1993, TTB's immediate predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), concluded that, at that time, there was no significant consumer interest in having nutrition information on alcohol beverage labels. Ultimately, ATF did not implement rules on this issue. For a detailed description of the rulemaking history concerning nutrition labeling on alcohol beverages see TTB Notice No. 41, 70 FR 22274 (April 29, 2005).

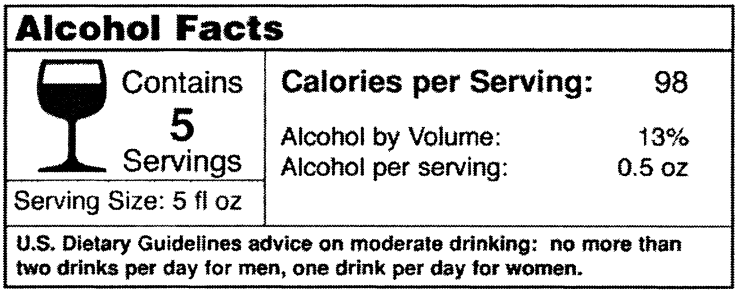
The issue of requiring the labeling of alcohol beverage products with calorie and nutrient information was not raised again until 2003, when TTB received a petition requesting rulemaking action to require an ''Alcohol Facts'' panel and ingredient labeling. Shortly thereafter, TTB was contacted by an industry member requesting approval to label its products with nutrition and other information on a ''Serving Facts'' panel. These panels, as well as TTB's authority to regulate alcohol beverage labels and advertisements, are discussed in detail below.

II. Petition for ''Alcohol Facts'' Label and Ingredient Labeling

On December 16, 2003, the Center for Science in the Public Interest (CSPI), the National Consumers League (NCL), 67 other organizations, and eight individuals, including four deans of schools of public health, petitioned TTB to change the alcohol beverage labeling regulations. Hereinafter, we refer to this petition as ''the petition.'' After receipt of the petition, additional individuals wrote to TTB requesting the addition of their names to the petition. The petition asked TTB to require that labels of all alcohol beverages regulated by TTB include the following information in a standardized format:

- The beverage's alcohol content expressed as a percentage of volume;
- A standard serving size;
- The amount of alcohol (in fluid ounces) contained within each standard serving;
- The number of calories per standard serving;
- The ingredients (including additives) from which the beverage is made;
- The number of standard drinks per container; and
- The current definitions of moderate drinking for men and women published in the ''Dietary Guidelines for Americans,'' which is issued jointly by the United States Department of Health and Human Services and the United States Department of Agriculture (USDA).

The petitioners proposed that all alcohol beverage containers bear this information on an ''Alcohol Facts'' panel. The petitioners provided the following example for a 750 milliliter bottle of wine:



The petition asked that the words ''Alcohol Facts'' be immediately followed by a declaration of the number of standard drinks (servings) per container. The petitioners asked that, consistent with the ''Dietary Guidelines for Americans,'' (*http://www.health.gov/DietaryGuidelines*) a serving should be defined as 12 ounces of beer, 5 ounces of wine, and 1.5 ounces of 80-proof distilled spirits. The petitioners further recommended that for alcohol beverages not fitting into one of those standard categories, a serving should be defined as an amount of fluid containing approximately 0.5 ounces of ethyl alcohol. The petitioners recommended that a consistent graphic symbol (for example, a beer mug, wine glass, or shot glass) should appear first, followed by the number of drinks in the container (for example, ''Contains 5 Servings''). The petition proposed requiring this information on labels of all malt beverages, wines, and distilled spirits products regulated by TTB that contain more than one-half of one percent alcohol by volume. The graphics and type size for the Alcohol Facts label should follow the Nutrition Labeling Education Act standards as set out in the Food and Drug Administration (FDA) regulations at 21 CFR 101.9(d), the petitioners suggested. Further, the petitioners stated that ingredient information should appear on the label immediately below, but segregated from, the ''Alcohol Facts'' box.

The petitioners suggested that current regulatory requirements force consumers to guess about the calorie content of alcohol beverages and the alcohol content of malt beverages. The petitioners included a summary of the results of a census-balanced, nationally representative telephone study conducted in September of 2003, among 600 Americans, ages 18 and older. The study was conducted by the Global Strategy Group, an independent polling and marketing research firm. The results were that 91 percent of respondents supported requiring ingredient labeling on alcohol beverages; 94 percent supported requiring alcohol content on alcohol beverage labels; 89 percent supported the mandatory labeling of calorie content for alcohol beverages; and 84 percent supported the labeling of serving size information.

III. Requests for Voluntary Serving Facts Labeling

Following receipt of the petition, TTB was contacted by an alcohol beverage industry member that wished to label its products with nutrient and other information on a ''Serving Facts'' panel. Subsequently, TTB received other requests from industry members to label products with similar information.

In July and then again in September of 2004, TTB posted on its Web site, *http://www.ttb.gov*, a summary of specifications for a planned ruling concerning the manner in which alcohol beverage labels and advertisements might permissibly reflect information about a single serving in a Serving Facts panel, consistent with the statutory and regulatory standards administered by TTB. The Bureau sought input from interested parties, including the alcohol beverage industry, consumers, and consumer interest groups, about what information should be permitted on such a panel and in what format the Serving Facts panel should appear.

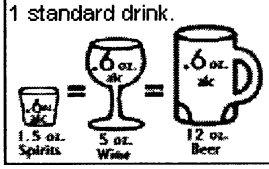
In the first posting, TTB solicited comments on a variety of options. The Bureau informally asked for comments on an optional Serving Facts panel that would include the serving size in fluid ounces based on what was previously specified in TTB Ruling 2004–1 (1.5 fluid ounces for distilled spirits, 5 fluid ounces for wines, and 12 fluid ounces for malt beverages, regardless of alcohol content). The panel would also include the number of servings per container, and for each serving the following information:

- Fluid ounces of ethyl alcohol (to the nearest tenth of an ounce);
- Calories;
- Fat (in grams);
- Carbohydrates (in grams); and
- Protein (in grams).

The Bureau also informally solicited comments on whether the term ''standard drink'' should be defined and whether it and the number of standard drinks in a serving should be permitted on alcohol beverage labels and in advertisements. Finally, we solicited comments on the optional use of three icons similar to the ones at the bottom of the label presented below:

Malt Beverage (5% ABV)

Serving Facts	
Serving Size 12 fl oz	
Servings Per Container 1	
Amount Per Serving	
Calories	150
Fat	0g
Carbohydrates	13.2g
Protein	1.1g
Alcohol	.6 oz
A standard drink contains 0.6 fl oz of alcohol. A serving of this beverage is 1 standard drink.	



In the second posting on our Web site, TTB informally solicited comments on an alternative label approach that omitted the icons and standard drink references. An example of this approach is as follows:

Malt Beverage (4 % ABV)

Serving Facts	
Serving Size 12 fl oz	
Servings Per Container 1	
Amount Per Serving	
Calories	90
Alcohol	0.5 fl oz
Fat	0g
Carbohydrates	2.2g
Protein	0.8g

As a result of the two Web postings, TTB received several comments concerning a voluntary Serving Facts panel. The comments reflected strong and varying opinions. A significant proportion of those who commented felt that the issue should be addressed in public notice and comment rulemaking rather than in a TTB ruling. Furthermore, many commenters believed that certain elements of the Serving Facts panel would tend to confuse or mislead consumers about the product. In response to the issues raised by the commenters, on December 28, 2004, TTB issued a press release indicating that we would address these issues in an advance notice of proposed rulemaking.

IV. Notice No. 41

On April 29, 2005, TTB published in the **Federal Register** (70 FR 22274) Notice No. 41, an advance notice of proposed rulemaking entitled ''Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages; Request for Public Comment.'' Notice No. 41 sought public comment on a wide range of alcohol beverage labeling and advertising issues to help the agency determine what regulatory changes in alcohol beverage labeling and advertising requirements, if any, TTB should propose in future rulemaking documents. Specifically, TTB sought comments on the petitioned ''Alcohol Facts'' panel and ingredient labeling, the ''Serving Facts'' panel presented in TTB's informal request for comments, and each panel's elements. Additionally, TTB requested comments on allergen labeling and the labeling of calorie and carbohydrate claims.

In the preamble to Notice No. 41, TTB announced its interim policy on the use

of Serving Facts panels on labels, as follows:

> Pending the completion of rulemaking proceedings, TTB does not intend to issue certificates of label approval bearing the optional ''Serving Facts'' panel. We believe it is important to have the benefit of public comments on these issues before making a decision as to whether the new elements in the panel might tend to mislead consumers.

During the 60-day comment period, we received several requests from alcohol beverage industry representatives and organizations to extend the comment period for an additional 60 to 90 days beyond the original June 28, 2005, closing date. In support of the extension requests, industry members noted that some of the questions posed in the notice were broad and far reaching from a policy standpoint, while others were very technical, requiring research and coordination within the affected industries. In response to those requests, we extended the comment period for an additional 90 days. See Notice No. 48, 70 FR 36359, June 23, 2005. The extended comment period for the ANRPM closed on September 26, 2005.

V. TTB's Authority To Prescribe Alcohol Beverage Labeling and Advertising Regulations

A. Internal Revenue Code

The Internal Revenue Code of 1986 (IRC) provides the Secretary with authority to issue regulations regarding the marking and labeling of containers of distilled spirits, wines, and beers. See 26 U.S.C. 5301, 5368, and 5412. This authority is based on the Secretary's responsibility to protect the revenue and to collect the taxes imposed on alcohol beverages by Chapter 51 of the IRC.

B. Federal Alcohol Administration Act

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e) and 205(f), set forth standards for regulation of the labeling and advertising of wine (containing at least 7 percent alcohol by volume), distilled spirits, and malt beverages, generally referred to as alcohol beverage products throughout this notice. These sections give the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer, to provide the consumer with ''adequate information'' as to the identity and quality of the product, to prohibit false or misleading statements, and to provide information as to the alcohol content of the product.

The statutory requirements with respect to alcohol content differ among the three alcohol beverage categories. The FAA Act requires alcohol content statements on labels of distilled spirits products. The Act also requires alcohol content statements for wines with an alcohol content of over 14 percent alcohol by volume, leaving such statements optional for wines with an alcohol content below that level. The Act, when originally enacted, prohibited such statements on malt beverage labels, unless required by State law, but that prohibition was overturned in 1995 by the U.S. Supreme Court in *Rubin* v. *Coors Brewing Company*, 514 U.S. 476 (1995).

The labeling and advertising provisions of the FAA Act also give the Secretary the authority to prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that are likely to mislead the consumer. In the case of malt beverages, the labeling and advertising provisions of the FAA Act apply only if the laws of the State into which the malt beverages are to be shipped impose similar requirements. TTB is responsible for the administration of the FAA Act and the regulations promulgated under it.

C. Legislative History of the Federal Alcohol Administration Act

With respect to TTB's authority to regulate the labeling of alcohol beverage products under the FAA Act, the Act's legislative history provides some insight as to the general purpose of the labeling provisions:

> * * * the provisions of this bill show that the purpose was to carry that regulation into certain particular fields in which control of interstate commerce in liquors was paramount and necessary. The purpose was to provide such regulations, not laid down in statute, so as to be inflexible, but laid down under the guidance of Congress, under general principles, by a body which could change them as changes were found necessary.
>
> Those regulations were intended to insure that the purchaser should get what he thought he was getting, that representations both in labels and in advertising should be honest and straight-forward and truthful. They should not be confined, as the pure-food regulations have been confined, to prohibitions of falsity, but they should also provide for the information of the consumer, that he should be told what was in the bottle, and all the important factors which were of interest to him about what was in the bottle.

See Hearings on H.R. 8539 before the Committee on Ways and Means, House of Representatives, 74th Cong., 1st Sess. 10 (1935).

VI. Discussion of Comments on Notice No. 41

In response to Notice No. 41, TTB received over 19,000 comments from consumers, consumer advocacy groups, Government officials, alcohol beverage industry members and associations, health organizations, and other concerned individuals.

A. Comments Regarding Alcohol Content

In Notice No. 41, TTB requested comments on the issue of whether the regulations should be amended to require an alcohol content statement on all alcohol beverage labels. There was significant disagreement as to whether the listing of alcohol content should be mandatory.

Many professional health organizations (including, among others, the American Society of Addiction Medicine, the American Medical Association (AMA), the American Nurses Association, and the American Council on Science and Health) as well as the Distilled Spirits Council of the United States (DISCUS), CSPI, NCL, and many consumers and other commenters supported mandatory alcohol content labeling for all alcohol beverage products. CSPI commented:

> Requiring *all* alcoholic beverages, whether beer, wine, distilled spirits, malternatives, or others, to be labeled for alcohol content is essential. Alcohol can be harmful when consumed in excess and even addictive for a substantial number of consumers. For that reason, labeling should provide clear information that allows consumers to measure and moderate their drinking. [Emphasis in the original.]

As previously stated above, the original petition from CSPI, NCL, and others, noted that a consumer survey indicated that 94 percent of respondents supported mandatory alcohol content labeling on alcohol beverages, with 77 percent of consumers strongly supporting such a requirement. The petitioners argued that ''the growing popularity of new, non-standard types of alcoholic beverages (e.g., lite beers, ice beers, malt liquors, hard lemonades, hard colas, wine coolers, other ready to drink 'alcopops,' fortified wines, and 'zippers [ready-to-drink liquor shots],' makes it even more difficult for consumers to accurately estimate their alcohol consumption.''

Some commenters suggested that mandatory alcohol content labeling is especially important given the problems caused by alcohol abuse. The Marin Institute suggested that ''clear, consistent and informative labeling—particularly with respect to alcohol content and serving size—will help

consumers avoid some of these problems by reducing over consumption.'' The NCL also suggested that ''better information about alcohol content per serving is especially important and should be given the highest priority because of the many public health problems caused by excessive consumption of alcohol.''

The Consumer Federation of America (CFA), a nonprofit association of 300 local, state and national consumer interest groups representing more than 50 million Americans, stated:

> Given the many public health problems caused by excessive consumption of alcohol, providing consumers better label information about alcohol content should be TTB's highest priority in this rulemaking. Providing consumers more information about alcohol content would help consumers make responsible drinking decisions and would help them follow the *Dietary Guidelines'* advice on moderate alcohol consumption. Potential benefits include reduced alcohol abuse, reduced drunk driving, and a reduction in the many diseases attributable to excessive alcohol intake.

The CFA further stated that such alcohol content is arguably required by the FAA Act, noting that it requires labels of alcohol beverages to provide ''adequate information'' on the identity, quality, and alcohol content of regulated products. The CFA also noted that the FAA Act provision prohibiting alcohol content information on labels of malt beverages was struck down as unconstitutional by the U.S. Supreme Court in *Rubin* v. *Coors Brewing Company* over ten years ago.

DISCUS noted that both large and small distillers have had a mandatory alcohol content labeling requirement for the past seventy years, and suggested that all alcohol beverage products should be required to bear alcohol content information, as this information is used by consumers to drink responsibly.

Other commenters, most notably members of the beer industry, objected to the extension of mandatory alcohol content labeling requirements to all malt beverages. The Beer Institute, a national trade association that represents domestic and international brewers, stated:

> The alcohol content of most beer is in a very narrow range, and consumers are generally aware of that fact. A weighted average of the alcohol content of the top 20 brands of domestic and imported beer based on 2004 sales data is 4.5 percent alcohol by volume. These brands account for 78.1 percent of the beer volume sold in the United States in 2004. Flavored malt beverage brands, none of which is in the top 20 brands, are required to display alcohol content by volume.

The Brewers Association, an organization representing approximately 1,400 small brewers and thousands of homebrewers and beer enthusiasts, commented in support of optional alcohol content statements on beer labels, but suggested that imposing mandatory alcohol content labeling requirements for malt beverages ''would stand congressional intent on its head and impose unnecessary costs on the industry.'' The comment noted that the FAA Act, as enacted, prohibited brewers from stating alcohol content on labels unless required by State law, and suggested that while the Supreme Court had overturned, on First Amendment grounds, the ban on the use of voluntary alcohol content statements, Congress had never distanced itself from its original intent on this matter. The Brewers Association thus stated that ''[w]hile TTB has, out of necessity, adjusted its alcohol content labeling rules to accommodate the demands of the First Amendment, it should not go further by imposing a rule that would *require* the very information that Congress saw fit to *prohibit*.'' [Emphasis in the original.]

The Serving Facts and Alcohol Facts panels presented in Notice No. 41 included alcohol content. Both panels expressed alcohol in U.S. fluid ounces of pure alcohol, and the Alcohol Facts panel also expressed alcohol content in percentage of alcohol by volume. Commenters disagreed on how to express alcohol content on an information panel. Diageo and many other commenters supported the listing of alcohol content in U.S. fluid ounces per serving, asserting that this information could be used by consumers to regulate their alcohol intake and follow the Dietary Guidelines advice on moderate drinking. It should be noted that the 2005 Dietary Guidelines provide that for purposes of explaining moderation, 12 fluid ounces of regular beer, 5 fluid ounces of wine, or 1.5 fluid ounces of 80-proof distilled spirits count as one drink; thus, the implication is that a ''drink'' would be equal to about 0.6 fluid ounces of pure alcohol. Some commenters further asserted that a consumer would not as easily be able to determine how many ''drinks'' he or she is consuming if alcohol content were only expressed as a percentage of alcohol by volume.

The National Consumers League suggested that ''the alcohol content of a beverage is a function of both serving size and percent alcohol by volume. Providing the amount of alcohol per serving would express alcohol content in a single number and thereby enable consumers to make comparisons between different products based on their alcohol content.''

The staff of the United States Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission (hereinafter collectively referred to as the FTC staff) supported disclosure of alcohol content in ounces of pure alcohol, stating:

> The amount of alcohol in beverages varies widely. Many popular beverages—12 ounces of regular beer containing 5% alcohol by volume ('ABV'), 5 ounces of wine containing 12% ABV or 1.5 ounces of 80 proof distilled spirits—deliver 0.6 ounces of pure alcohol. Numerous other popular beverages, however, contain more or less alcohol. Beers in the marketplace range from approximately 3.3% to 17% ABV, thus delivering between 0.39 and 2 ounces of pure alcohol per serving. Wines range from 6% to 18% ABV, i.e., providing between 0.3 and 0.9 ounces of alcohol in a 5-ounce serving. Distilled spirits range from 15% to 75% ABV, i.e., providing 0.22 to 1.1 ounces of alcohol per serving. [Footnotes omitted.]

The FTC staff suggested that information about alcohol on labels may help consumers make better-informed decisions, stating that ''research shows that in many instances, consumer decisions are made at the point of purchase.'' [Footnote omitted.]

CSPI, which originally proposed the listing of alcohol content on labels as both a percentage of alcohol by volume and in U.S. fluid ounces of pure alcohol, submitted a comment reflecting a change in this position. CSPI explained that it no longer favored the labeling of alcohol in U.S. fluid ounces of pure alcohol, stating that ''[a]lthough a single drink of an alcoholic beverage may contain approximately 0.6 ounces of alcohol, CSPI believes that it is unnecessary—and perhaps confusing—to put such information on a label.'' CSPI further stated that ''[c]onsumers do not think in those terms, but rather understand that drinks are served generally in standard, common sizes that vary according to the product.''

Also voicing its opposition to the ounces of pure alcohol approach, a major brewer stated that when alcohol content is listed in fluid ounces per serving, the number of fluid ounces will rise and fall according to the serving size and, more importantly, will rise and fall according to the amount the consumer actually consumes. The brewer and many other commenters stated that depicting alcohol content in this manner may mislead consumers. The brewer suggested that alcohol content when expressed as a percentage of alcohol by volume is succinct, clear, accurate, neutral, easy to understand, and easy to compare. It also stated that

the percentage of alcohol by volume requires no explanation, definition, or graphic icon, but is a consistent measure that does not vary or fluctuate with the size of the drink.

The Beer Institute opposed expressing alcohol content in fluid ounces for the following reasons:

> As compared to labeling beverages in terms of their alcohol concentration, or percent alcohol by volume, labeling beverages in ounces of absolute alcohol is misleading because beverage categories, types, and packages vary in alcohol potency. To achieve the informational goals of TTB and various petitioners, a consumer must compare disparate serving sizes for each product, number of servings in a container, *and* amount of pure alcohol contained in the stated serving size. Furthermore, the use of a standard serving size is not consistent with the manner in which many alcohol beverages are actually consumed. [Emphasis in original.]

Several commenters further asserted that the display of a percentage of alcohol by volume remains the best means of indicating alcohol content on a product label or in advertising. Some commenters noted that the higher the percentage, the stronger the alcohol and its effect.

Several other commenters stated that displaying alcohol content in U.S. fluid ounces per serving is unnecessary, misleading, and potentially harmful to the consumer. Other commenters contended that such labeling may be in violation of State law and regulations, as most states require alcohol content to be listed as a percentage of alcohol by volume.

Several public health organizations suggested other methods of depicting alcohol content. These include content expressed as a percentage of alcohol by weight, and alcohol expressed in grams.

TTB Response

TTB believes that the alcohol content of a beverage is one of the most important pieces of information about that product. We agree with those commenters who stated that labels should provide the consumers with this very basic information. We also believe that consumers use information about alcohol content to measure and moderate their drinking.

As previously noted, the provisions of the FAA Act regarding the labeling of alcohol content differ by commodity. Accordingly, the current regulations that implement the labeling provisions of the FAA Act also differ by commodity. Alcohol content statements are already required for all distilled spirits products. See 27 CFR 5.32(a)(3), 5.37 and 19.643(b). Wines containing more than 14 percent alcohol by volume must also bear alcohol content statements; however, under current regulations wines with an alcohol content of at least 7 percent but no more than 14 percent by volume may be labeled with the designation ''table wine'' or ''light wine'' in lieu of a percent alcohol by volume statement. See 27 CFR 4.36(a). Finally, with the exception of certain flavored malt beverages that derive alcohol from added ingredients (see 27 CFR 7.22(a)(5)), malt beverages are not required to bear an alcohol content statement under current regulations.

In previous documents published in the **Federal Register**, TTB and its predecessor agency, ATF, have indicated an intention to examine the issue of requiring alcohol content on malt beverage labels. In 1993, after the United States District Court for the District of Colorado first struck down the ban on alcohol content on malt beverage labels as unconstitutional, and before the case went to the Supreme Court, which also held that the ban violated the First Amendment, ATF issued an interim rule allowing optional alcohol content labeling for malt beverages. See T.D. ATF–339, 58 FR 21228 (April 19, 1993). In the preamble to that final rule, ATF stated that it believed that ''if a future court action ultimately does not uphold the existing statute prohibiting statements of alcoholic content, or if future legislative action removes the current statutory prohibition, then ATF would consider making the statement of alcoholic content mandatory on labels of malt beverages.'' See 58 FR 21229. Similarly, in 2005, in the preamble to the final rule on flavored malt beverages, TTB addressed comments that favored mandatory alcohol content for all malt beverages by stating that while we were ''not unsympathetic to the comments suggesting mandatory alcohol content labeling for all malt beverages, we are not in a position to implement such a rule without notice and public comment.'' See TTB T.D.–21, 70 FR 194, 221 (January 3, 2005).

After reviewing the comments received in response to Notice No. 41, TTB is now proposing to require alcohol content statements on the labels of all alcohol beverage products, including table wines and all malt beverages. As noted by CSPI, alcohol can be harmful when consumed in excess; thus, labeling should provide information that allows consumers to measure and moderate their drinking. We received many comments that made similar points from public health organizations, including the American Society of Addiction Medicine, the AMA, the American Nurses Association, and the American Council on Science and Health.

We agree with those commenters who suggested that providing consumers with more information about alcohol content may help them make responsible drinking decisions. The Beer Institute commented that the alcohol content of most beer is generally in a narrow range, with a weighted average of the alcohol content of the top 20 brands in 2004 being 4.5 percent alcohol by volume. However, while most beer sold is, in fact, within this narrow range, we are also aware of beers being sold today in the United States with an alcohol content as high as 24 percent alcohol by volume. Unless the brewer chooses to place this information on the label, the consumer has no way of knowing whether the alcohol content of the malt beverage he is purchasing is 4.5 percent alcohol by volume or over 5 times that amount. Consumers should not be forced to resort to guesswork about this important element of the alcohol beverages they consume. While table wines fall by definition within a certain range of alcohol content, those wines at the top of the range (14 percent) have an alcohol content twice as high as those wines at the bottom of the range (7 percent). Again, this is important information to consumers, and it should be presented on the label. We agree with the suggestion by the FTC staff that because of the significant variety in the alcohol content of alcohol beverages, label disclosures about alcohol content may assist consumers in choosing among categories and brands.

The Brewers Association suggested that requiring alcohol content statements on malt beverages would be contrary to the congressional intent expressed when the FAA Act was enacted in 1935. We recognize that the FAA Act, as enacted, specifically prohibited the placement of alcohol content statements on malt beverage labels, unless required by State law. This provision of the law was found to be unconstitutional by the Supreme Court in *Rubin* v. *Coors Brewing Co.,* 514 U.S. 476 (1995). This action by the Court leaves the Secretary with authority to either allow or require alcohol content statements on malt beverage labels. In fact, as previously noted, we have already issued regulations requiring alcohol content statements on certain flavored malt beverage labels.

We also recognize that the FAA Act does not require alcohol content statements on labels of wines containing 14 percent alcohol by volume or less. Accordingly, as stated above, our

regulations implemented under the FAA Act provide that labels for such products may either express alcohol content as a percentage of alcohol by volume or they may bear the type designation to which they are entitled based on the product's alcohol content (for example, ''table wine'' or ''light wine.'') See 27 CFR 4.36.

The implementing regulations under the IRC require alcohol content to be labeled on all wine containers; however, they incorporate by reference the rules under 27 CFR part 4. See 27 CFR 24.257(a)(3). This incorporation of the rules under part 4 results in a somewhat inconsistent effect. The IRC regulations require wines under 7 percent by volume (which are not ''wines'' under the FAA Act and thus fall under the FDA's labeling jurisdiction) to bear a percent-alcohol-by-volume statement; however, they do not require the same statement on wines with an alcohol content of 7 to 14 percent alcohol by volume. TTB believes that the listing of alcohol content should be consistent for all wines regardless of their alcohol content. Accordingly, we are proposing to amend § 24.257(a)(3) of the TTB regulations to require alcohol content, expressed in terms of percent-alcohol-by-volume, on all wine labels. We believe that this amendment would serve an important revenue purpose, as the alcohol content of a wine is one factor in determining its tax classification. See 26 U.S.C. 5041(b). We also believe that our statutory authority under the FAA Act allows us to issue regulations regarding the placement of the mandatory alcohol content statement.

Accordingly, TTB is proposing that alcohol content, expressed as a percentage of alcohol by volume, must appear on labels for all alcohol beverages subject to our labeling jurisdiction under the FAA Act.

TTB is proposing to allow the mandatory alcohol content statement to appear on any label affixed to the container including, at the option of the industry member, as part of a Serving Facts panel as discussed later in this document. This approach is required in order to conform to a trade agreement among the United States, Australia, Argentina, Canada, Chile, and New Zealand, in which it was agreed that wines may be imported bearing certain common mandatory information (including alcohol content) on any wine label on the container, as long as such information is in a single field of vision. TTB is further proposing to remove §§ 4.32(a)(3), 5.32(a)(3) and 7.22(a)(5), which mandate placement of alcohol content statements for wine, distilled spirits, and malt beverages on the brand label. Under the proposed regulatory changes, listing alcohol content on a Serving Facts panel or elsewhere on the label would satisfy the labeling requirement.

After careful consideration of the comments, TTB continues to believe that the display of a percentage of alcohol by volume is the best way to express alcohol content on a product label or in advertisements. We believe that consumers are familiar with alcohol content expressed in this manner. By contrast, consumers have little or no familiarity with alcohol expressed in U.S. fluid ounces of pure alcohol. Indeed many commenters, including CSPI, suggested that such statements might confuse consumers.

However, we note that several commenters suggested that presenting alcohol in fluid ounces per serving may provide consumers with useful information. As the NCL noted in its comment, providing this information may enable consumers to more easily make comparisons between different products based on their alcohol content.

TTB does not believe that the disclosure of alcohol in fluid ounces is inherently misleading; however, we agree that consumers are used to seeing alcohol content expressed as a percentage of alcohol by volume and might be confused by a statement of alcohol in fluid ounces, without some context in which to evaluate this information. For these reasons, TTB is not proposing that the panel include a mandatory statement of alcohol in U.S. fluid ounces of pure alcohol per serving. We agree that the number of fluid ounces of alcohol per serving might be confusing in isolation; however, we believe that it would not be confusing if presented together with a traditional alcohol content statement. Furthermore, this information might be useful to consumers, and would allow them to compare the quantity of alcohol contained in single servings of different commodities without doing mathematical calculations.

Accordingly, we are proposing to permit the additional display of a statement of the number of fluid ounces of alcohol per serving, as long as it includes a statement of alcohol content expressed as a percentage of alcohol by volume. The proposed rule further provides that the heading ''fl oz of alcohol'', if it appears in the Serving Facts panel, must be indented beneath the heading ''Alcohol by volume.''

As previously noted, the proposed rule would allow the mandatory alcohol content statement to appear on the Serving Facts panel or elsewhere on the label, or both on the Serving Facts panel and elsewhere; however, if the industry member chooses to list the number of fluid ounces of pure alcohol in the product, the proposed rule provides that such information must appear as part of the Serving Facts panel. As noted in the comments, the percentage of alcohol by volume in a given product does not change based on the serving size; however, the number of ounces of pure alcohol does. Thus, to provide context for the consumer, the ounces of pure alcohol must appear as part of the Serving Facts panel, which also discloses the serving size and the number of servings per container. Because the number of fluid ounces of alcohol per serving must appear together with the alcohol content statement, this means that industry members choosing to disclose the number of ounces of alcohol per serving must put both this statement and the percentage of alcohol by volume together in the Serving Facts panel.

We believe that by allowing the use of a statement of fluid ounces of alcohol only if it appears directly underneath a statement of alcohol content on a Serving Facts panel, consumers may come to understand the relationship between alcohol content expressed as a percentage of alcohol by volume and the expression of the number of fluid ounces of pure alcohol per serving.

B. Comments Regarding Calorie and Nutrient Labeling and Advertising

In Notice No. 41, TTB requested comments on the issue of listing calorie and nutrient information on alcohol beverage labels and in advertisements. Over 18,500 consumers who responded to Notice No. 41 indicated that they would like to see this additional information on alcohol beverage labels.

Most of these comments were form letters generated through a letter-writing campaign initiated by Diageo, a major alcohol beverage producer, through its Web site at *http://www.knowyourdrink.com.* Consumers who visited the Web site were invited to submit a comment to TTB on this issue. If consumers chose to submit a comment, the Web site would then generate and forward one of over 20 different form letters to TTB. Many of these consumers expressed confusion as to why alcohol beverage labels do not currently bear this type of information, and some expressed the belief that TTB prohibited the use of this information on labels. The response by consumers who took the time to show their support for calorie and nutrient information on alcohol beverage labels via the *http://*

www.knowyourdrink.com Web site was numerically significant (over 18,000).

TTB received many other comments in support of the display of calorie and nutrient information per serving. Many of these commenters stated that they use facts about calories and nutrient content of the products they eat and drink to balance their diets. Several commenters, including the NCL, suggested that calorie information on alcohol beverage labels would help consumers maintain their weight within a healthy range consistent with the ''Dietary Guidelines for Americans'' advice. Commenting on this issue, CSPI explained that:

* * * Alcohol provides a significant portion of calories (3% to 5%) in the American diet (for heavier drinkers, it contributes even more generously) and many drinkers and other consumers watch their calorie intake in order to help maintain a healthy weight. Particularly today, when drinking is widely portrayed as an adjunct (if not a prerequisite) to a healthy lifestyle, and popular, newer, ready-to-drink concoctions often contain more than 200 calories per serving, calorie information takes on added importance. Obesity and excessive weight represent substantial threats to individual and public health. The medical and other costs related to those problems are staggering, and continue to grow, along with the human suffering. Calorie labeling could provide a constant, low-cost reminder that alcohol consumption adds generally empty, discretionary calories to the diet. Along with other educational and policy approaches, such labeling could help raise awareness and potentially provide information that consumers can use to modify their drinking behavior.

The NCL, as well as Shape Up America, which is a non-profit organization concerned with public health issues, referred to a recent FDA report, Report of the Obesity Working Group, ''Calories Count,'' March 12, 2004, available at (*http://www.cfsan.fda.gov/dms/owg-toc.html*), which concludes that maintaining a healthy weight is a matter of counting and balancing calories consumed and expended. Shape Up America explained that awareness of the calorie content of food and beverages is essential to implementing this energy balance strategy. Many other commenters, including the American Council on Science and Health, a consumer education consortium concerned with public health issues, asserted that at a time when the prevalence of obesity is becoming a significant public health threat, information about the content of all foods and beverages should be presented to consumers in a standardized, clear format to allow them to make well-informed choices.

The American Dietetic Association (ADA), which is the largest association of food and nutrition professionals and represents nearly 65,000 members, also commented in support of calorie and nutrient labeling. The ADA asserted that nutrition and ingredient labeling of alcohol beverage products will contribute positively to public health measures to reduce the current burden of chronic disease, including obesity, hypertension, diabetes, and dyslipidemia. The ADA stated that it supports initiatives to label wine, distilled spirits, and malt beverages to provide information consumers can use to maintain health, including a healthy body weight, and to manage chronic conditions such as diabetes. This comment asserted that such information would be best conveyed within the context of dietary guidance based on the ''Dietary Guidelines for Americans 2005,'' which includes advice on the consumption of alcohol beverage products. The ADA also stated that the growing health care costs associated with the rise in chronic diseases and conditions, which can be attributed to over-consumption of foods and beverages, including those containing alcohol, more than justify the costs of revising labels.

TTB received several comments from individuals who suffer from diabetes. These commenters explained that access to nutrition information is critical to their efforts to control their disease. One commenter states that ''as a diabetic, I am especially interested in the carbohydrate content of all food and beverages. This is vital information in order to determine necessary insulin administration.'' Another commenter, a State policy maker and also a diabetic, stated that he regularly checks labels for portion size and nutritional content. He explained that this type of information is invaluable in his efforts to control his disease. Another commenter, The Social & Health Research Center, explained that between 2001 and 2004 diabetes rates grew by 55 percent. They state that the key to this disease is prevention, and explained that a large national study, the Diabetes Prevention Program, reported that high risk individuals who practiced healthy lifestyles were able to reduce their diabetes risk by 58 percent. This commenter, like others, stressed that it is extremely important for people with diabetes and at risk for diabetes, who choose to drink alcohol, to have complete information about the contents of these beverages. The commenter further stated that alcohol is a significant source of calories and that excessive alcohol consumption makes it difficult to ingest sufficient nutrients within an individual's daily calorie allotment and to maintain a healthy weight.

The FTC staff also commented in support of amending the TTB regulations to require that alcohol beverage labels disclose alcohol and nutrient content (calories, carbohydrates, fat, and saturated fat) per serving, stating that such a change would be likely to have beneficial effects on consumers and competition. The FTC staff did not comment on the listing of protein. Their comment asserted that information on labels about the attributes of alcohol beverages would help consumers select beverages they prefer, including making selections consistent with the recommendations of public health agencies. Additionally, the FTC staff indicated that such labeling would encourage manufacturers to compete based on the nutritional (for example, calorie and carbohydrate content) attributes of their beverages. The FTC staff also stated that such requirements should not extend to advertisements because advertising differs from labeling in important ways that make it likely that the costs of mandatory disclosure in advertisements would outweigh its benefits.

The FTC staff also noted that alcohol varies significantly in calories per serving, pointing to beers that ranged from 95 to 340 calories per serving; spirits that ranged from 48 to 180 calories per serving, and wines that ranged from 100 to 235 calories per serving. This comment also noted ranges in carbohydrate content, with beers ranging from 5 to 22 grams of carbohydrates per serving, spirits ranging from 0 to 18 grams of carbohydrates per serving, and wines ranging from 1 to 18 grams of carbohydrates per serving. While alcohol beverages generally do not contain fat, there are distilled spirits specialty products that contain fat from cream, milk, or coconut.

TTB did not receive any specific comments against providing calorie information on alcohol beverage labels; however, a few commenters were generally opposed to listing any calorie or nutrient information on alcohol beverage labels. Some of these commenters stated that alcohol beverage products are consumed for pleasure and not for nutritional content; therefore, nutritional and calorie content labeling should not be required. One commenter cautioned that alcohol consumption is not a part of a healthy lifestyle and that those on diets should not be drinking any alcohol.

A few commenters were opposed to listing information about certain nutrients. The AMA, while expressing

support for the listing of the number of calories as well as the number of grams of carbohydrate, fat, and protein per serving, suggested that fats and protein only be listed if they reach a threshold.

Like the AMA, CSPI suggested that the listing of fats and proteins should be permitted only if they meet a certain meaningful, minimum threshold amount. CSPI commented that listing information on carbohydrate, fat, and protein content on alcohol beverage labels provides little value to consumers and may even do harm. Specifically, CSPI expressed concern that listing such information on alcohol beverage labels might suggest to consumers that the product is akin to food and represents an ordinary source of nutrition.

Several other commenters stated that nutrition information on alcohol beverage products should be limited to only calories and carbohydrates. One commenter suggested that listing protein on alcohol beverage labels might convince a consumer to drink more of the product to get more protein. Some commenters also expressed concern that listing fat content could open the door to ''no-fat'' claims for alcohol beverages, which are typically directed towards health foods.

A few commenters expressed concern that listing nutrient content on alcohol beverage labels could be misleading. A large brewing company commented that the Alcohol Facts panel would be inappropriate, and stressed the differences in the labeling of food and alcohol beverages. The commenter made the following point:

> Food labels present detailed nutrient content and dietary information in the context of a healthy diet. The servings of listed items such as carbohydrates, cholesterol, protein and fat are expressed not only in grams, but also in a percentage daily value based on a 2,000 calorie diet. The 2,000 calorie diet has no equivalent in alcohol products, which have no recommended daily nutritional value. Furthermore, adding nutritional recommendations would contradict TTB's statements opposing the placement of health claims on alcohol beverage labeling.

The Beer Institute commented that TTB should move with extreme caution on any rulemaking to mandate or permit nutritional labeling similar to that required by FDA on the food and beverage products it regulates. Its comment suggested that any such change should only be considered after thorough research and a formal agency determination that changes in the label format or display of additional information would be consistent with the intent of Congress and in the public interest. The Beer Institute instead supported the current TTB policy of voluntary disclosure of a statement of average analysis on labels for all types and categories of alcohol beverages. (TTB Ruling 2004–1 allows the use of calorie and carbohydrate references on alcohol beverage labels and in advertisements as part of, or in conjunction with, a statement of average analysis listing the serving size as well as the number of calories, and the number of grams of carbohydrates, protein, and fat, per serving.)

TTB Response

As noted earlier in this document, the purpose of the FAA Act is, in part, to ensure that alcohol beverage products are labeled and advertised in a manner that will provide the consumer with ''adequate information'' as to the identity and quality of the product, and to prohibit false or misleading statements. As explained in the legislative history, Congress purposefully avoided laying out specific statutory requirements, opting instead to lay down general guidance so that the Department of the Treasury would have the flexibility to draft regulations and change them when necessary. Congress further intended that the purchaser or consumer should be told what was in the bottle, and all the important factors which were of interest to the consumer about the product.

The comments resulting from Notice No. 41 clearly indicate that consumers are very interested in having information about the calorie and nutrient content of the alcohol beverage products they purchase. These consumers expressed the view that this information should be available on the product's label. In fact, many commenters feel that this information is vital to health decisions they make on a daily basis. These comments seem consistent with the results of the survey submitted with the CSPI and NCL petition, in which 89 percent of the respondents supported mandatory labeling of calorie content on alcohol beverage labels, with 65 percent of the respondents strongly supporting such a requirement.

TTB agrees with those commenters who indicated that the calorie and nutrient content of alcohol beverages may constitute important information for consumers interested in monitoring their overall intake of calories, carbohydrates, protein, and/or fat. TTB believes it is important for consumers to have the ability to make informed decisions about the alcohol beverage choices they make. To make informed choices, consumers should have access to information on the calorie, nutrient, and alcohol content of alcohol beverage products. Without this information, TTB believes a consumer cannot adequately judge the consequences of the beverage selections that he or she makes.

TTB notes that thousands of comments generated by the *http://www.knowyourdrink.com* Web site stated or implied that TTB does not allow the placement of calorie, carbohydrate, protein, and fat information on alcohol beverage labels. This is incorrect. As explained above, TTB's current policy, as most recently set forth in TTB Ruling 2004–1, is to allow producers who wish to put this information on alcohol beverage labels to do so, as long as they include a complete statement of average analysis which lists the number of calories, and the number of grams of carbohydrates, protein, and fat, per serving. The fact that so many of the consumer commenters were unaware that this information already appears on many alcohol beverage labels gives rise to questions as to whether our current policy, which allows the optional placement of calorie and nutrient information on alcohol beverage labels, provides adequate information to consumers about the identity and quality of the product. Given the fact that consumers are used to seeing calorie and nutrient information presented in a standardized format on food labels, it is possible those labels that currently bear statements of average analysis are not presenting this information in a way that is consistent and easy for consumers to notice and understand.

Based on our review of the comments, TTB believes that the calorie and nutrient content of alcohol beverages may constitute a material factor in a consumer's decision to purchase such beverages, and that under the FAA Act and as supported by its legislative history it is appropriate to require that labels present this data for the consumer's consideration. In this respect, our mandate under the FAA Act to ensure that consumers have adequate information about the identity and quality of the product is similar to the intent under those provisions of the current Food and Drug Cosmetic Act (FD&C Act) that state that the labeling of a food is misleading if it fails to reveal the material facts with respect to the consequences that may result from use of the food. See 21 U.S.C. 321.

TTB does not agree with those commenters who suggested that certain nutrients should not be labeled unless they meet a certain threshold level. For 30 years, brewers have included calories, carbohydrates, fat and protein

in a statement of average analysis on labels of malt beverages that made calorie or carbohydrate claims. We have seen no evidence that these labels misled consumers into believing that such products constituted good sources of nutrients. Furthermore, such statements are not specific health claims or health-related statements. Our current regulations define the term ''health-related statement'' to include statements and claims of nutritional value, but go on to provide that ''statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.'' See 27 CFR 4.39(h)(1)(i), 5.42(b)(8)(1)(A) and 7.29(e)(1)(i).

Finally, as pointed out by the FTC staff, there is a significant range in calories and carbohydrates among alcohol beverages. While most alcohol beverages do not contain fat, some distilled spirits specialty products contain fat from cream, milk, or coconut. Consumers should be able to readily determine the calorie and nutrient content of an alcohol beverage before deciding whether to purchase or consume the product.

Accordingly, pursuant to TTB's statutory authority under the FAA Act to require information on labels that will provide consumers with adequate information about the quality and identity of the product, we are proposing to amend the TTB regulations to require a ''Serving Facts'' panel on alcohol beverage labels, and to require such a panel on any advertisement that makes a calorie or carbohydrate representation. We believe that this information should be presented to consumers in a uniform, standardized format that is prominent on the label, so that consumers may easily avail themselves of this important information. The format and other elements included in the ''Serving Facts'' panel are discussed later in this document.

C. Comments Concerning Inclusion of a Definition of Moderate Drinking on Alcohol Beverage Labels

In Notice No. 41, TTB sought comments on the feasibility and desirability of an Alcohol Facts panel containing, among other information, the statement: ''U.S. Dietary Guidelines advice on moderate drinking: No more than two drinks per day for men, one drink per day for women.'' Several commenters supported the idea of displaying this definition of moderate drinking on alcohol beverage labels. Specifically, these commenters stated that this information will help consumers moderate their drinking.

DISCUS cautioned that including the Dietary Guidelines advice regarding moderate drinking may run afoul of the Bureau's rules and current guidance to industry regarding health claims and other health-related statements. The Beer Institute asserted that the Dietary Guidelines statement represented in the Alcohol Facts panel is a health statement; therefore, TTB should prohibit it. Further, the Beer Institute contended that the Dietary Guidelines are detailed and carefully sourced, making the information impractical to disclose in a meaningful manner on a label or in an advertisement.

TTB Response

The Dietary Guidelines recommend that if adults choose to drink alcohol beverages, they should consume them only in moderation. The term ''moderation'' is defined in the Dietary Guidelines as the consumption of up to one drink per day for women and up to two drinks per day for men. For purposes of illustrating moderation, the Dietary Guidelines explain that 12 fluid ounces of regular beer, 5 fluid ounces of wine, or 1.5 fluid ounces of 80-proof (40 percent alcohol by volume) distilled spirits, count as one drink. The Dietary Guidelines further state that this definition of moderation is not intended as an average over several days but rather as the amount consumed on any single day. In addition to the definition of moderate drinking, the Dietary Guidelines provide approximately two pages of additional information about responsible alcohol consumption and what that means.

For example, the Dietary Guidelines caution that even moderate alcohol consumption may have adverse affects in specific situations and on specific individuals. The Dietary Guidelines explain that individuals who plan to drive, operate machinery, or take part in other activities that require attention, skill, or coordination should avoid drinking alcohol beverages. Additionally, the Dietary Guidelines advise that children and adolescents, women of child bearing age who may become pregnant, pregnant and lactating women, individuals taking medications that can interact with alcohol, and individuals with specific medical conditions, should not drink at all. Even moderate drinking during pregnancy may have behavioral or developmental consequences for the baby, the Dietary Guidelines stress. Finally, the Dietary Guidelines also suggest that individuals of any age who cannot restrict their drinking to moderate levels should not drink at all. This last category is obviously hard to define, and may include many individuals who do not even realize that they fall within it.

Based on our consideration of the comments, TTB believes that labeling alcohol beverage products with information about the definition of moderate drinking could tend to mislead consumers, without more specific cautionary information about those individuals for whom even moderate consumption may create health risks. While many consumers may be concerned about moderate consumption, the Dietary Guidelines also advise many individuals that they should not consume any alcohol at all. We must avoid creating the misleading impression that the Dietary Guidelines condone the consumption of one or two alcohol beverages per day for those who should not consume any alcohol at all. Accordingly, this notice does not propose to include the definition of moderate drinking from the Dietary Guidelines as part of a Serving Facts panel.

D. Comments Regarding Labeling Alcohol Beverages With Standard Drink and Serving Size Information

In Notice No. 41, both the Alcohol Facts and Serving Facts panels introduced the concept of a standard drink or standard serving size based on the Dietary Guidelines advice on alcohol consumption. The Alcohol Facts proposal in the petition suggested labeling that would include a declaration of the number of standard drinks (servings) per container. As noted above, the petitioners suggested that a serving should be defined as 12 ounces of beer, 5 ounces of wine, and 1.5 ounces of 80-proof distilled spirits. The petition also suggested that for any alcohol beverages not fitting into one of those categories, a serving should be defined as the amount of fluid containing approximately 0.5 fluid ounces of pure alcohol. The petitioners later submitted comments in response to Notice No. 41 to change that figure to 0.6 fluid ounces of pure alcohol, which aligns their suggested definition with the standard drink definition on the ''Serving Facts'' panel.

TTB received many comments in support of defining and listing standard drink information on labels and in advertisements. Many commenters suggested that standard drink information on alcohol beverage labels would help consumers measure, moderate, and make more informed decisions about their alcohol consumption. A number of commenters suggested that any information panel

would be more useful to consumers if TTB clearly defines what constitutes a ''serving'' of the product.

Some commenters asserted that standard drink information listed on products would help consumers compare products across product categories. One commenter, a university professor and licensed clinical psychologist, indicated that a majority of his students have the impression that a beer is less intoxicating than a shot of distilled spirits. Further, he stated, it is essential that consumers understand that the alcohol content of beer and wine is no less significant than the alcohol content of distilled spirits. He explained, ''[m]any of my clients, and those of my colleagues, will assert with absolute certainty that they do not have a drinking problem because they 'only drink beer.' '' He concluded that providing information as to what constitutes a standard serving of alcohol would be a more useful method of conveying alcohol content information than the tremendously misleading existing standards using alcohol by volume and proof, he concluded.

TTB also received many comments opposing the listing of standard drink or standard serving size information on alcohol beverage labels and in advertisements. The strongest opposition came from the brewing industry. Specifically, a large brewer and other brewers and brewing industry associations commented that a ''standard drink'' contradicts the reality of how different types of alcohol beverages are packaged, poured, and consumed. These commenters noted that alcohol beverages vary in alcoholic strength not only among the categories but within each category as well. They also noted that while beer is usually consumed without being mixed, distilled spirits are often used and consumed in mixed drinks, which are measured using shot glasses of various volumes or are free poured. Because of these variations, these commenters asserted that standard servings do not exist.

One commenter, a journalist who has covered alcohol beverages from both a recreational and health perspective for 10 years, argued that using the terms ''serving'' and ''standard drink'' synonymously, as in the CSPI petition, is a dangerous and irresponsible move. He made the following points:

- Servings are based strictly on volume both in the FDA regulations and in the consumer's mind. Standard drinks, which refer to how much alcohol is in one drink as defined by the Dietary Guidelines, must take into account alcohol content.
- Great variations in alcohol strength exist in both the wine and beer categories, with many higher-alcohol wines containing 150 percent or more of the alcohol strength of their lower-alcohol counterparts and with higher-alcohol beers occasionally topping 300 percent of the strength of the average beer.
- The standard drink equivalency is oversimplified and disregards the tremendous variation in alcoholic strength.

CSPI also commented on this issue, stating:

> Providing ''standard drink'' information, though useful in some more general education contexts, might not be helpful on labels of particular products. For example, many over-sized containers, such as 16-ounce beers, are ordinarily sold—and meant to be consumed—as a single serving.

A large brewer noted that FDA has undertaken a fundamental re-examination of its labeling regulations concerning serving size and published an advance notice of proposed rulemaking (ANPRM) on April 4, 2005 (70 FR 17010) seeking comments from consumers on a variety of issues. The FDA ANPRM stated that most consumers in focus groups conducted by FDA ''indicated that they incorrectly thought a serving size was a recommended portion size, rather than a standardized unit of measure.'' (See 70 FR 17012.) Given FDA's concern that consumers may perceive a serving size as a recommended portion size, the large brewer suggested that ''TTB should not make rules that would involve the display of serving size on labels for alcohol beverages until FDA has decided whether, and if so, how to amend its regulations concerning serving size on food products. Acting prior to the FDA's decision-making process would be premature and possibly counterproductive.''

TTB Response

As explained above, TTB Ruling 2004–1 set forth the following serving sizes: 1.5 fl. oz. for distilled spirits; 5 fl. oz. for wines; and 12 fl. oz. for malt beverages. These sizes were based on the 2000 Dietary Guidelines, which suggested that the above amounts ''count as a drink'' for purposes of determining ''moderation,'' assuming that the distilled spirits are 80-proof and the malt beverages are ''regular beer.'' It should be noted that the 2005 Dietary Guidelines provide the same guidance with respect to what counts as a drink for purposes of explaining ''moderation;'' however, in illustrating the calorie content of various alcohol beverages, the 2005 Dietary Guidelines set forth ''example serving volumes'' of various products as follows: 12 oz. for regular and light beers; 5 oz. for white and red wines; 3 oz. for sweet dessert wines, and 1.5 oz. for 80 proof distilled spirits (such as gin, rum, vodka, and whiskey). Moreover, the Guidelines go on to note that higher alcohol content and mixing alcohol with other beverages will increase the number of calories in the beverage.

TTB acknowledged in its ''Frequently Asked Questions on TTB Ruling 2004–1,'' published on the TTB Web site, that there ''are some good arguments for setting standardized serving sizes based on the alcohol content of the product; however, we believe that before we set permanent standards, we should engage in rulemaking to solicit comments from the public and the industry.''

As indicated above, commenters varied in their opinions on the standard drink issue. TTB agrees with those commenters who asserted that alcohol beverages are not commonly packaged, poured, served, or consumed in standard drinks with exactly 0.6 fluid ounces of pure alcohol. In fact, rarely would the packaged or consumed quantity of an alcohol beverage product equal a ''standard drink'' of exactly 0.6 fluid ounces of pure alcohol. Some products will contain less than one standard drink while others will contain multiple standard drinks. Additionally, TTB believes that consumers are likely to be confused about the difference between the terms ''standard drink'' and ''serving size.''

In this proposed rule, we take into account the variations in the way that different commodities are consumed, and the fact that there are significant variations in alcohol content within the different categories of malt beverages, wines, and distilled spirits. We note that the Federal Food, Drug, and Cosmetic Act at 21 U.S.C. 343 (q)(1)(A)(i), defines a serving size as ''an amount customarily *consumed*'' [emphasis added]. Serving sizes for all food and beverage products regulated by FDA are based on this definition rather than on the amount recommended by any dietary guidance. TTB believes that serving sizes for alcohol beverage products also should be based on customary consumption and not solely on the broad categories outlined in the Dietary Guidelines advice on moderate drinking. Those categories do not explicitly take into account either what is customarily consumed or what the alcohol content variations are within each respective category.

TTB believes that what is ''customarily consumed'' should be determined on an individual package

basis according to the way the product is packaged, the alcohol content of that product, and how the product is typically consumed. Since the amount customarily consumed varies widely among and within the three alcohol beverage categories, TTB agrees with those commenters who argue that one standard for calculating the serving size does not fit all alcohol beverage product categories. Not only are there differences among wines, distilled spirits, and malt beverages in how they are packaged, sold, and consumed, there are differences within each category as well. For example, a lower alcohol distilled spirits product, such as a specialty product with an alcohol content of 5 percent by volume, packaged in a 200 ml bottle (about 8 fl. oz.) might reasonably be consumed on one occasion, while higher alcohol distilled spirits in the same size bottle might typically be consumed over more than one occasion. While a 12 fl. oz. (355 ml) bottle of beer is typically considered one serving, this may not be true where the beer has an alcohol content of over 10 percent alcohol by volume. In fact, some specialty malt beverages have alcohol content levels of over 20 percent by volume, making it less likely that such products would be consumed in one setting. Additionally, dessert wines, which have a higher alcohol content, are typically consumed in smaller servings than table wines.

Accordingly, TTB is not proposing to define a standard drink but is instead proposing to adopt specific serving size reference amounts for each alcohol beverage product category based on the amount customarily consumed as a single serving. See Section VII of this notice for a detailed description of the serving size reference amounts for each category. TTB recognizes that these serving size reference amounts do not reflect the multiple servings or ''helpings'' that may be consumed on a single occasion. Serving size reference amounts are not intended as recommended consumption amounts but rather are intended to be used as a reference amount for the consumer to determine nutrient and calorie intake. We specifically invite comments on these serving size reference amounts including whether each accurately represents the amount of the product category that is customarily consumed. TTB would welcome any data that might enable us to identify a better standard for the amount customarily consumed for a specific product category, including consumer research or studies, or statistical data about consumption patterns.

It should be noted that the proposed serving size reference amounts are largely based on the quantities set forth in TTB Ruling 2004–1 (5 fluid ounces for wines, 1.5 fluid ounces for distilled spirits, and 12 fluid ounces for malt beverages), with some significant differences. Most importantly, any product with an alcohol content outside the range of a typical product within the commodity classification may require a different serving size. For example, under TTB Ruling 2004–1, a 12 fl. oz. (355 mL) can of 8 percent alcohol by volume distilled spirits cocktail would contain approximately 8 servings, while an 8 percent alcohol by volume can of malt beverage would only contain one serving. In contrast, the proposed rule takes into account the alcohol content of the product in determining the serving size. We discuss the proposed serving sizes for wines, distilled spirits, and malt beverages in more detail in Section VII of this document.

E. Comments Concerning the Title of Any Alcohol Beverage Product Information Panel

In response to Notice No. 41, we received several comments concerning the title of any information panel TTB ultimately permits or requires on alcohol beverage labels and in advertisements. These commenters expressed varying opinions as to what such a label should be called. One commenter stated that the caption ''Alcohol Facts'' does not best reflect the information components that would be set forth in such a panel. This commenter further suggested that the caption ''Serving Facts'' is more appropriate to describe components in a serving of an alcohol beverage product. On the other hand, several commenters urged TTB to call such a label ''Alcohol Facts'' to distinguish it from the Nutrition Facts panel, which is present on other food and beverage products. One commenter explained that this approach was used by FDA to distinguish the label on dietary supplements (''Supplement Facts'') from the label on foods, and thus serves as a precedent for a similar name for the panel on alcohol beverage products.

TTB Response

TTB agrees with those commenters who believe that the title ''Serving Facts,'' is a better descriptor of the information presented in the panel, as that information will include more than just facts about alcohol content. Therefore, TTB is proposing ''Serving Facts'' as the title for the mandatory information panel.

F. Comments Concerning the Serving Facts Graphic

TTB did not receive any specific comments in support of the graphic (shot glass, wine glass, and beer mug icons, with equal signs between the icons) depicted on the ''Serving Facts'' label in Notice No. 41. Many commenters, including brewers, wineries, and various industry associations, were strongly opposed to the graphic. This graphic, the commenters claim, is a political expression of ''equalization.'' Further, the commenters asserted that this image is used commonly by the distilled spirits trade associations in their attempt to achieve parity with wine and beer in various regulated areas, such as taxes, access to markets, advertising, and other forms of regulatory control.

The Wine Institute, a trade association representing California wineries, stated as follows in opposition to the graphic:

> The equivalency graphic is an oversimplification of the concept of alcohol exposure. In context, the U.S. Dietary Guidelines' use of serving sizes to define moderation along with their recommendations offers useful information to consumers. It takes two pages for the Dietary Guidelines to explain its recommendation in clear and concise fashion. It is a message that cannot be reduced to a single ambiguous and misleading graphic. The use of the graphic out of the context of qualifying language or balance provides only a partial picture and might be as likely to mislead the consumer as those that are actually false.

The Wine Institute also argued that the graphic is subject to different interpretations and provides little in the way of useful information. This comment stated that most hard liquor is not consumed in a shot glass and most wine is not presented in carefully measured 5-ounce glasses.

TTB Response

The comments show strong opposition to the use of the graphic described above on alcohol beverage labels and in advertisements. TTB believes that very rarely would a glass of beer, wine, or distilled spirits contain exactly 0.6 U.S. fluid ounces of pure alcohol. TTB agrees that such a graphic is subject to interpretation and could mislead consumers. Thus, we are not proposing to include this graphic as part of the Serving Facts panel.

G. Costs Associated With Mandatory Labeling Requirements

We received several comments regarding the costs associated with any type of new mandatory labeling requirements, including new

requirements for the labeling of nutrient information and alcohol content. These comments generally referred to the costs of new labeling in general, rather than breaking down the costs associated with each of these different proposals.

Many of these comments were from small alcohol beverage producers who stated that any new labeling requirements, particularly mandatory ingredient labeling, would be too costly and would place them at a distinct disadvantage because larger producers are better equipped to comply. Small producers described such costs as follows:

- Costs of new labeling equipment or costs to upgrade current equipment.
- Production disruption costs due to installation of new equipment.
- Costs of label redesign and new label stocks.
- Costs of laboratory testing equipment or laboratory services.

The Brewers Association submitted a comment opposing the adoption of any new mandatory labeling requirements in the regulations other than the labeling of major allergens present in levels scientifically proven to be harmful to at-risk individuals and the disclosure of certain nutrient information for products labeled or advertised with calorie or carbohydrate claims. This comment stated that almost any other new mandatory labeling requirement ''would dramatically impact nearly every aspect of a small brewer's business, from its choice in ingredients to its ability to access markets. If TTB moves forward with mandatory labeling requirements, small brewers would face a potentially devastating economic double hit—the first from significantly higher production and administration costs and the second from severe restraints on their brewing creativity.''

The Brewers Association conducted a survey of its members on the impact of new mandatory labeling requirements. Based on the cumulative responses of 97 small packaging brewers (who represent a combined volume of 5,698,924 barrels of the approximately 7 million barrels produced by small brewers), the Brewers Association concluded that ''mandatory ingredient and nutrition labeling requirements would significantly increase small brewers' costs of doing business and deter the creativity and innovation that has made craft brewing both popular and profitable as small businesses.''

The comment from the Brewers Association estimated that the aggregate average costs of new mandatory labeling requirements for respondents by size ranged from $35,530 per brewer for smaller brewers to $1.5 million per brewer for larger brewers. The Brewers Association stated that such mandatory labeling requirements would have a substantial financial impact on all small brewers. The survey also revealed that additional labeling costs would cause about 27 percent of survey respondents to cease bottling operations, and that mandatory ingredient or calorie labeling would force approximately 29 percent of survey respondents to withdraw from interstate sales.

Some small wineries expressed similar concerns. For example, one small winery commented that new mandatory requirements for ingredient and nutrition information would be disastrous, noting that many of its annual lots were less than 100 cases and that the laboratory work required for each lot would be a prohibitive cost for small lots. Another winery stated that it did not have the laboratory equipment to test for carbohydrate and calorie content. Many wineries argued that nutrition is not a concern for consumers when choosing an alcohol beverage, and they questioned whether consumers were interested in either ingredient or nutrition labeling on alcohol beverage products.

Both small winemakers and small brewers expressed their concern that new labeling requirements would negatively affect their market share. One small winemaker commented that such label requirements would make it even more difficult for small family wineries to compete with large wine conglomerates and low cost imports. Another small winemaker stated that any new labeling requirement would be onerous to all but the largest wineries that make 100,000 gallons or larger batches of wine. The commenter further suggested that if TTB imposes any new requirements, wines that are produced in batch quantities of less than 5,000 gallons should be exempt. The Brewers Association also suggested an exemption for small brewers if TTB imposes any new label requirements.

Some consumers who commented on this issue were concerned about the effect any new labeling requirements would have on small alcohol beverage producers. One commenter suggested longer phase-in periods for any mandatory requirements for small alcohol beverage producers. The commenter further suggested the possibility that brewers of small volume beers could be required to post this information on their Web sites, thereby eliminating the cost of printing new labels.

On the other hand, we also received comments suggesting that the cost of additional labeling would not be excessive, given the benefits to consumers. CSPI and one individual commenter referenced a past cost assessment done by FDA that evaluated relabeling costs for a final rule adding trans fatty acid labeling requirements to foods (see 68 FR 41434, 41477, July 11, 2003). In the study, FDA estimated that the average low relabeling cost per ''stock keeping unit'' (SKU) would be about $1,100 and the average high relabeling cost per SKU would be about $2,600. (An SKU is a specific product sold in a specific size.)

CSPI and the individual commenter applied these FDA relabeling cost estimates to the alcohol beverage labeling changes aired for comment in the Notice No. 41. Applying the estimates to a winery selling 5 types of wine, they computed the average total cost of relabeling to be between $5,500 and $13,000 for the winery. They then applied the estimates to a particular brand of wine, stating that if the winery produced 320,000 9-liter cases (3,840,000 750 ml bottles), ''[e]ach of those bottles would incur a cost of $0.000677—less than 7/100ths of a penny—if the cost were $2,600 per sku.''

TTB Response

A number of the comments discussed above suggested that we exempt small businesses from any new labeling requirement. Alcohol beverage products manufactured by small businesses are typically made in smaller batches, and each batch may be prepared a little differently each time. For example, craft brewers often produce seasonal malt beverages in very small quantities and small wineries often produce wine in batches of less than 5,000 gallons.

Even if a rule is not a significant regulatory action, Executive Order 12866 requires us to design regulations in the most cost-effective manner to achieve the regulatory objective. We seek to tailor our regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities, consistent with the regulatory objective.

We have considered several options to reduce the regulatory burdens and economic costs imposed by the proposed rule. One option would be to exempt small businesses from the requirements of the rule; however, we are not proposing that option for two related reasons. One of the primary purposes of the proposed rule is to enhance consumer protection; this purpose would be defeated by a permanent exemption for small businesses. There is no reason to believe that consumers of alcohol beverages

produced by small producers are less interested in obtaining information about the alcohol, calorie, and nutrient content of the beverages they consume. Moreover, we question whether such a permanent exemption would be consistent with the mandate, in the FAA Act, to ensure that labels provide consumers with adequate information about the identity and quality of the product.

A second option we considered was a delay in the effective date of any final rule in order to provide adequate time for the industry to develop new labeling materials, deplete existing inventories, and coordinate the proposed labeling changes with their already scheduled labeling changes. TTB believes that most alcohol beverage industry members change their labels at least once every three years. This is consistent with FDA's conclusion, in a recent proposed rule relating to the labeling of health claims involving soluble fiber from certain foods, that ''firms typically update their label about every 3 years.'' (See 72 FR 5367 and 5372, February 6, 2007.) For this reason, TTB proposes a delayed effective date of three years from the date any final rule is published in the **Federal Register**. We further propose that manufacturers, bottlers, and importers who wish to label their products with a Serving Facts panel and alcohol content statement before the rule comes into effect may begin to do so as long as they adhere to the requirements of the final rule.

TTB believes that by delaying the implementation date for the new labeling requirements, costs associated with label redesign and new label stocks would be significantly reduced. A three-year implementation period would allow affected industry members to use up existing label stocks and coordinate the redesigning of their labels with an already planned label redesign. We believe this option will minimize costs or burdens associated with the proposed new label information. Again, this is consistent with FDA's conclusion, in its proposed rule involving the labeling of health claims involving soluble fiber from certain foods, that if companies can add new labeling statements at the same time that they would normally update their labels, ''the cost of adding the new information on the package approaches zero.'' (See 72 FR 5372.)

In addition to the proposed delayed effective date, we are proposing regulatory text that allows flexibility on the placement and appearance of the Serving Facts information. TTB also proposes to permit listing Serving Facts information in a linear fashion for containers 50 milliliters or smaller. See the regulatory text for an illustration of the linear display. In providing such flexibility, TTB believes that industry members would not have to purchase new, or upgrade current, labeling equipment. Instead, existing labeling equipment could be used. TTB is also seeking comments on whether the proposed linear display for small containers should be permitted on all containers irrespective of their size.

Several commenters mentioned the costs associated with laboratory analysis of products. However, we believe that this will not impose a significant burden on small businesses. According to the FDA Labeling Cost Model Final Report (revised January 2003), the costs associated with analytical testing are the same regardless of how the product is packaged and sold; thus, manufacturers incur costs on a product (or formula) basis. (See 72 FR 5567.) TTB has determined that the costs associated with the analytical testing required for the proposed new labeling requirements would be approximately $250 per formulation. To develop these cost estimates, we obtained price quotes in the spring of 2007 from four different companies that test alcohol beverage products. Accordingly, TTB believes that the costs associated with this proposal are not significant.

VII. Proposed Regulatory Changes

Based on the above, TTB is proposing to amend parts 4, 5, 7 and 24 of the TTB regulations to set forth requirements for mandatory alcohol content and for the presentation of certain calorie and nutrient information in a mandatory ''Serving Facts'' panel. These changes involve the addition of a new subpart L in part 4, a new subpart J in part 5, and a new subpart J in part 7, as well as conforming changes elsewhere in parts 4, 5, 7, and 24. We discuss the proposed regulatory amendments in more detail below.

A. Mandatory Alcohol Content Statement

As stated in TTB's response to comments concerning alcohol content, TTB proposes in §§ 4.32(b)(3), 5.32(b)(11), and 7.71(a) to require an alcohol content statement, expressed as a percentage of alcohol by volume, on the labels of all alcohol beverage products, including table wines and malt beverages.

B. Mandatory Serving Facts Panel

As stated above, TTB proposes a mandatory nutrient information panel that must include the following information: The title ''Serving Facts''; serving size; the number of servings per container; the number of calories per serving; and the number, in grams per serving, of carbohydrates, fat, and protein. The Serving Facts label may also bear the mandatory alcohol content statement as a percentage of alcohol by volume. TTB also proposes to allow, on a voluntary basis, the disclosure of the number of U.S. fluid ounces of pure alcohol per serving, as part of a statement that includes alcohol content expressed as a percentage of alcohol by volume.

(1) Serving Size and Servings per Container

TTB is proposing to define the term ''serving'' or ''serving size'' as the amount of the alcohol beverage customarily consumed as a single serving, expressed in both U.S. fluid ounces and, in parentheses, in milliliters for wines, distilled spirits, and malt beverages. In new §§ 4.111(b), 5.81(b), and 7.91(b), TTB is proposing the use of serving size reference amounts, specific to each alcohol beverage category, which in each case most closely approximates the amount of the product that a consumer customarily drinks as a single serving. This amount is specified as a reference amount used only as a basis for the consumer to determine nutrient and calorie intake and not as a recommended consumption amount. These rules are intended to ensure as much uniformity as possible in labeling serving sizes within a product category. TTB proposes the following serving size reference amounts for each category:

- *Wine:* For wines with an alcohol content of not more than 14 percent alcohol by volume, the serving size is 5 fluid ounces (about 148 milliliters). For wines with an alcohol content higher than 14 percent alcohol by volume and not more than 24 percent alcohol by volume, the serving size is 2.5 fluid ounces (about 74 milliliters).
- *Distilled spirits:* For distilled spirits products containing not more than 10 percent alcohol by volume, the serving size is 12 fluid ounces (about 355 milliliters). For products containing over 10 percent and not more than 18 percent alcohol by volume, the serving size is 5 fluid ounces (about 148 milliliters). For products containing over 18 percent alcohol by volume, the serving size is 1.5 fluid ounces (about 44 milliliters).
- *Malt beverages:* For malt beverages with an alcohol content of not more than 10 percent alcohol by volume, the serving size is 12 fluid ounces (355 milliliters). For malt beverages with an alcohol content higher than 10 percent

alcohol by volume, the serving size is 5 fluid ounces (148 milliliters).

Since wines and distilled spirits are subject to metric standards of fill under the TTB regulations, the proposed serving sizes for these categories are set forth in both fluid ounces and milliliters. We recognize that consumers may use fluid ounces rather than milliliters when pouring a glass of wine or a shot glass of distilled spirits. For consistency purposes, TTB is proposing to require serving sizes for malt beverages to be set forth in both fluid ounces and milliliters.

(2) Percentage of Alcohol by Volume

In new §§ 4.111(c), 5.81(c), and 7.91(c) for wines, distilled spirits, and malt beverages, respectively, TTB proposes to provide that if Serving Facts panels on labels or in advertisements include any information about alcohol content, the alcohol content must be expressed on those panels as a percentage of alcohol by volume. The Bureau is also proposing to amend §§ 4.32, 5.32, and 7.22 to remove the requirement that an alcohol content statement appear on the brand label, so as to permit its inclusion in a Serving Facts panel or elsewhere on the label. We are also proposing to make conforming changes to §§ 4.36 and 7.71(a). Finally, we are proposing to amend § 24.257(a)(3) to provide that alcohol content, expressed as percent-by-volume, is required on labels for all products meeting the IRC definition of a ''wine.''

(3) Alcohol Expressed in Fluid Ounces

In new §§ 4.111(d), 5.81(d), and 7.91(d), TTB is proposing to permit the display of the number of U.S. fluid ounces of pure alcohol per serving as long as this statement is as part of a statement that includes alcohol content, expressed as a percentage of alcohol by volume.

(4) Calories

In new §§ 4.111(e), 5.81(e), and 7.91(e), TTB proposes standards for expressing a statement of the calorie content per serving for wines, distilled spirits and malt beverages, respectively.

(5) Carbohydrates

In new §§ 4.111(f), 5.81(f), and 7.91(f), TTB proposes standards for expressing carbohydrate content per serving for wines, distilled spirits, and malt beverages, respectively.

(6) Fat

In new §§ 4.111(g), 5.81(g), and 7.91(g), TTB proposes standards for expressing fat content per serving for wines, distilled spirits, and malt beverages, respectively.

(7) Protein

In new §§ 4.111(h), 5.81(h), and 7.91(h), TTB proposes standards for expressing protein content per serving for wines, distilled spirits, and malt beverages, respectively.

C. Format and Placement of the Serving Facts Panel

New §§ 4.112, 5.82, and 7.92 set forth proposed formatting specifications for the Serving Facts panel. While TTB would encourage presentation of the Serving Facts information in a horizontal or vertical panel format for all products, TTB proposes to permit listing Serving Facts information in a linear fashion for containers 50 milliliters or smaller. See the regulatory text for an illustration of the linear display. TTB is also seeking comments on whether the proposed linear display for small containers should be permitted on all containers irrespective of their size. In addition, new §§ 4.113, 5.83, and 7.93 would permit the panel to appear anywhere on the alcohol beverage container or in the advertisement that is visible to the consumer.

D. Tolerance Levels

New §§ 4.114, 5.84, and 7.94 codify the existing tolerance levels specified in TTB Procedure 2004–2, Testing of Calorie, Carbohydrate, Protein, and Fat Content of Alcohol Beverages; Acceptable Tolerance Levels, which apply to label and advertisement statements of calorie, fat, carbohydrate and protein content. These sections also cross reference the tolerance levels for alcohol content as specified in the current regulations.

VIII. Public Participation

A. Comments Sought

We request comments from anyone interested on the regulatory proposals outlined in this notice. All comments must reference Notice No. 73 and include your name and mailing address. They must be legible and written in language acceptable for public disclosure. Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We regard all comments as originals.

TTB specifically solicits comments on the proposed serving size reference amounts for wines, distilled spirits, and malt beverages. Are these figures a reasonably accurate representation of the amount of the product customarily consumed as a single serving? If not, what data or other information should TTB consider that would give a better estimate of the amount customarily consumed for a specific product category? Are the proposed reference amounts more accurate than the serving sizes set forth in TTB Ruling 2004–1 (1.5 fl. oz. for distilled spirits, 5 fl. oz. for wines, and 12 fl. oz. for malt beverages, regardless of the alcohol content)? Why or why not? Should TTB instead retain the serving sizes set forth in Ruling 2004–1?

We also solicit comments on whether the proposed elements of the Serving Facts panel will provide consumers with adequate information about the identity and quality of the product. For example, should the panel include additional elements? Alternatively, should certain elements (such as protein or fat content) be required only if the levels of these nutrients reach a certain threshold? Why or why not? Would it be confusing to the consumer to see protein and fat content on some labels but not on others? Why or why not?

Additionally, TTB seeks comments on whether the proposed linear display for small containers should be permitted on all containers irrespective of their size. Why or why not? Would allowing the linear display on all containers reduce the costs associated with compliance while providing consumers with adequate information about the products?

Finally, TTB solicits comments on the expected economic impact of the proposed rule, especially the impact on small businesses. Does the proposed delayed effective date suffice to limit the negative impact on small businesses and reduce overall costs of compliance while ensuring that consumers are protected? How many small businesses would be impacted by the proposed rule, and what would be the economic impact of the proposal on these small businesses? Please explain in detail and provide specific cost data.

We welcome comments on all other issues presented in this Notice.

B. Submitting Comments

You may submit comments on this notice by one of the following two methods:

- *Federal e-Rulemaking Portal:* To submit a comment on this notice using the online Federal e-rulemaking portal, visit *http://www.regulations.gov* and select ''Alcohol and Tobacco Tax and Trade Bureau'' from the agency drop-down menu and click ''Submit.'' In the resulting docket list, click the ''Add Comments'' icon for the appropriate docket number and complete the resulting comment form. You may

attach supplemental files to your comment.[1] A direct link to the appropriate Regulations.gov docket is also available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.*

• *Mail:* You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *http://www.regulations.gov,* please enter the entity's name in the ''Organization'' blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

C. Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

D. Public Disclosure

On the Federal e-rulemaking portal, we will post, and you may view, copies of this notice and any electronic or mailed comments we receive about this proposal. To view a posted document or comment, go to *http://www.regulations.gov* and select ''Alcohol and Tobacco Tax and Trade Bureau'' from the agency drop-down menu and click ''Submit.'' In the resulting docket list, click the appropriate docket number, then click the ''View'' icon for any document or comment posted under that docket number.

All submitted and posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

[1] More complete information on using Regulations.gov, including instructions for accessing open and closed dockets and for submitting comments, is available through the site's ''User Tips'' link.

IX. Regulatory Analysis and Notices

A. Regulatory Flexibility Act

We certify under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposed rule will not have a significant economic impact on a substantial number of small entities. Based on the comments we received in response to Notice No. 41, we believe that the proposed rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposed rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code of 1986, we will submit this notice of proposed rulemaking to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

As noted in the comment discussion in this proposed rule, several commenters suggested that new labeling requirements would impose significant costs on small businesses. Commenters stated that these costs would include the costs of new labeling equipment or costs to upgrade current equipment to accommodate a back label, production disruption costs due to installation of new equipment, costs of label redesign and new label stocks, and costs of laboratory testing equipment or laboratory services.

In response to these comments, TTB considered options to minimize the regulatory burdens and economic costs imposed by the proposed rule. One option we considered was to exempt small businesses from the requirements of the rule. However, as previously noted, we are not proposing such an exemption because it might be inconsistent with our mandate to ensure that alcohol beverage labels provide consumers with adequate information about the identity and quality of these products.

A second option we considered was a delay in the effective date of any final rule in order to provide adequate time for the industry to develop new labeling materials, deplete existing inventories, and coordinate the proposed labeling changes with their already scheduled labeling changes. Most alcohol beverage industry members change their labels at least once every three years.

Accordingly, as explained earlier in this document, TTB is proposing a delayed effective date of three years from the date any final rule is published in the **Federal Register**. We further propose that manufacturers, bottlers, and importers who wish to label their products with a Serving Facts panel and alcohol content statement before the final rule comes into effect may begin to do so as long as they adhere to the requirements of the final rule.

TTB believes that by delaying the implementation date for the new labeling requirements, costs associated with label redesign and new label stocks would be significantly reduced. A three-year implementation period would allow affected industry members to use up existing label stocks and coordinate the redesigning of their labels with an already planned label redesign. We believe this option will minimize costs or burdens associated with the proposed new label information.

In addition to the proposed delayed effective date, we are proposing regulatory text that allows flexibility on the placement and appearance of the Serving Facts information. We are also proposing to permit a linear display of the Serving Facts information on containers 50 milliliters or smaller. In providing such flexibility, TTB believes that industry members would not have to purchase new, or upgrade current, labeling equipment. Instead, existing labeling equipment could be used. TTB is also soliciting comments on whether we should also permit the linear display on all labels irrespective of the container size and whether doing so would reduce the costs associated with compliance while adequately informing consumers about the products.

Several commenters mentioned the costs associated with laboratory analysis of products. However, we believe that this will not impose a significant burden on small businesses. As noted earlier in this document, according to the FDA Labeling Cost Model Final Report, the costs associated with analytical testing are the same regardless of how the product is packaged and sold; thus, manufacturers incur costs on a product (or formula) basis. TTB has determined that the costs associated with the analytical testing required for the proposed new labeling requirements would be approximately $250 per formulation. To develop these cost

estimates, we obtained price quotes in the spring of 2007 from four different companies that test alcohol beverage products. Accordingly, TTB believes that the costs associated with this proposal are not significant.

We specifically solicit comments on the number of small producers, importers and bottlers that may be affected by this proposed rule and the impact of this proposed rule, if adopted as a final rule, on those small businesses. We ask any small business that believes that it would be significantly affected by this proposed rule to submit a comment telling us how the rule would affect it.

B. Executive Order 12866

We have determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information may be sent by e-mail to OMB at *Alexander_T._Hunt@omb.eop.gov,* or by paper mail to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Alcohol and Tobacco Tax and Trade Bureau at the address previously specified. Because OMB must complete its review of the collections of information between 30 and 60 days after publication, comments on the information collections should be submitted not later than August 30, 2007. Comments are specifically requested concerning:

- Whether the proposed collections of information are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collections of information (see below);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in 27 CFR §§ 4.32, 4.62, 4.111, 4.112, 4.113, 4.114, 4.115, 4.116, 5.32, 5.63, 5.81, 5.82, 5.83, 5.84, 5.85, 5.86, 7.22, 7.52, 7.91, 7.92, 7.93, 7.94, 7.95, 7.96, and 24.257(a)(3) and involves disclosures of information on labels and performance standards for statements made on labels and in advertisements of alcohol beverages. This information is required to prevent deception of the consumer and will be used to provide the consumer with adequate information as to the identity and quality of alcohol beverage products. In addition, the collection of information under § 24.257(a)(3) will be used to protect the revenue. These collections of information are mandatory. The likely respondents are businesses or other for-profit institutions, including associations, corporations, partnerships, and small businesses.

This information constitutes only a portion of the labeling and advertising information on alcohol beverages required under authority of the Federal Alcohol Administration Act (FAA Act) and the Internal Revenue Code of 1986, as amended (IRC). OMB has previously approved a collection of information for Labeling and Advertising Requirements Under the FAA Act under control number 1513–0087.

- Estimated total annual reporting and/or recordkeeping burden: 7,071 hours.
- Estimated average annual burden hours per respondent and/or recordkeeper: One hour.
- Estimated number of respondents and/or recordkeepers: 7,071.
- Estimated annual frequency of responses: One.

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 control number assigned by OMB.

X. Drafting Information

The principal authors of this document are Lisa M. Gesser and Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Administrative practice and procedure, Advertising, Customs duties and inspection, Distilled spirits, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Malt Beverages, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I, parts 4, 5, 7, and 24, as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. In § 4.32, remove and reserve paragraph (a)(3) and add new paragraphs (b)(3) and (b)(4) to read as follows:

§ 4.32 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with § 4.36.

(4) A Serving Facts panel, in accordance with subpart L of this part.

* * * * *

3. Revise § 4.36 to read as follows:

§ 4.36 Alcohol content.

(a) *Mandatory statement.* The alcohol content for wines must be stated on wines as a percentage of alcohol by volume. For example, ''Alcohol_% by volume,'' or similar appropriate phrase, or in accordance with the requirements set forth in § 4.111(c) of subpart L of this part; *Provided*, that if the word ''alcohol'' and/or ''volume'' are

abbreviated, they shall be shown as ''alc.'' (alc) and/or ''vol.'' (vol), respectively.

(b) *Tolerances.* The following tolerances shall be allowed either above or below the stated percentage:

(1) A tolerance of 1.5 percent for wines containing 14 percent or less of alcohol by volume.

(2) A tolerance of 1 percent for wines containing more than 14 percent of alcohol by volume.

(c) Regardless of the tolerances normally permitted in statements of alcohol content, such statements must definitely and correctly indicate the class, type and taxable grade of the wine so labeled and nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcohol content statement that indicates that the alcohol content of the wine is within the prescribed limitations on the alcohol content of any class, type, or taxable grade of wine when in fact it is not.

4. Amend § 4.62 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 4.62 Mandatory statements.

* * * * *

(c) *Calorie and carbohydrate claims.* If the advertisement makes an explicit or implicit calorie or carbohydrate claim, it must include a Serving Facts panel in accordance with subpart L of this part and an alcohol content statement disclosing the percentage of alcohol by volume.

* * * * *

5. Add a new Subpart L to read as follows:

Subpart L—Nutrient Information

Sec.

4.111 Serving Facts panels.
4.112 Format for Serving Facts panels.
4.113 Placement of Serving Facts panels.
4.114 Tolerance Levels.

Subpart L—Nutrient Information

§ 4.111 Serving Facts panels.

(a) *General.* A Serving Facts panel required under § 4.32(b)(4) must include the following information: The single serving size; the number of servings per container; the number of calories per serving; and the number, in grams per serving, of carbohydrates, fat, and protein. Alcohol content statements, as provided in paragraphs (c) and (d) of this section, may appear on the Serving Facts panel.

(b) *Single serving size and servings per container*—(1) *Definition.* The term ''single serving'' or ''serving size'' means an amount of the wine customarily consumed as a single serving, expressed in U.S. fluid ounces, and in parentheses, in milliliters to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help the consumer determine his or her nutrient and calorie intake. The single serving or serving size reference amounts for wines are:

For products containing:	a single serving or serving size is:
At least 7% and not more than 14% alc/vol.	5 fluid ounces (148 milliliters).
Over 14% and not more than 24% alc/vol.	2.5 fluid ounces (74 milliliters).

(2) *Single and multi-serving containers.* Products packaged and sold in containers with a volume of less than or equal to a single serving reference amount described in this section must be labeled as a single serving. Products packaged and sold in containers with a volume of more than a single serving reference amount described in this section will be treated as multi-serving containers and the number of servings per container must be labeled to the nearest ¼ serving.

(c) *Percentage of alcohol by volume.* The Serving Facts panel may include a statement of alcohol content as a percentage of alcohol by volume, to which the tolerance ranges in § 4.36 apply. A statement of alcohol content in the Serving Facts panel will satisfy the requirement for listing alcohol content in § 4.32(b)(3).

(d) *Alcohol expressed in fluid ounces.* A Serving Facts panel may declare the number of U.S. fluid ounces of pure alcohol (ethyl alcohol) per serving, expressed to the nearest tenth of an ounce, only if the panel also includes a statement of alcohol content expressed as a percentage of alcohol by volume, presented in accordance with § 4.112(g).

(e) *Calories.* A Serving Facts panel must express the calorie content per serving to the nearest 5-calorie increment up to and including 50 calories, and to the nearest 10-calorie increment above 50 calories. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrates.* A Serving Facts panel must express carbohydrate content to the nearest gram per serving, except that the carbohydrate content may be expressed as zero if a serving contains less than 0.5 gram.

(g) *Fat.* A Serving Facts panel must express fat content in grams per serving to the nearest 0.5 gram below 5 grams and to the nearest gram above 5 grams. If the serving contains less than 0.5 gram, the fat content may be expressed as zero.

(h) *Protein.* A Serving Facts panel must express protein content in grams per serving to the nearest gram. If the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 4.112 Format for Serving Facts panels.

The wine label or advertisement must present the Serving Facts panel in, or in a manner that closely follows, the specifications set forth in this section. While TTB encourages presentation of the Serving Facts information in a panel format as specified in paragraph (a) through (l) of this section, TTB will also permit the listing of Serving Facts information in a linear fashion for containers 50 milliliters or smaller. See paragraph (m) of this section for an illustration of an appropriate linear display.

(a) The Serving Facts panel information must be set off within a box by use of hairlines with all black or one color type, printed on a white or other neutral contrasting background.

(b) The Serving Facts panel may be presented in either a horizontal or vertical orientation.

(c) All information within the Serving Facts panel must:

(1) Appear in a single easy-to-read type style;

(2) Appear in upper and lower case letters;

(3) Have at least one point leading (that is, space between lines of text); and

(4) Not include letters that touch other letters, numbers, or lines.

(d) The Serving Facts information specified in § 4.111 must appear in the panel in the following order:

(1) Serving size;

(2) Servings per container;

(3) Percentage of alcohol by volume (if included in the Serving Facts panel);

(4) Alcohol in U.S. fluid ounces (if included in the Serving Facts panel);

(5) Calories;

(6) Carbohydrates;

(7) Fat; and

(8) Protein.

(e) The following information must not appear in bold and must be in type or printing not smaller than 1 millimeter for containers of 237 milliliters (8 U.S. fluid ounces) or less or not smaller than 2 millimeters for containers of more than 237 milliliters:

(1) ''Serving Size'', including the numeric figure denoting the size in U.S. fluid ounces and, in parentheses, in milliliters.

(2) ''Servings Per Container'', including the numeric figure denoting

the correct number (rounded to the nearest ¼ serving); and

(3) Numeric figures denoting alcohol content, calories, and carbohydrate, fat, and protein content.

(f) The following headings must be highlighted by bold or extra bold type or printing that prominently distinguishes them from other information, and they must appear in type or printing size no smaller than that specified below:

(1) ''Serving Facts'' (type or printing size no smaller than 2 millimeters for containers of 237 milliliters or less and no smaller than 4 millimeters for containers of more than 237 milliliters);

(2) ''Amount Per Serving'' and ''Amount Per Bottle'' (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters); and

(3) ''Alcohol by volume'', ''Calories'', ''Carbohydrate'', ''Fat'', and ''Protein'' (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters).

(g) If included on the Serving Facts panel, the heading ''fl oz of alcohol'' must be preceded by and indented underneath the heading ''Alcohol by volume'' and not bolded and must appear in type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters.

(h) A 3-point bar must separate the serving size and servings per container information from the amount per serving information, a 1.5-point bar must appear under the ''Amount Per Serving'' heading, and the other inner lines and outside line of the box must be 0.5-point thickness.

(i) The following abbreviations or shortened expressions may be used:

(1) For percentage of alcohol by volume, ''Alcohol by volume'', ''Alc/vol'' or ''Alc by vol'';

(2) For U.S. fluid ounces, ''fl oz'';

(3) For grams, ''g'';

(4) For Carbohydrate, ''Carb''

(5) For serving, ''Serv.'';

(6) For milliliter, ''ml''; and

(7) For amount, ''Amt.''

(j) The expression of decimal amounts less than 1 must include a zero prior to the decimal point (for example, 0.5 fl oz).

(k) The following sample label illustrates an acceptable display for a 375 milliliter bottle of 14 percent alcohol by volume wine without a statement of alcohol content expressed as a percentage of alcohol by volume. This is permissible only if such a statement appears elsewhere on the beverage label. The industry member may not include the optional display of alcohol in fluid ounces in a serving facts label without a statement of alcohol content expressed as a percentage of alcohol by volume.

Serving Facts	
Serving Size	5 fl oz (148 ml)
Servings Per Container	2 ½
	Amt Per Serv.
Calories	120
Carbohydrate	3g
Fat	0g
Protein	0g

(l) The following sample label illustrates an acceptable display for a 750 milliliter bottle of wine containing 14 percent alcohol by volume. This sample label also includes the display of a statement of alcohol content expressed as a percentage of alcohol by volume as well as the optional display of alcohol in fluid ounces.

Serving Facts	
Serving Size	5 fl oz (148 ml)
Servings Per Container	5
	Amount Per Serving
Alcohol by volume	14%
fl oz of alcohol	0.7
Calories	120
Carbohydrate	3g
Fat	0g
Protein	0g

(m)(1) The following sample label illustrates the linear display for a 50 milliliter bottle of wine containing 14 percent alcohol by volume. When Serving Facts information is given in a linear fashion, bolding is required only on the title ''Serving Facts'' and is optional for the headings ''Calories,'' ''Alcohol by volume,'' ''Carbohydrate,'' ''Fat,'' and ''Protein.'' The formatting specifications in paragraphs (i) and (j) of this section apply. Type or printing must be no smaller than 1 millimeter.

Serving Facts: Serving size: 1.7 fl oz (50 ml); Servings per container: 1; **Alcohol by volume:** 14%; Fl oz of alcohol: 0.2; **Calories:** 41; **Carbohydrates:** 1g; **Fat:** 0g; **Protein:** 0g

(2) Inclusion of the statement of alcohol content expressed as a percentage of alcohol by volume in a linear display is optional; however, such a statement must appear somewhere on the beverage label. When the optional statement of alcohol content in fluid ounces is included in the linear format, the alcohol content expressed as a percentage of alcohol by volume must also be included in the linear format.

§ 4.113 Placement of Serving Facts panels.

The Serving Facts panel may appear anywhere on the alcohol beverage container or in the advertisement as long as it is visible to the consumer.

§ 4.114 Tolerance levels.

(a) *General.* The following tolerance levels apply to label and advertisement statements of calorie, fat, carbohydrate, protein, and alcohol content for wines:

(1) *Calorie content.* A statement of calorie content on a label or in an advertisement will be acceptable as long as the calorie content, as determined by TTB analysis, is within the tolerance of +5 or −10 calories of the labeled or advertised calorie content. For example, a label or advertisement showing 96 calories is acceptable if TTB analysis of the product shows a calorie content between 86 and 101 calories.

(2) *Carbohydrate and fat content.* Statements of carbohydrate and fat content on labels or in advertisements will be considered acceptable as long as the carbohydrate and fat content, as determined by TTB analysis, are each within a reasonable range below the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent above the labeled or advertised amount. For example, a label or advertisement showing 4.0 grams of carbohydrates is acceptable if TTB analysis of the wine shows a carbohydrate content of not more than 4.8 grams.

(3) *Protein content.* A statement of protein content on a label or in an advertisement will be acceptable as long as the protein content, as determined by TTB analysis, is within a reasonable range above the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent below the labeled or advertised amount. For example, a label showing 1.0 gram of protein will be acceptable if TTB analysis of the product shows a protein content of not less than 0.8 gram.

(4) *Alcohol content.* If the Serving Facts panel includes an alcohol content statement, the tolerance ranges in § 4.36 apply.

(b) *Publication of analytical methods.* TTB will maintain on its Web site information regarding the current methods used by the Bureau to validate calorie, fat, carbohydrate, and protein content statements.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

6. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

7. In § 5.32, remove and reserve paragraph (a)(3) and add new paragraphs (b)(11) and (b)(12) to read as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) * * *

(11) Alcohol content, in accordance with § 5.37.

(12) Serving Facts panel, in accordance with subpart J of this part.

* * * * *

8. Amend § 5.63 by redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to read as follows:

§ 5.63 Mandatory statements.

* * * * *

(e) *Calorie and carbohydrate claims.* If the advertisement makes an explicit or implicit calorie or carbohydrate claim, it must include a Serving Facts panel in accordance with subpart J of this part and an alcohol content statement disclosing the percentage of alcohol by volume.

* * * * *

9. Add a new Subpart J to read as follows:

Subpart J—Nutrient Information

Sec.

5.81 Serving Facts panels.
5.82 Format for the Serving Facts panels.
5.83 Placement of Serving Facts panels.
5.84 Tolerance levels.

Subpart J—Nutrient Information

§ 5.81 Serving Facts panels.

(a) *General.* A Serving Facts panel required under § 5.32(b)(12) must include the following information: The single serving size; the number of servings per container; the number of calories per serving; and the number, in grams per serving, of carbohydrates, fat, and protein. Alcohol content statements, as provided in paragraphs (c) and (d) of this section, may appear on the Serving Facts panel.

(b) *Single serving size and servings per container*—(1) *Definition.* The term ''single serving'' or ''serving size'' means an amount of the distilled spirits customarily consumed as a single serving, expressed in U.S. fluid ounces, and in parentheses, in milliliters to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help the consumer determine his or her nutrient and calorie intake. The single serving or serving size reference amounts for distilled spirits are:

For products containing:	a single serving or serving size is:
0.5 to 10% alc/vol	12 fluid ounces (355 milliliters).
over 10% to 18% alc/vol.	5 fluid ounces (148 milliliters).
over 18% alc/vol	1.5 fluid ounces (44 milliliters).

(2) *Single and multi-serving containers.* Products packaged and sold in containers with a volume of less than or equal to a single serving reference amount described in this section must be labeled as a single serving. Additionally, products sold in 50 milliliter containers will be considered a single serving. Products packaged and sold in containers with a volume of more than a single serving reference amount described in this section will be treated as multi-serving containers and the number of servings per container must be labeled to the nearest ¼ serving.

(c) P*ercentage of alcohol by volume.* The Serving Facts panel may include a statement of alcohol content as a percentage of alcohol by volume, to which the tolerance ranges in § 5.37 apply. A statement of alcohol content in the Serving Facts panel will satisfy the requirement for listing alcohol content in § 5.32(b)(11).

(d) *Alcohol expressed in fluid ounces.* A Serving Facts panel may declare the number of U.S. fluid ounces of pure alcohol (ethyl alcohol) per serving, expressed to the nearest tenth of an

ounce, only if the panel also includes a statement of alcohol content expressed as a percentage of alcohol by volume, presented in accordance with § .5.82(g).

(e) *Calories.* A Serving Facts panel must express the calorie content per serving to the nearest 5-calorie increment up to and including 50 calories, and to the nearest 10-calorie increment above 50 calories. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrates.* A Serving Facts panel must express carbohydrate content to the nearest gram per serving, except that the carbohydrate content may be expressed as zero if a serving contains less than 0.5 gram.

(g) *Fat.* A Serving Facts panel must express fat content in grams per serving to the nearest 0.5 gram below 5 grams and to the nearest gram above 5 grams. If the serving contains less than 0.5 gram, the fat content may be expressed as zero.

(h) *Protein.* A Serving Facts panel must express protein content in grams per serving to the nearest gram. If the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 5.82 Format for the Serving Facts panels.

The distilled spirits label or advertisement must present the Serving Facts panel in, or in a manner that closely resembles, the following format. While TTB encourages presentation of the Serving Facts information in a panel format as specified below, TTB will also permit the listing of Serving Facts information in a linear fashion for containers 50 milliliters or smaller. See paragraph (m) of this section for an illustration of the linear display.

(a) The Serving Facts panel information must be set off in a box by use of hairlines with all black or one color type, printed on a white or other neutral contrasting background.

(b) The Serving Facts panel may be presented in either a horizontal or vertical orientation.

(c) All information within the Serving Facts panel must:

(1) Appear in a single easy-to-read type style;

(2) Appear in upper and lower case letters;

(3) Have at least one point leading (that is, space between lines of text); and

(4) Not include letters that touch other letters, numbers, or lines.

(d) The Serving Facts information specified in § 5.81 must appear in the panel in the following order:

(1) Serving size;

(2) Servings per container;

(3) Percentage of alcohol by volume (if included in the Serving Facts panel);

(4) Alcohol in U.S. fluid ounces (if included in the Serving Facts panel);

(5) Calories;

(6) Carbohydrates;

(7) Fat; and

(8) Protein.

(e) The following information must not appear in bold and must be in type or printing not smaller than 1 millimeter for containers of 237 milliliters (8 U.S. fluid ounces) or less or not smaller than 2 millimeters for containers of more than 237 milliliters:

(1) ''Serving Size'', including the numeric figure denoting the size in U.S. fluid ounces and, in parentheses, in milliliters;

(2) ''Servings Per Container'', including the numeric figure denoting the correct number (rounded to the nearest ¼ serving); and

(3) Numeric figures denoting alcohol content, calories, and grams of carbohydrates, fat, and protein content.

(f) The following headings must be highlighted by bold or extra bold type or printing that prominently distinguishes them from other information, and they must appear in type or printing size no smaller than that specified below:

(1) ''Serving Facts'' (type or printing size no smaller than 2 millimeters for containers of 237 milliliters or less and no smaller than 4 millimeters for containers of more than 237 milliliters);

(2) ''Amount Per Serving'' and ''Amount Per Bottle'' (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters); and

(3) ''Alcohol by volume'', ''Calories'', ''Carbohydrates'', ''Fat'', and ''Protein'' (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters).

(g) If included on the Serving Facts panel, the heading ''fl oz of alcohol'' must be preceded by and indented underneath the heading ''Alcohol by volume'' and not bolded and must appear in type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters.

(h) A 3-point bar must separate the serving size and servings per container information from the amount per serving information, a 1.5-point bar should appear under the ''Amount Per Serving'' heading, and the other inner lines and outside line of the box should be 0.5-point thickness.

(i) The following abbreviations or shortened expressions may be used:

(1) For percentage of alcohol by volume, ''Alcohol by volume'', ''Alc/vol'' or ''Alc by vol.''

(2) For U.S. fluid ounces, ''fl. oz.'';

(3) For grams, ''g'';

(4) For Carbohydrate, ''Carb'';

(5) For serving, ''Serv.'';

(6) For milliliters, ''ml''; and

(7) For amount, ''amt''.

(j) The expression of decimal amounts less than 1 must include a zero prior to the decimal point (for example, 0.5 fl oz).

(k) The following sample label illustrates an acceptable display for a 100 milliliter bottle of 40 percent alcohol by volume distilled spirits without a statement of alcohol content expressed as a percentage of alcohol by volume. This is permissible only if such a statement appears elsewhere on the beverage label. The industry member may not include the optional display of alcohol in fluid ounces in a serving facts label without a statement of alcohol content expressed as a percentage of alcohol by volume.

Serving Facts	
Serving Size	1.5 fl oz (44 ml)
Servings Per Container	2.25
	Amt Per Serv.
Calories	116
Carbohydrate	0g
Fat	0g
Protein	0g

(l) The following sample label illustrates an acceptable display for a 750 milliliter bottle of distilled spirits containing 40 percent alcohol by volume. This sample label also includes the display of alcohol content expressed as a percentage of alcohol by volume as well as the optional display of alcohol in fluid ounces.

Serving Facts	
Serving Size	1.5 fl oz (44 ml)
Servings Per Container	17
	Amount Per Serving
Alcohol by volume	40%
fl oz of alcohol	0.6
Calories	116
Carbohydrate	0g
Fat	0g
Protein	0g

(m)(1) The following sample label illustrates the linear display for a 50 milliliter bottle of distilled spirits containing 40 percent alcohol by volume. When Serving Facts information is given in a linear fashion, bolding is required only on the title ''Serving Facts'' and is optional for the headings ''Calories,'' ''Alcohol by volume,'' ''Carbohydrate,'' ''Fat,'' and ''Protein.'' The formatting specifications in paragraphs (i) and (j) of this section apply. Type or printing must be no smaller than 1 millimeter.

Serving Facts: Serving size: 1.7 fl oz (50 ml); Servings per container: 1; **Alcohol by volume:** 40%; Fl oz of alcohol: 0.7; **Calories:** 131; **Carbohydrates:** 0g; **Fat:** 0g; **Protein:** 0g

(2) Inclusion of the statement of alcohol content expressed as a percentage of alcohol by volume in a linear display is optional; however, such a statement must appear somewhere on the beverage label. When the optional statement of alcohol content in fluid ounces is included in the linear format, the alcohol content expressed as a percentage of alcohol by volume must also be included in the linear format.

§ 5.83 Placement of Serving Facts panels.

The Serving Facts panel may appear anywhere on the alcohol beverage container or in the advertisement as long as it is visible to the consumer.

§ 5.84 Tolerance levels.

(a) *General.* The following tolerance levels apply to label and advertisement statements of calorie, fat, carbohydrate, protein, and alcohol content for distilled spirits:

(1) *Calorie content.* A statement of calorie content on a label or in an advertisement will be acceptable as long as the calorie content, as determined by TTB analysis, is within the tolerance of +5 or −10 calories of the labeled or advertised calorie content. For example, a label or advertisement showing 96 calories is acceptable if TTB analysis of the product shows a calorie content between 86 and 101 calories.

(2) *Carbohydrate and fat content.* Statements of carbohydrate and fat content on labels or in advertisements will be considered acceptable as long as the carbohydrate and fat content, as determined by TTB analysis, are each within a reasonable range below the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent above the labeled or advertised amount. For example, a label or advertisement showing 4.0 grams of carbohydrates is acceptable if TTB analysis of the distilled spirits shows a carbohydrate content of not more than 4.8 grams.

(3) *Protein content.* A statement of protein content on a label or in an advertisement will be acceptable as long as the protein content, as determined by TTB analysis, is within a reasonable range above the labeled or advertised amount (that is, within good manufacturing practice limitations) and is not more than 20 percent below the labeled or advertised amount. For example, a label showing 1.0 gram protein will be acceptable if TTB

analysis of the product shows a protein content of not less than 0.8 gram.

(4) *Alcohol content.* If the Serving Facts panel includes an alcohol content statement, the tolerance ranges in § 5.37 apply.

(b) *Publication of analytical methods.* TTB will maintain on its Web site, information regarding the current methods used by the Bureau to validate calorie, fat, carbohydrate, and protein content statements.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

10. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

11. In § 7.22, remove paragraph (a)(5), revise paragraph (b)(3) and add a new paragraph (b)(5) to read as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with § 7.71.

(4) * * *

(5) A Serving Facts panel, in accordance with subpart J of this part.

* * * * *

12. Amend § 7.52 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 7.52 Mandatory statements.

* * * * *

(c) *Calorie and carbohydrate claims.* If the advertisement makes an explicit or implicit calorie or carbohydrate claim, it must include a Serving Facts panel in accordance with subpart J of this part and an alcohol content statement disclosing the percentage of alcohol by volume.

* * * * *

13. Revise the heading of Subpart H to read ''Subpart H—Alcohol Content Statements''.

14. Amend § 7.71 by revising the section heading and paragraph (a) to read as follows:

§ 7.71 Alcohol content.

(a) *General.* Alcohol content must be stated on the label unless prohibited by State law. When alcohol content is stated, and the manner of statement is not required under State law, it shall be stated as prescribed in paragraph (b) of this section.

* * * * *

15. Add a new Subpart J to read as follows:

Subpart J—Nutrient Information

Sec.

7.91 Serving Facts panels.
7.92 Format for Serving Facts panels.
7.93 Placement of Serving Facts panels.
7.94 Tolerance levels.

Subpart J—Nutrient Information

§ 7.91 Serving Facts panels.

(a) *General.* A Serving Facts panel required under § 7.22(b)(5) must include the following information: The single serving size; the number of servings per container; the number of calories per serving; and the number, in grams per serving, of carbohydrates, fat, and protein. Alcohol content statements, as provided in paragraph (c) and (d) of this section, may appear on the Serving Facts panel.

(b) *Single serving size and servings per container*—(1) *Definition.* The term ''single serving'' or ''serving size'' means an amount of the malt beverage customarily consumed as a single serving, expressed in U.S. fluid ounces, and in parentheses, in milliliters to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help the consumer determine his or her nutrient and calorie intake. The single serving or serving size reference amounts for malt beverages are:

For products containing:	a single serving or serving size is:
0.5 to 10% alc/vol	12 fl oz (355 milliliters).
over 10% alc/vol	5 fl oz (148 milliliters).

(2) *Single and multi-serving containers.* Products packaged and sold in containers with a volume of less than or equal to a single serving reference amount described in this section must be labeled as a single serving. Products packaged and sold in containers with a volume of more than a single serving reference amount described in this section will be treated as multi-serving containers and the number of servings per container must be labeled to the nearest ¼ serving.

(c) *Percentage of alcohol by volume.* The Serving Facts panel may include a statement of alcohol content as a percentage of alcohol by volume, to which the tolerance ranges in § 7.71 apply. A statement of alcohol content in the Serving Facts panel will satisfy the requirement for listing alcohol content in § 7.22(b)(3).

(d) *Alcohol expressed in fluid ounces.* A Serving Facts panel may declare the number of U.S. fluid ounces of pure alcohol (ethyl alcohol) per serving, expressed to the nearest tenth of an ounce, only if the panel also includes a statement of alcohol content expressed as a percentage of alcohol by volume, presented in accordance with § 7.92(g).

(e) *Calories.* A Serving Facts panel must express the calorie content per serving to the nearest 5-calorie increment up to and including 50 calories, and to the nearest 10-calorie increment above 50 calories. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrates.* A Serving Facts panel must express carbohydrate content to the nearest gram per serving, except that the carbohydrate content may be expressed as zero if a serving contains less than 0.5 gram.

(g) *Fat.* A Serving Facts panel must express fat content in grams per serving to the nearest 0.5 gram below 5 grams and to the nearest gram above 5 grams. If the serving contains less than 0.5 gram, the fat content may be expressed as zero.

(h) *Protein.* A Serving Facts panel must express protein content in grams per serving to the nearest gram. If the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 7.92 Format for Serving Facts panels.

The malt beverage label or advertisement must present the Serving Facts panel in, or in a manner that closely resembles, the following format. While TTB encourages presentation of the Serving Facts information in a panel format as specified below, TTB will also permit the listing of Serving Facts information in a linear fashion for containers 50 milliliters or smaller. See paragraph (m) below for an illustration of the linear display.

(a) The Serving Facts panel information must be set off within a box by use of hairlines with all black or one color type, printed on a white or other neutral contrasting background.

(b) The Serving Facts panel may be presented in either a horizontal or vertical orientation.

(c) All information within the Serving Facts panel must:

(1) Appear in a single easy-to-read type style;

(2) Appear in upper and lower case letters;

(3) Have at least one point leading (that is, space between lines of text); and

(4) Not include letters that touch other letters, numbers, or lines.

(d) The Serving Facts information specified in § 7.91 must appear in the panel in the following order:

(1) Serving size;

(2) Servings per container;

(3) Percentage of alcohol by volume (if included in the Serving Facts panel);

(4) Alcohol in U.S. fluid ounces (if included in the Serving Facts panel);
(5) Calories;
(6) Carbohydrates;
(7) Fat; and
(8) Protein.

(e) The following information must not appear in bold and must be in type or printing not smaller than 1 millimeter for containers of 237 milliliters (8 U.S. fluid ounces) or less or not smaller than 2 millimeters for containers of more than 237 milliliters:

(1) ''Serving Size'', including the numeric figure denoting the size in U.S. fluid ounces.

(2) ''Servings Per Container'', including the numeric figure denoting the correct number (rounded to the nearest 1/4 serving); and

(3) Numeric figures denoting alcohol content, calories, and carbohydrate, fat, and protein content.

(f) The following headings must be highlighted by bold or extra bold type or printing that prominently distinguishes them from other information, and they must appear in type or printing size no smaller than that specified below:

(1) ''Serving Facts'' (type or printing size no smaller than 2 millimeters for containers of 237 milliliters or less and no smaller than 4 millimeters for containers of more than 237 milliliters);

(2) ''Amount Per Serving'' and ''Amount Per Bottle'' (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters); and

(3) ''Alcohol by volume'', ''Calories'', ''Carbohydrate'', ''Fat'', and ''Protein'' (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters).

(g) If included on the Serving Facts panel, the heading ''fl oz of alcohol'' must be preceded by and indented underneath the heading ''Alcohol by volume'' and not bolded and must appear in type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters.

(h) A 3-point bar must separate the serving size and servings per container information from the amount per serving information, a 1.5-point bar must appear under the ''Amount Per Serving'' heading, and the other inner lines and outside line of the box must be 0.5-point thickness.

(i) The following abbreviations or shortened expressions may be used:

(1) For percentage of alcohol by volume, ''Alcohol by volume'', ''Alc/vol'' or ''Alc by vol'';

(2) For U.S. fluid ounces, ''fl oz'';

(3) For grams, ''g'';

(4) For Carbohydrate, ''Carb'';

(5) For serving, ''Serv.'';

(6) For milliliter, ''ml''; and

(7) For amount, ''Amt.''

(j) The expression of decimal amounts less than 1 must include a zero prior to the decimal point (for example, 0.5 fl oz).

(k) The following sample label illustrates an acceptable display for a 24- fluid ounce bottle of 4 percent alcohol by volume malt beverage without a statement of alcohol content expressed as a percentage of alcohol by volume. This is permissible only if such a statement appears elsewhere on the beverage label. The industry member may not include the optional display of alcohol in fluid ounces in a serving facts label without a statement of alcohol content expressed as a percentage of alcohol by volume.

Serving Facts

Serving Size	12 fl oz (355 ml)
Servings Per Container	2
	Amt Per Serv.
Calories	90
Carbohydrate	2g
Fat	0g
Protein	1g

(l) The following sample label illustrates an acceptable display for a 12 fluid ounce bottle of a malt beverage containing 4 percent alcohol by volume. This sample label also includes the display of a statement of alcohol content expressed as a percentage of alcohol by volume as well as the optional display of alcohol in fluid ounces.

Serving Facts

Serving Size	12 fl oz (355 ml)
Servings Per Container	1
	Amount Per Serving
Alcohol by volume	4%
fl oz of alcohol	0.5
Calories	90
Carbohydrate	2g
Fat	0g
Protein	1g

(m)(1) The following sample label illustrates the linear display for a 1.7 fluid ounce bottle of a malt beverage containing 12 percent alcohol by volume. When Serving Facts information is given in a linear fashion, bolding is required only on the title ''Serving Facts'' and is optional for the headings ''Calories,'' ''Alcohol by volume,'' ''Carbohydrate,'' ''Fat,'' and ''Protein.'' The formatting specifications in paragraphs (i) and (j) of this section apply. Type or printing must be no smaller than 1 millimeter.

Serving Facts: Serving size: 1.7 fl oz (50 ml); Servings per container: 1; **Alcohol by volume:** 12%; Fl oz of alcohol: 0.2; **Calories:** 13; **Carbohydrates:** 0g; **Fat:** 0g; **Protein:** 0g

(2) Inclusion of the statement of alcohol content expressed as a percentage of alcohol by volume in a linear display is optional; however, such a statement must appear somewhere on the beverage label. When the optional statement of alcohol content in fluid ounces is included in the linear format, the alcohol content expressed as a percentage of alcohol by volume must also be included in the linear format.

§ 7.93 Placement of Serving Facts panels.

The Serving Facts panel may appear anywhere on the alcohol beverage container or in the advertisement as long as it is visible to the consumer.

§ 7.94 Tolerance levels.

(a) *General.* The following tolerance levels apply to label and advertisement statements of calorie, fat, carbohydrate, protein, and alcohol content for malt beverages:

(1) *Calorie content.* A statement of calorie content on a label or in an advertisement will be acceptable as long as the calorie content, as determined by TTB analysis, is within the tolerance of +5 or -10 calories of the labeled or advertised calorie content. For example, a label or advertisement showing 96 calories is acceptable if TTB analysis of the product shows a calorie content between 86 and 101 calories.

(2) *Carbohydrate and fat content.* Statements of carbohydrate and fat content on labels or in advertisements will be considered acceptable as long as the carbohydrate and fat content, as determined by TTB analysis, are each within a reasonable range below the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent above the labeled or advertised amount. For example, a label or advertisement showing 4.0 grams of carbohydrates is acceptable if TTB analysis of the malt beverage shows a carbohydrate content of not more than 4.8 grams.

(3) *Protein content.* A statement of protein content on a label or in an advertisement will be acceptable as long as the protein content, as determined by TTB analysis, is within a reasonable range above the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent below the labeled or advertised amount. For example, a label showing 1.0 gram protein will be acceptable if TTB analysis of the product shows a protein content of not less than 0.8 gram.

(4) *Alcohol content.* If the Serving Facts panel includes an alcohol content statement, the tolerance ranges in § 7.71 apply.

(b) *Publication of analytical methods.* TTB will maintain on its Web site, information regarding the current methods used by the Bureau to validate calorie, fat, carbohydrate, and protein content statements.

PART 24—WINE

16. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5148, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

17. Revise § 24.257(a)(3) to read as follows:

§ 24.257 Labeling wine containers.

(a) * * *

(3) The alcohol content as percent by volume. For wine with 7 percent or more alcohol by volume, the rules of § 4.36 apply. For wine with less than 7 percent alcohol by volume stated on the label there is allowed an alcohol content tolerance of plus or minus .75 percent by volume; and

* * * * *

Signed: July 17, 2007.

John J. Manfreda,

Administrator.

Approved: July 19, 2007.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 31, 2007

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Mango promotion, research, and information order:
- Terms of office provision; amendment; published 7-30-07

Oranges, grapefruit, tangerines, and tangelos grown in Florida; published 7-30-07

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- GRAS or prior-sanctioned ingredients—
  - Ethyl alcohol containing ethyl acetate; published 7-31-07
- Ractopamine and tylosin; published 7-31-07

JUSTICE DEPARTMENT

Organization, functions, and authority delegations:
- Deputy Attorney General and Associate Attorney General; published 7-31-07

TRANSPORTATION DEPARTMENT

Organization, functions, and authority delegations:
- Maritime Administrator; published 7-31-07

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
- Nonqualified deferred compensation plans; section 409A application
  - Correction; published 7-31-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds grown in California; comments due by 8-7-07; published 6-8-07 [FR 07-02837]

Cotton research and promotion program:
- Procedures for conduct of sign-up period; comments due by 8-9-07; published 7-30-07 [FR E7-14608]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Citrus canker; comments due by 8-7-07; published 7-27-07 [FR E7-14530]

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- Coverage enhancement option insurance provisions; comments due by 8-6-07; published 6-6-07 [FR E7-10825]
- Cultivated wild rice crop insurance provisons; comments due by 8-6-07; published 6-6-07 [FR E7-10824]

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:
- Entity list—
  - Entities acting contrary to national security and foreign policy interests of U.S.; export and reexport license requirements; comments due by 8-6-07; published 6-5-07 [FR E7-10788]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic coastal fisheries—
  - American lobster; comments due by 8-6-07; published 6-20-07 [FR E7-11964]
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 8-6-07; published 7-5-07 [FR 07-03262]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Synthetic organic chemicals manufacturing industry and petroleum refineries; VOC equipment leaks; comments due by 8-8-07; published 7-9-07 [FR E7-13203]

Air programs:
- Volatile organic compound emissions control—
  - Paper, film, foil, metal furniture, and large appliance coatings; control techniques guidelines; comments due by 8-9-07; published 7-10-07 [FR E7-13104]

Air quality implementation plans:
- Preparation, adoption, and submittal—
  - Electric generating units emission increases; prevention of significant deterioration and nonattainment new source review; comments due by 8-8-07; published 7-9-07 [FR E7-13297]
  - Increment modeling procedures refinement; prevention of significant deterioration new source review; comments due by 8-6-07; published 6-6-07 [FR E7-10459]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Captan, etc.; comments due by 8-6-07; published 6-6-07 [FR E7-10863]

Superfund program:
- National oil and hazardous substances contingency plan priorities list; comments due by 8-6-07; published 7-5-07 [FR E7-13056]

Water programs:
- Water quality standards—
  - Washington; Federal marine aquatic life water quality criteria for toxic pollutants; withdrawn; comments due by 8-8-07; published 7-9-07 [FR E7-13206]
  - Washington; Federal marine aquatic life water quality criteria for toxic pollutants; withdrawn; comments due by 8-8-07; published 7-9-07 [FR E7-13207]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Customer propriety network information; comments due by 8-7-07; published 6-8-07 [FR E7-10732]
- Price cap local exchange carriers; interstate special access services; regulatory framework; comments due by 8-8-07; published 7-25-07 [FR E7-14272]

Television broadcasting—
- Digital television—
  - Conversion; transition issues; comments due by 8-8-07; published 7-9-07 [FR E7-12905]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Administrative rulings and decisions:
- Ozone-depleting substances use; essential-use designations—
  - Oral pressurized metered-dose inhalers containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol, etc.; removed; comments due by 8-10-07; published 6-11-07 [FR 07-02883]
  - Oral pressurized metered-dose inhalers containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol, etc.; removed; meeting; comments due by 8-10-07; published 7-9-07 [FR E7-13300]

HOMELAND SECURITY DEPARTMENT

Articles conditionally free, subject to reduced rates, etc.:
- U.S.-Singapore Free Trade Agreement; preferential tariff treatment and other customs-related provisions; comments due by 8-10-07; published 6-11-07 [FR E7-11078]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:
- Single family mortgage insurance—
  - Mortgaged property; mortgagor's investment standards; comments due by 8-10-07; published 7-10-07 [FR 07-03357]

Public and Indian housing:

Indian Housing Block Grant Program; project or tenant-based rental assistance; comments due by 8-7-07; published 6-8-07 [FR E7-11054]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Mussels; Northeast Gulf of Mexico drainages; public hearings; comments due by 8-6-07; published 6-21-07 [FR E7-11897]

Findings on petitions, etc.—

Wolverine; comments due by 8-6-07; published 6-5-07 [FR E7-10570]

Yellow-billed loon; comments due by 8-6-07; published 6-6-07 [FR E7-10823]

Gray wolf; northern Rocky Mountains population; comments due by 8-6-07; published 7-6-07 [FR 07-03273]

JUSTICE DEPARTMENT

Death sentences in Federal cases; implementation:

State capital counsel systems; certification process; comments due by 8-6-07; published 6-6-07 [FR E7-10892]

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Searches of housing units, inmates, and inmate work areas; electronic devices use; comments due by 8-10-07; published 7-11-07 [FR E7-13403]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Organization and operations—

Chartering and field of membership manual; community chartering policies update; comments due by 8-6-07; published 6-5-07 [FR E7-10398]

Federal credit union bylaws; comments due by 8-6-07; published 6-5-07 [FR E7-10389]

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:

Leyse, Mark Edward; comments due by 8-6-07; published 5-23-07 [FR E7-09910]

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Federal old age, survivors, and disability insurance and aged, blind, and disabled—

Quick disability determination process; comments due by 8-9-07; published 7-10-07 [FR E7-13288]

STATE DEPARTMENT

Exchange Visitor Program:

College and university students; student interns subcategory; comments due by 8-6-07; published 6-5-07 [FR E7-10606]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 8-6-07; published 6-6-07 [FR E7-10754]

Boeing; comments due by 8-6-07; published 6-20-07 [FR E7-11926]

British Aerospace Regional Aircraft; comments due by 8-6-07; published 7-6-07 [FR E7-13091]

Pacific Aerospace Corp., Ltd.; comments due by 8-8-07; published 7-9-07 [FR E7-13247]

Pacific Aerospace Ltd.; comments due by 8-6-07; published 7-6-07 [FR E7-13092]

Viking Air Ltd.; comments due by 8-6-07; published 7-6-07 [FR E7-13125]

Airworthiness standards:

Propellers; comments due by 8-6-07; published 6-20-07 [FR 07-03050]

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Restricted areas; comments due by 8-6-07; published 6-6-07 [FR 07-02734]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Indian Reservation Road Bridge Program; comments due by 8-6-07; published 6-5-07 [FR E7-09869]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Active trade or business requirement section 355 guidance; comments due by 8-6-07; published 5-8-07 [FR 07-02269]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 556/P.L. 110–49

Foreign Investment and National Security Act of 2007 (July 26, 2007; 121 Stat. 246)

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