5–14–08 Wednesday
Vol. 73 No. 94 May 14, 2008

Pages 27713–28024

Federal Register

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

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

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

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

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

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

3. The important elements of typical Federal Register documents.

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

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

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

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 73, No. 94

Wednesday, May 14, 2008

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Scientific Peer Review Groups, 27832–27833

Agricultural Research Service
NOTICES
Intent to Grant Exclusive License:
Health for All Seasons LLC of Mountain View, California, 27794
Nawgan Products, LLC of Chesterfield, MO, 27794

Agriculture Department
See Agricultural Research Service
See Energy Policy and New Uses Office, Agriculture Department
See Natural Resources Conservation Service

Antitrust Division
NOTICES
Proposed Final Judgment:
Multiple Listing Service of Hilton Head Island, Inc., 27847–27849

Army Department
See Engineers Corps
NOTICES
Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent:
Article of Footwear with Temperature Regulation Means, 27804

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27833–27834
Meetings:
National Center for Injury Prevention and Control Initial Review Group, 27834–27835
National Institute for Occupational Safety and Health, 27835–27836

Children and Families Administration
NOTICES
Delegation of Authority, 27836

Coast Guard
RULES
Drawbridge Operation Regulations:
Charles River, Boston, MA; Larry Kessler 5K Run, 27744
Charles River, Boston, MA, Fourth of July Fireworks Celebration, 27744
Security Zone:
HOVENSA Refinery, St. Croix, United States Virgin Islands, 27745–27747
PROPOSED RULES
Anchorage Regulations; Port of New York, 27775–27778
Crewmember Identification Documents, 27778–27783

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Request for Public Comment on Short Supply Petition Under the North American Free Trade Agreement, 27803–27804

Defense Department
See Army Department
See Engineers Corps
See Navy Department

Education Department
RULES
Demands for Testimony or Records in Legal Proceedings, 27747–27748
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27811–27812
Applications for New Awards for Fiscal Year 2008:
Training and Advisory Services Program—Equity Assistance Centers (Formerly Desegregation Assistance Centers), 27812–27816
Meetings:
National Advisory Council on Indian Education, 27816–27817

Employment and Training Administration
NOTICES
Availability of Funds and Solicitation for Grant Applications:
Mentoring, Educational, and Employment Strategies to Improve Academic, Social, and Career Pathway Outcomes, 27852–27863

Energy Department
See Federal Energy Regulatory Commission

Energy Policy and New Uses Office, Agriculture Department

RULES
Designation of Biobased Items for Federal Procurement, 27928–27956, 27958–27975, 27978–27995

Engineers Corps
NOTICES
Intent to Prepare a Draft Environmental Impact Statement:
Expansion of an Existing Sand and Aggregate Mining Operation; Cottage Grove, MN, 27804–27805

Environmental Protection Agency
RULES
Land Disposal Restrictions:
Site Specific Treatment Variance; Hazardous Mixed Wastes Treated by Vacuum Thermal Desorption; Clive, Utah, 27761–27767
Pesticide Tolerances:
Cyproconazole, 27756–27761

Tebuconazole, 27748–27756
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Columbia County, PA; Section 110(a)(1) 8-hour Ozone Maintenance Plan and 2002 Base-Year Inventory, 27783–27786
Crawford County, PA; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory, 27791–27793
Somerset County, PA; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory, 27786–27788
Susquehanna County Area, PA; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory, 27788–27791
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27818–27821
Extension of the Period for Preparation of Regional Clean Water Act Section 404(c) Recommendation:
Use of Wetlands and Other Waters in the Yazoo River Basin as Disposal Sites, Issaquena County, MS, 27821–27822
Naphthalene Risk Assessments; Availability, and Risk Reduction Options, 27822–27823
Transfer of Data:
Battelle Memorial Institute and Toxicology Excellence for Risk Assessment, et al., 27823–27824

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Amendment of Class E Airspace:
Franklin, PA, 27721
Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments, 27721–27727
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27884–27887
Crewmember Demand Oxygen Mask, 27887–27888
Environmental Assessment:
Quad City International Airport, Moline, IL, 27888
Proposed Release of Land:
Elkins Randolph County Airport; Elkins, WV, 27888

Federal Communications Commission
NOTICES
Radio Broadcasting Services:
AM or FM Proposals to Change the Community of License, 27824–27825

Federal Election Commission
NOTICES
Antidiscrimination and Retaliation Act (No FEAR Act), 27825–27826

Federal Energy Regulatory Commission
NOTICES
Combined Notice of Filings, 27817–27818

Federal Maritime Commission
NOTICES
Agreement Filed, 27826
Meetings:
Federal Maritime Commission, 27826
Ocean Transportation Intermediary License:
Applicants, 27826–27827
Revocations, 27827

Federal Reserve System
NOTICES
Change in Bank Control; Acquisition of Shares of Bank or Bank Holding Companies, 27827
Formations, Acquisitions, and Mergers of Bank Holding Companies, 27827–27828
Meetings; Sunshine Act, 27828

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Status Review for Rio Grande Cutthroat Trout, 27900–27926
NOTICES
Availability of the Draft Revised Comprehensive Conservation Plan and Environmental Assessment:
Innoko National Wildlife Refuge; McGrath, AK, 27842–27844

Food and Drug Administration
RULES
Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements; Technical Amendment, 27727–27728
NOTICES
Determination of Regulatory Review Period for Purposes of Patent Extension:
AVASTIN, 27836–27837
INVEGA, 27837–27838
ZOLINZA, 27838–27839

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27828–27832
Meetings:
American Health Information Community, 27832

Health Resources and Services Administration
NOTICES
Preference for Healthy Start Grantees, 27839

Homeland Security Department
See Coast Guard
See U.S. Customs and Border Protection

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

Internal Revenue Service
RULES
Source Rules Involving U.S. Possessions and Other Conforming Changes; Correction, 27728–27729
PROPOSED RULES
Withdrawal of Regulations Under Old Section 6323(b)(10); Correction, 27775

NOTICES
Meetings:
Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee, 27893

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental Statements; Availability, etc.:
Improvements to the USIBWC Tijuana River Flood Control Project, 27845–27846

International Trade Administration
NOTICES
Corrected 2007 Calculation of Expected Non-Market Economy Wages, 27795–27796
Final Results of Administrative Review of the Suspension Agreement:
Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 27796–27797

International Trade Commission
NOTICES
Investigations:
Hand-Held Meat Tenderizers, 27846–27847
Steel Concrete Reinforcing Bar From Turkey, 27847

Justice Department
See Antitrust Division
See National Institute of Corrections

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

Land Management Bureau
NOTICES
Temporary Route Closure:
Sonoran Desert National Monument, Arizona, 27844–27845

Maritime Administration
NOTICES
Availability of a Finding of No Significant Impact, 27888–27889

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

Mine Safety and Health Administration
RULES
Sealing of Abandoned Areas, 27729–27730

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 27863
National Endowment for the Arts; Arts Advisory Panel, 27864

National Highway Traffic Safety Administration
NOTICES
Receipt of Petition for Decision of Inconsequential Noncompliance:
Ford Motor Co., 27889–27890
Receipt of Petition for Decision that Nonconforming 1988-1994 ALPINA Burkard Bovensiepen GmbH B12 5.0 Model Passenger Cars Are Eligible for Importation, 27890–27892

National Institute of Corrections
NOTICES
Solicitation for a Cooperative Agreement:
Identifying Characteristics of High Performing Correctional Organizations, 27849–27852

National Institute of Standards and Technology
NOTICES
Meetings:
Information Security and Privacy Advisory Board, 27797

National Institutes of Health
NOTICES
Meetings:
Fogarty International Center Advisory Board, 27839–27840
National Advisory Child Health and Human Development, 27840
National Center for Research Resources, 27840–27841
National Institute of Dental and Craniofacial Research, 27841
National Institute of Environmental Health Sciences, 27841–27842
National Institute of General Medical Sciences Special Emphasis Panel, 27841–27842

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Allocating Bering Sea/Aleutian Islands Fishery Resources; American Fisheries Act Sideboards, 27768–27770
PROPOSED RULES
Environmental Review Process for Fishery Management Actions, 27998–28023
NOTICES
Meetings:
Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeastern Data, Assessment, and Review Steering Committee, 27797–27798
Gulf of Mexico Fishery Management Council, 27798–27799
Gulf of Mexico Fishery Management Council; Correction, 27798
New England Fishery Management Council, 27799
Pacific Fishery Management Council, 27799–27800
South Atlantic Fishery Management Council, 27800–27802
Southeast Data, Assessment, and Review (SEDAR) 16 Assessment Workshop Panel, 27802
Western Pacific Fishery Management Council; Correction, 27802–27803
Western Pacific Regional Fishery Management Council, 27803

National Park Service
NOTICES
National Register of Historic Places:
Notification of Pending Nominations and Related Actions, 27845

Natural Resources Conservation Service
NOTICES
Rehabilitation of Floodwater Retarding Structure No. 5 of the Plum Creek Watershed, Hays County, TX, 27794–27795
West Tarkio Creek Watershed, Montgomery, Fremont and Page Counties, IA and Atchison County, MO, 27795

Navy Department
NOTICES
Record of Decision for 2005 Base Realignment and Closure Actions at National Naval Medical Center, Bethesda, MD, 27805–27811

Nuclear Regulatory Commission
PROPOSED RULES
Consideration of Petition in Rulemaking Process:
Organization of Agreement States, Inc., 27771–27773
Consideration of Petition Rulemaking Process:
E. Russell Ritenour, Ph.D, 27773–27775
NOTICES
Availability of Final Supplement 32 to the Generic Environmental Impact Statement:
License Renewal of Wolf Creek Generating Station, 27864

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27865

Presidential Documents
PROCLAMATIONS
Special observances:
National Defense Transportation Day and National Transportation Week (Proc. 8254), 27713–27714
Peace Officers' Memorial Day and Police Week (Proc. 8255), 27715–27716
ADMINISTRATIVE ORDERS
Government Agencies and Employees:
John Warner National Defense Authorization Act for Fiscal Year 2007, Assignment of Function (Memorandum of May 6, 2008), 27717
Russian Federation; Proposed Agreement for Cooperation in Peaceful Uses of Nuclear Energy (Presidential Determination)
No. 2008-19 of May 5, 2008, 27719

Securities and Exchange Commission
NOTICES
Application:
Prudential Retirement Insurance and Annuity Co. et al., 27865–27868
Meetings; Sunshine Act, 27868–27869
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority, Inc., 27869–27873
Fixed Income Clearing Corp., 27873–27874
NASDAQ Stock Market LLC, 27874–27878
NYSE Arca, Inc., 27878–27882

Small Business Administration
NOTICES
Exemption Under Section 312 of the Small Business Investment Act; Conflicts of Interest:
C3 Capital Partners II, L.P., 27882
Emergence Capital Partners SBIC, L.P., 27882
Horizon Ventures Fund II, L.P., 27883
Hearing:
Region I Regulatory Fairness Board: Concord, NH, 27883

State Department
NOTICES
Determination, 27883
Meetings:
Cultural Property Advisory Committee, 27883–27884
Proposal to Extend Agreement Between the Government of the United States and the Republic of Honduras, 27884

Surface Mining Reclamation and Enforcement Office
RULES
Montana Regulatory Program, 27730–27743

Surface Transportation Board
NOTICES
Acquisition Exemption:
Dakota, Minnesota & Eastern Railroad Corp.; Line of BNSF Railway Co., 27892

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

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

Treasury Department
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27892–27893

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27842

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27893–27897

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 27900–27926

Part III
Agriculture Department, Energy Policy and New Uses Office, Agriculture Department, 27928–27956

Part IV
Agriculture Department, Energy Policy and New Uses Office, Agriculture Department, 27958–27975

Part V
Agriculture Department, Energy Policy and New Uses Office, Agriculture Department, 27978–27995

Part VI
Commerce Department, National Oceanic and Atmospheric Administration, 27998–28023

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
8254 27713
8255 27715

Administrative Orders:
Memorandums:
Memorandum of May 6, 2008 27717
Presidential Determinations:
No. 2008-19 of May 5, 2008 27719

7 CFR
2902 (3 documents) 27928, 27958, 27978

10 CFR

Proposed Rules:
34 27771
35 27773

14 CFR
71 27721
97 (2 documents) 27721, 27725

21 CFR
111 27727

26 CFR
1 (2 documents) 27728, 27729
301 (2 documents) 27728, 27729

Proposed Rules:
301 27775

30 CFR
75 27729
926 27730

33 CFR
117 (2 documents) 27744
165 27745

Proposed Rules:
110 27775
160 27778

34 CFR
8 27747

40 CFR
180 (2 documents) 27748, 27756
268 27761

Proposed Rules:
52 (4 documents) 27783, 27786, 27788, 27791

50 CFR
679 27768

Proposed Rules:
17 27900
700 27998

Federal Register
Vol. 73, No. 94
Wednesday, May 14, 2008

Presidential Documents

Title 3—

The President

Proclamation 8254 of May 9, 2008

National Defense Transportation Day and National Transportation Week, 2008

By the President of the United States of America

A Proclamation

America's transportation system strengthens our national security and keeps our country moving. On National Defense Transportation Day and during National Transportation Week, we thank the men and women of the transportation industry for their efforts to ensure that our Nation's infrastructure operates effectively and efficiently.

Innovation, investment, and imagination have enabled new modes of transportation to revolutionize the world. Today, businesses can deliver goods and services faster than ever, first responders can quickly bring hope and healing to those in need, and people can visit loved ones across the country or around the globe. The Armed Forces utilize modern transportation to deploy troops, move supplies, and bring our heroes home from the front lines. We are grateful for the hard work of all transportation professionals.

My Administration supports the continued creation of safer, more secure, and more reliable roadways, bridges, airports, seaports, and mass transit systems. We are addressing the challenges facing our transportation system today, helping lay the groundwork for future demands, and giving State and local authorities the flexibility to solve transportation problems in their communities. By promoting research in advanced transportation technologies, my Administration is also working to help end our reliance on foreign sources of energy, improve our environment, and strengthen our economic and national security.

To recognize the men and women who work in the transportation industry and who contribute to our Nation's well-being and defense, the Congress, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), has requested that the President designate the third Friday in May of each year as ''National Defense Transportation Day,'' and, by joint resolution approved May 14, 1962, as amended (36 U.S.C. 133), that the week during which that Friday falls be designated as ''National Transportation Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Friday, May 16, 2008, as National Defense Transportation Day and May 11 through May 17, 2008, as National Transportation Week. I encourage all Americans to learn how our modern transportation system contributes to the security of our citizens and the prosperity of our country and to celebrate these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.



[FR Doc. 08–1265
Filed 5–13–08; 8:45 am]
Billing code 3195–01–P

Federal Register
Vol. 73, No. 94
Wednesday, May 14, 2008

Presidential Documents

Title 3—

The President

Proclamation 8255 of May 9, 2008

Peace Officers' Memorial Day and Police Week, 2008

By the President of the United States of America

A Proclamation

Across our Nation, law enforcement officers carry the great responsibility of protecting their fellow citizens. On Peace Officers' Memorial Day and during Police Week, we honor these brave public servants who fight crime, violence, and terrorism, and we pay homage to the heroes who have fallen in the line of duty.

With valor and devotion, our country's law enforcement officers stand watch on the front lines and help make our communities safer and more secure. Fulfilling their duties with courage and commitment, they work tirelessly and put themselves in harm's way, exemplifying the good and decent character of America.

As we observe Peace Officers' Memorial Day and Police Week, we pause to pay tribute to those who serve in law enforcement. On this occasion, we especially remember those who have made the ultimate sacrifice, and we pray for the families and friends they have left behind. We thank all the extraordinary American men and women who have answered the call to serve in law enforcement for their commitment to justice and to their communities.

By a joint resolution approved October 1, 1962, as amended (76 Stat. 676), and by Public Law 103–322, as amended (36 U.S.C. 136–137), the President has been authorized and requested to designate May 15 of each year as ''Peace Officers' Memorial Day'' and the week in which it falls as ''Police Week,'' and to direct that the flag be flown at half staff on Peace Officers' Memorial Day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 15, 2008, as Peace Officers' Memorial Day and May 11 through May 17, 2008, as Police Week. I call on all Americans to observe these events with appropriate ceremonies and activities. I also call on Governors of the United States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, as well as appropriate officials of all units of government, to direct that the flag be flown at half staff on Peace Officers' Memorial Day. I further encourage all Americans to display the flag at half staff from their homes and businesses on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.



[FR Doc. 08–1266
Filed 5–13–08; 8:45 am]
Billing code 3195–01–P

Federal Register
Vol. 73, No. 94
Wednesday, May 14, 2008

Presidential Documents

Title 3—

The President

Memorandum of May 6, 2008

Assignment of Reporting Function Under Subsection 1225(a) of the John Warner National Defense Authorization Act for Fiscal Year 2007

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby assign to you the function of the President under subsection 1225(a) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364).

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 6, 2008.

[FR Doc. 08–1264
Filed 5–13–08; 8:45 am]
Billing code 4710–10–P

Federal Register
Vol. 73, No. 94
Wednesday, May 14, 2008

Presidential Documents

Title 3—

The President

Presidential Determination No. 2008–19 of May 5, 2008

Proposed Agreement Between the Government of the United States of America and the Government of the Russian Federation for Cooperation in the Field of Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement Between the Government of the United States of America and the Government of the Russian Federation for Cooperation in the Field of Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize the Secretary of State to arrange for its execution.

The Secretary of State is authorized to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 5, 2008.

[FR Doc. 08–1263
Filed 5–13–08; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 73, No. 94
Wednesday, May 14, 2008

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0279; Airspace Docket No. 07–AEA–19]

Amendment of Class E Airspace; Franklin, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** (73 FR 9439) that modifies Class E Airspace at Franklin, PA. The modified airspace from nearby Venango Regional Airport will now adequately support the Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (lAP) developed for medical flight operations for the Northwest Medical Center.

DATES: Effective 0901 UTC, June 05, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5581; Fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on February 21, 2008 (73 FR 9439), Docket No. FAA–2007–0279; Airspace Docket No. 07–AEA–19. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 5, 2008. No adverse comments were received, and thus this notice confirms that effective date.

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

Lynda G. Otting,

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

[FR Doc. E8–10421 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30608; Amdt. No. 3269]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective May 14, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14, 2008.

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

For Examination—

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

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is

incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

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

The Rule

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

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

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under DOT Regulatory Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on May 2, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
04/03/08	MO	Hannibal	Hannibal Regional	8/0995	VOR or GPS A, Amdt 3. This NOTAM Published in TL–08–11 is Hereby Rescinded in its Entirety.
04/10/08	NY	Schenectady	Schenectady County	8/1927	GPS Rwy 22, Orig-B.
04/15/08	MS	Oxford	University-Oxford	8/3151	VOR/DME–A, Amdt 4A. This NOTAM Published in TL08–11 is Hereby Rescinded in its Entirety.
04/15/08	MI	Detroit	Willow Run	8/3298	RNAV (GPS) Rwy 9R, Orig. This NOTAM Published in TL08–11 is Hereby Rescinded in its Entirety.
04/17/08	OK	Lawton	Lawton-Ft Sill Regional	8/3571	ILS or LOC Rwy 35, Amdt 7D.
04/22/08	NY	Farmingdale	Republic	8/3573	Takeoff Minimums and (Obstacle) DP, Amdt 5.
04/17/08	ID	Boise	Boise Air Terminal/Gowen Fld	8/3632	VOR/DME or TACAN Rwy 10L, Amdt 1A.
04/17/08	ID	Boise	Boise Air Terminal/Gowen Fld	8/3633	VOR/DME or TACAN Rwy 28L, Amdt 1B.
04/17/08	CO	Durango	Durango-La Plata County	8/3651	GPS Rwy 2, Orig.
04/17/08	IA	Clinton	Clinton Muni	8/3743	GPS Rwy 32, Amdt 1A.
04/17/08	AL	Dothan	Dothan Regional	8/3752	RNAV (GPS) Rwy 18, Orig-A.
04/17/08	CO	Montrose	Montrose Regional	8/3769	GPS Rwy 35, Orig-A.
04/17/08	CO	Montrose	Montrose Regional	8/3771	VOR/DME Rwy 13, Amdt 8C.
04/17/08	CO	Montrose	Montrose Regional	8/3772	GPS Rwy 17, Orig.
04/17/08	SC	Summerville	Summerville	8/3782	NDB or GPS Rwy 6, Orig-B.
04/17/08	SC	Summerville	Summerville	8/3783	Takeoff Minimums and (Obstacle) DP, Orig.
04/18/08	PA	York	York	8/3821	NDB Rwy 17, Amdt 6.
04/18/08	NY	Rochester	Greater Rochester Intl	8/3826	RNAV (GPS) Rwy 4, Orig.
04/18/08	NJ	Manville	Central Jersey Rgnl	8/3828	RNAV (GPS) Rwy 25, Orig.
04/18/08	NH	Manchester	Manchester	8/3832	VOR/DME or GPS Rwy 17, Orig-B.

FDC date	State	City	Airport	FDC No.	Subject
04/18/08	NC	Erwin	Harnett Rgnl Jetport	8/3833	NDB Rwy 23, Amdt 2.
04/18/08	FL	Tampa	Tampa Intl	8/3834	ILS Rwy 36L (CAT II), ILS Rwy 36L (CAT III), Amdt 15.
04/18/08	MS	Oxford	University-Oxford	8/3838	LOC Rwy 9, Amdt 2A.
04/18/08	VA	Chase City	Chase City Muni	8/3845	RNAV (GPS) Rwy 36, Orig.
04/18/08	IN	Anderson	Anderson Muni-Darlington Field	8/3900	VOR or GPS–A, Amdt 8B.
04/18/08	OK	Enid	Enid Woodring Regional	8/3901	VOR Rwy 17, Amdt 12B.
04/18/08	OK	Enid	Enid Woodring Regional	8/3902	VOR Rwy 35, Amdt 13A.
04/18/08	OK	Enid	Enid Woodring Regional	8/3903	ILS Rwy 35, Amdt 4A.
04/18/08	OK	Enid	Enid Woodring Regional	8/3904	GPS Rwy 35, Orig-A.
04/18/08	OH	Zanesville	Zanesville Muni	8/3914	VOR or GPS Rwy 22, Amdt 3A.
04/18/08	OH	Zanesville	Zanesville Muni	8/3915	VOR or GPS Rwy 4, Amdt 6A.
04/18/08	OH	Sandusky	Griffing-Sandusky	8/3916	VOR Rwy 27, Amdt 7.
04/18/08	OH	Sandusky	Griffing-Sandusky	8/3917	VOR/DME or GPS Rwy 27, Amdt 2.
04/18/08	OH	Piqua	Piqua Airport-Hartzell Field	8/3918	VOR Rwy 26, Amdt 6.
04/18/08	OH	Piqua	Piqua Airport-Hartzell Field	8/3919	RNAV (GPS) Rwy 8, Orig.
04/18/08	OH	Piqua	Piqua Airport-Hartzell Field	8/3920	RNAV (GPS) Rwy 26, Orig.
04/18/08	OH	Sidney	Sidney Muni	8/3921	VOR/DME RNAV or GPS Rwy 28, Amdt 5A.
04/18/08	OH	Sidney	Sidney Muni	8/3922	VOR or GPS Rwy 23, Amdt 12A.
04/18/08	OH	Youngstown	Youngstown Elser Metro	8/3967	Takeoff Minimums and (Obstacle) DP, Orig.
04/18/08	OH	Youngstown	Youngstown Elser Metro	8/3968	GPS Rwy 28, Orig-A.
04/21/08	AR	Clinton	Holley Mountain Airpark	8/4118	RNAV (GPS) Rwy 5, Amdt 1.
04/21/08	TX	San Antonio	San Antonio Intl	8/4121	RNAV (GPS) Rwy 12R, Orig-A.
04/21/08	TX	San Antonio	San Antonio Intl	8/4122	RNAV (GPS) Rwy 21, Amdt 1.
04/21/08	TX	San Antonio	San Antonio Intl	8/4141	ILS Rwy 12R Amdt 13A...ILS Rwy 12R (CAT II) Amdt 13A.
04/21/08	SD	Mitchell	Mitchell Muni	8/4147	ILS Rwy 30, Orig.
04/21/08	SD	Vermillion	Harold Davidson Field	8/4148	NDB or GPS Rwy 30, Amdt 1.
04/21/08	PA	York	York	8/4170	GPS Rwy 35, Amdt 2.
04/21/08	IA	Keokuk	Keokuk Muni	8/4186	RNAV (GPS) Rwy 32, Orig.
04/21/08	IA	Iowa Falls	Iowa Falls Muni	8/4192	NDB or GPS Rwy 31, Amdt 4.
04/21/08	IA	Ames	Ames Muni	8/4226	ILS Rwy 1, Amdt 1.
04/21/08	IA	Ames	Ames Muni	8/4227	RNAV (GPS) Rwy 1, Amdt 1.
04/21/08	IA	Ames	Ames Muni	8/4228	RNAV (GPS) Rwy 31, Orig.
04/21/08	IA	Ames	Ames Muni	8/4229	RNAV (GPS) Rwy 19, Orig.
04/21/08	IA	Ames	Ames Muni	8/4230	RNAV (GPS) Rwy 13, Orig.
04/21/08	CA	Oakland	Metropolitan Oakland Intl	8/4239	RNAV (GPS) Rwy 11, Orig-A.
04/22/08	MA	Boston	Gen Edward Lawrence Logan Intl	8/4281	VOR/DME Rwy 15R, Amdt 2.
04/22/08	MA	Boston	Gen Edward Lawrence Logan Intl	8/4282	VOR/DME Rwy 33L, Amdt 2B.
04/22/08	GA	Lagrange	Lagrange-Callaway	8/4292	ILS Rwy 31, Amdt 1A.
04/22/08	AK	Teller	Teller	8/4366	RNAV (GPS) Rwy 25, Orig.
04/22/08	AK	Teller	Teller	8/4370	RNAV (GPS) Rwy 7, Orig.
04/22/08	TX	Austin	Austin-Bergstrom Intl	8/4422	ILS or LOC Rwy 35L, Amdt 4.
04/22/08	TX	Livingston	Livingston Muni	8/4443	RNAV (GPS) Rwy 30, Orig.
04/22/08	TX	Houston	Lone Star Executive	8/4444	NDB Rwy 14, Amdt 2.
04/22/08	TX	Houston	Lone Star Executive	8/4448	ILS Rwy 14, Amdt 2.
04/22/08	TX	Houston	Lone Star Executive	8/4449	RNAV (GPS) Rwy 32, Orig-A.
04/23/08	KS	Pittsburg	Atkinson Muni	8/4587	RNAV (GPS) Rwy 4, Orig-A.
04/23/08	KS	Pittsburg	Atkinson Muni	8/4588	RNAV (GPS) Rwy 22, Orig-A.
04/23/08	KS	Pittsburg	Atkinson Muni	8/4589	VOR/DME Rwy 4, Amdt 3A.
04/24/08	PA	Ebensburg	Ebensburg	8/4717	VOR or GPS–A, Amdt 6A.
04/24/08	NH	Manchester	Manchester	8/4719	ILS or LOC Rwy 6, Amdt 1A.
04/24/08	CA	Palmdale	Palmdale Regional/USAF Plant 42	8/4725	RNAV (GPS) Rwy 25, Orig-A.
04/24/08	CA	Stockton	Stockton Metropolitan	8/4726	NDB Rwy 29R, Amdt 14D.
04/24/08	CA	Stockton	Stockton Metropolitan	8/4727	VOR Rwy 29R, Amdt 18A.
04/24/08	CA	Stockton	Stockton Metropolitan	8/4728	GPS Rwy 29R, Orig-B.
04/24/08	TX	Abilene	Abilene Regional	8/4813	LOC BC Rwy 17L, Amdt 3C.
04/24/08	ND	Jamestown	Jamestown Regional	8/4814	ILS or LOC Rwy 31, Amdt 7D.
04/24/08	AR	North Little Rock.	North Little Rock Muni	8/4822	LOC/DME Rwy 5, Orig.
04/24/08	NE	Plattsmouth	Plattsmouth Muni	8/4823	NDB Rwy 16, Orig.
04/24/08	RI	Pawtucket	North Central State	8/4856	LOC Rwy 5, Amdt 5D.
04/24/08	RI	Pawtucket	North Central State	8/4857	VOR or GPS–A, Amdt 6A.
04/24/08	RI	Pawtucket	North Central State	8/4858	GPS Rwy 5, Orig.
04/24/08	RI	Pawtucket	North Central State	8/4860	GPS Rwy 23, Orig-A.
04/24/08	RI	Pawtucket	North Central State	8/4861	VOR or GPS–B, Amdt 6A.
04/24/08	OH	Cincinnati	Cincinnati Muni Airport-Lunken Field	8/4862	LOC BC Rwy 3R, Amdt 8B.
04/24/08	OH	Marion	Marion Muni	8/4863	LOC/DME Rwy 25, Orig-A.
04/25/08	AR	Osceola	Osceola Muni	8/4919	NDB or GPS Rwy 19, Orig-A.
04/25/08	LA	New Orleans	Louis Armstrong New Orleans Intl	8/4936	ILS Rwy 1, Amdt 16C.
04/25/08	LA	New Orleans	Louis Armstrong New Orleans Intl	8/4937	RADAR–1, Amdt 17.
04/25/08	LA	New Orleans	Louis Armstrong New Orleans Intl	8/4938	ILS Rwy 10 (CAT II) Amdt 2A, ILS Rwy 10 (CAT III) Amdt 2A, ILS Rwy 10 (CAT I) Amdt 2A.

FDC date	State	City	Airport	FDC No.	Subject
04/25/08	OH	Willoughby	Willoughby Lost Nation Muni	8/4945	VOR–B, Orig-A.
04/25/08	OH	Willoughby	Willoughby Lost Nation Muni	8/4946	VOR Rwy 28, Orig-B.
04/25/08	OH	Willoughby	Willoughby Lost Nation Muni	8/4947	VOR-A, Orig-A.
04/25/08	LA	Baton Rouge	Baton Rouge Metro, Ryan Field	8/4962	RNAV (GPS) Rwy 13, Orig.
04/25/08	LA	Baton Rouge	Baton Rouge Metro, Ryan Field	8/4964	RNAV (GPS) Rwy 4L, Amdt 1.
04/25/08	LA	Baton Rouge	Baton Rouge Metro, Ryan Field	8/4965	NDB Rwy 31, Amdt 2A.
04/25/08	LA	Baton Rouge	Baton Rouge Metro, Ryan Field	8/4967	VOR Rwy 4L, Amdt 17.
04/25/08	LA	Baton Rouge	Baton Rouge Metro, Ryan Field	8/4969	RNAV (GPS) Rwy 22R, Amdt 1.
04/25/08	LA	Baton Rouge	Baton Rouge Metro, Ryan Field	8/4970	RNAV (GPS) Rwy 31, Amdt 1A.
04/25/08	LA	Baton Rouge	Baton Rouge Metro, Ryan Field	8/4973	VOR/DME Rwy 22R, Amdt 8E.
04/25/08	LA	Baton Rouge	Baton Rouge Metro, Ryan Field	8/4974	RADAR–1, Amdt 10B.
04/25/08	LA	Baton Rouge	Baton Rouge Metro, Ryan Field	8/4975	ILS or LOC Rwy 13, Amdt 27B.
04/25/08	KS	Wichita	Wichita Mid-Continent	8/5001	ILS or LOC Rwy 1R, Amdt 17A.
04/28/08	IN	Goshen	Goshen Muni	8/5173	VOR Rwy 9, Amdt 12.
04/28/08	MO	Mosby	Midwest National Air Center	8/5175	ILS or LOC/DME Rwy 18, Orig.
04/28/08	MO	Grain Valley	East Kansas City	8/5176	VOR or GPS Rwy 23, Amdt 3.
04/28/08	MO	Lee's Summit	Lee's Summit Muni	8/5177	VOR/DME A, Orig.
04/28/08	MO	Hannibal	Hannibal Regional	8/5182	VOR/DME or GPS A, Amdt 3.
04/28/08	MT	Miles City	Frank Wiley Field	8/5183	NDB Rwy 4, Amdt 5.
04/28/08	MT	Miles City	Frank Wiley Field	8/5184	RNAV (GPS) Rwy 4, Amdt 1.
04/28/08	WI	Green Bay	Austin Straubel International	8/5185	RNAV (GPS) Rwy 24, Orig.
04/28/08	WI	Green Bay	Austin Straubel International	8/5186	VOR A, Orig.
04/28/08	WI	Green Bay	Austin Straubel International	8/5187	LOC BC Rwy 24, Amdt 18.
04/28/08	WI	Green Bay	Austin Straubel International	8/5188	RNAV (GPS) Rwy 6, Amdt 1.
04/28/08	MT	Miles City	Frank Wiley Field	8/5189	VOR Rwy 4, Amdt 11.
04/28/08	MT	Miles City	Frank Wiley Field	8/5190	VOR/DME or GPS Rwy 22, Amdt 8.
04/28/08	IL	Chicago	Chicago-O' Hare Intl	8/5191	ILS or LOC Rwy 4R, Amdt 6H.
04/28/08	NE	Oshkosh	Garden County	8/5192	NDB Rwy 12, Amdt 1.
04/28/08	IL	Chicago	Chicago-O' Hare Intl	8/5193	ILS or LOC Rwy 22R, Amdt 7D.
04/28/08	MN	Granite Falls	Granite Falls Muni/Lenzen-Roe Meml Fld	8/5195	GPS Rwy 33, Orig-A.
04/28/08	MN	Granite Falls	Granite Falls Muni/Lenzen-Roe Meml Fld	8/5196	VOR/DME Rwy 33, Orig-A.
04/28/08	MN	Benson	Benson Muni	8/5198	NDB Rwy 14, Amdt 7.
04/28/08	MN	Morris	Morris Muni-Charlie Schmidt Fld	8/5199	VOR or GPS Rwy 14, Orig-A.
04/28/08	OH	Waverly	Pike County	8/5208	NDB Rwy 25, Amdt 1.
04/28/08	OH	Waverly	Pike County	8/5209	GPS Rwy 7, Orig-A.
04/28/08	MN	Minneapolis	Anoka County-Blaine Arpt (Janes Field)	8/5214	ILS or LOC/DME Rwy 27, Orig.
04/28/08	MN	Minneapolis	Anoka County-Blaine Arpt (Janes Field)	8/5215	RNAV (GPS) Rwy 27, Orig.
04/28/08	MI	Davison	Athelone Williams Memorial	8/5220	VOR Rwy 8, Orig-A.
04/28/08	MI	Linden	Prices	8/5221	VOR A, Orig.
04/28/08	TX	Beaumont	Beaumont Muni	8/5229	RNAV (GPS) Rwy 13, Orig-A.
04/28/08	TX	Beaumont	Beaumont Muni	8/5230	RNAV (GPS) Rwy 31, Orig-A.
04/28/08	CO	Aspen	Aspen-Pitkin Co/Sardy Field	8/5248	VOR/DME or GPS C, Amdt 4E.
04/28/08	AK	Nulato	Nulato	8/5252	RNAV (GPS) Rwy 2, Orig.
04/28/08	AK	Nulato	Nulato	8/5253	RNAV (GPS) Rwy 20, Orig.
04/28/08	AZ	Winslow	Winslow-Lindbergh Regional	8/5255	VOR or GPS Rwy 11, Amdt 4A.
04/28/08	MT	Livingston	Mission Field	8/5267	GPS Rwy 22, Orig-A.
04/29/08	RI	Providence	Theodore Francis Green State	8/5347	RNAV (GPS) Rwy 23, Orig-B.
04/29/08	GA	Jesup	Jesup-Wayne County	8/5351	NDB or GPS Rwy 29, Amdt 2B.
04/29/08	GA	Jesup	Jesup-Wayne County	8/5352	NDB or GPS Rwy 11, Amdt 1B.
04/30/08	MO	Springfield	Springfield-Branson National	8/5454	VOR/DME or TACAN Rwy 2, Orig-A.
04/30/08	MO	Springfield	Springfield-Branson National	8/5455	VOR or TACAN Rwy 20, Amdt 18B.
04/30/08	MO	Springfield	Springfield-Branson National	8/5456	ILS Rwy 14, Orig.
04/30/08	MO	Springfield	Springfield-Branson National	8/5457	RNAV (GPS) Rwy 32, Amdt 1.
04/30/08	MO	Springfield	Springfield-Branson National	8/5458	RNAV (GPS) Rwy 14, Amdt 1.
04/30/08	AR	Fayetteville	Drake Field	8/5466	VOR or GPS A, Amdt 24B.
04/30/08	AR	Fayetteville	Drake Field	8/5467	VOR/DME B, Orig-A.
04/30/08	AL	Dothan	Dothan Regional	8/5490	ILS or LOC Rwy 32, Amdt 8.
04/30/08	FL	Tampa	Peter O Knight	8/5639	Take-Off Minimums and (Obstacle) DP, Amdt 4.
04/30/08	IN	Brazil	Brazil Clay County	8/5740	VOR or GPS Rwy 9, Amdt 7.

[FR Doc. E8–10603 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30607; Amdt. No 3268]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective May 14, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14, 2008.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on May 2, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Under Title 14, Code of Federal Regulations, Part 97 (14 CFR

part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective 5 JUN 2008*

Blytheville, AR, Blytheville Muni, RNAV (GPS) RWY 18, Orig
Blytheville, AR, Blytheville Muni, RNAV (GPS) RWY 36, Orig
Blytheville, AR, Blytheville Muni, NDB RWY 18, Amdt 3
Blytheville, AR, Blytheville Muni, GPS RWY 36, Orig-A, CANCELLED
Blytheville, AR, Blytheville Muni, Takeoff and Minimums and Obstacle DP, Orig
Carlisle, AR, Carlisle Muni, RNAV (GPS) RWY 9, Orig
Carlisle, AR, Carlisle Muni, RNAV (GPS) RWY 27, Orig
Carlisle, AR, Carlisle Muni, GPS RWY 9, Amdt 1A, CANCELLED
Carlisle, AR, Carlisle Muni, Takeoff Minimums and Obstacle DP, Orig
Conway, AR, Dennis R. Cantrell Field, Takeoff Minimums and Obstacle DP, Amdt 1
Mena, AR, Intermountain Muni, ILS OR LOC RWY 27, Amdt 1
Mena, AR, Intermountain Muni, NDB RWY 27, Amdt 1
Hollister, CA, Hollister Muni, RNAV (GPS) RWY 31, Orig
Hollister, CA, Hollister Muni, GPS RWY 31, Amdt 1, CANCELLED
Hollister, CA, Hollister Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Hazlehurst, GA, Hazlehurst, Takeoff Minimums and Obstacle DP, Orig
Agana, Guam, Guam Intl, ILS OR LOC RWY 6R, Orig
Decorah, IA, Decorah Muni, NDB RWY 29, Amdt 1
Decorah, IA, Decorah Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Grinnell, IA, Grinnell Rgnl, RNAV (GPS) RWY 13 Amdt 1
Grinnell, IA, Grinnell Rgnl, RNAV (GPS) RWY 31, Amdt 1
Grinnell, IA, Grinnell Rgnl, NDB RWY 13, Amdt 4
Grinnell, IA, Grinnell Rgnl, VOR/DME RWY 31, Amdt 4
Grinnell, IA, Grinnell Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Arco, ID, Arco-Butte County, Takeoff Minimums and Obstacle DP, Amdt 1
Grangeville, ID, Idaho County, Takeoff Minimums and Obstacle DP, Amdt 1
Goshen, IN, Goshen Muni, ILS OR LOC RWY 27, Amdt 1
Goshen, IN, Goshen Muni, RNAV (GPS) RWY 27, Orig
Goshen, IN, Goshen Muni, VOR RWY 27, Amdt 7
Goshen, IN, Goshen Muni, Takeoff Minimums and Obstacle DP, Orig
Indianapolis, IN, Hendricks County-Gordon Graham Fld, RNAV (GPS) RWY 18, Orig
Indianapolis, IN, Hendricks County-Gordon Graham Fld, Takeoff Minimums and Obstacle DP, Orig
Ulyssess, KS, Ulyssess, RNAV (GPS) RWY 12, Amdt 1
Ulyssess, KS, Ulyssess, RNAV (GPS) RWY 30, Amdt 1
Baton Rogue, LA, Baton Rogue Metro, Ryan Field, ILS OR LOC RWY 22R, Amdt 10
Homer, LA, Homer Muni, RNAV (GPS) RWY 12, AMDT 1
Homer, LA, Homer Muni, RNAV (GPS) RWY 30, AMDT 1
Homer, LA, Homer Muni, Takeoff Minimums and Obstacle DP, Orig
New Roads, LA, False River Rgnl, RNAV (GPS) RWY 18, Orig
New Roads, LA, False River Rgnl, RNAV (GPS) RWY 36, Orig
New Roads, LA, False River Rgnl, VOR/DME–A, Amdt 4
New Roads, LA, False River Rgnl, GPS RWY 18, Orig-A, CANCELLED
New Roads, LA, False River Rgnl, Takeoff Minimums and Obstacle DP, Orig
Oakland, MD, Garrett County, VOR RWY 27, Amdt 4
Detroit, MI, Detroit Metropolitan Wayne County, NDB RWY 3L, Amdt 12D, CANCELLED
Oscoda, MI, Oscoda-Wurtsmith, RNAV (GPS) RWY 6, Orig
Oscoda, MI, Oscoda-Wurtsmith, VOR RWY 6, Amdt 1
Oscoda, MI, Oscoda-Wurtsmith, Takeoff Minimums and Obstacle DP, Orig
Ainsworth, NE, Ainsworth Muni, RNAV (GPS) RWY 13, Orig
Ainsworth, NE, Ainsworth Muni, RNAV (GPS) RWY 17, Amdt 1
Ainsworth, NE, Ainsworth Muni, RNAV (GPS) RWY 31, Orig
Ainsworth, NE, Ainsworth Muni, RNAV (GPS) RWY 35, Amdt 1
Ainsworth, NE, Ainsworth Muni, Takeoff Minimums and Obstacle DP, Orig
Columbus, NE, Columbus Muni, VOR RWY 14, Amdt 14A
Cozad, NE, Cozad Muni, RNAV (GPS) RWY 13, Amdt 1
Cozad, NE, Cozad Muni, RNAV (GPS) RWY 31, Amdt 1
Cozad, NE, Cozad Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Nebraska City, NE, Nebraska City Muni, RNAV (GPS) RWY 15, Orig
Nebraska City, NE, Nebraska City Muni, RNAV (GPS) RWY 33, Orig
Nebraska City, NE, Nebraska City Muni, GPS RWY 33, Amdt 1, CANCELLED
Nebraska City, NE, Nebraska City Muni, Takeoff and Minimums and Obstacle DP, Orig
Plattsmouth, NE, Plattsmouth Muni, RNAV (GPS) RWY 16, Amdt 1
Plattsmouth, NE, Plattsmouth Muni, RNAV (GPS) RWY 34, Amdt 1
Plattsmouth, NE, Plattsmouth Muni, NDB RWY 34 Amdt 1
Portsmouth, NH, Portsmouth Intl at Pease, RADAR–1, Amdt 1
Andover, NJ, Aeroflex-Andover, VOR–A, Amdt 8
Andover, NJ, Aeroflex-Andover, RNAV (GPS) RWY 3, Amdt 1
Albuquerque, NM, Albuquerque Intl Sunport, Takeoff Minimums and Obstacle DP, Amdt 5
Olean, NY, Cattaraugus County-Olean, LOC RWY 22, Amdt 6
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 6R, Amdt 20
Cleveland, OH, Cleveland-Hopkins Intl, LDA/DME RWY 6R, Amdt 1
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) RWY 6R, Amdt 2
Delaware, OH, Delaware Muni, RNAV (GPS) RWY 10, Orig
Delaware, OH, Delaware Muni, RNAV (GPS) RWY 28, Orig
Delaware, OH, Delaware Muni, GPS RWY 10, Orig-A, CANCELLED
Delaware, OH, Delaware Muni, GPS RWY 28, Orig-A, CANCELLED
Springfield, OH, Springfield-Beckley Muni, VOR RWY 24, Amdt 11
Springfield, OH, Springfield-Beckley Muni, VOR/DME RWY 33, Orig
Springfield, OH, Springfield-Beckley Muni, ILS OR LOC RWY 24, Amdt 1
Hinton, OK, Hinton, Muni, RNAV (GPS) RWY 17, Amdt 1
Hinton, OK, Hinton, Muni, RNAV (GPS) RWY 35, Amdt 1
Hinton, OK, Hinton, Muni, Takeoff and Minimums and Obstacle DP, Orig
Tahlequah, OK, Tahlequah Muni, RNAV (GPS) RWY 17, Amdt 1
Tahlequah, OK, Tahlequah Muni, RNAV (GPS) RWY 35, Amdt 1
Tahlequah, OK, Tahlequah Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Dubois, PA, Dubois Regional, ILS OR LOC RWY 25, Amdt 8
Dubois, PA, Dubois Regional, RNAV (GPS) RWY 25, Orig
Reedsville, PA, Mifflin County, Takeoff Minimums and Obstacle DP, Amdt 3
Somerset, PA, Somerset County, NDB RWY 25, Amdt 6
Somerset, PA, Somerset County, LOC/NDB RWY 25, Amdt 4
Waynesburg, PA, Greene County, RNAV (GPS) RWY 9, Orig
Waynesburg, PA, Greene County, RNAV (GPS) RWY 27, Orig
Smithville, TN, Smithville Muni, RNAV (GPS) RWY 6, Amdt 1
Smithville, TN, Smithville Muni, RNAV (GPS) RWY 24, Amdt 1
Smithville, TN, Smithville Muni, Takeoff Minimums and Obstacle DP, Orig
Angleton/Lake Jackson, TX, Brazoria County, Takeoff and Minimums and Obstacle DP, Amdt 1
Brownsville, TX, Brownsville/South Padre Island Intl, RNAV (GPS) RWY 13R, Amdt 1
Galveston, TX, Scholes Intl at Galveston, Takeoff and Minimums and Obstacle DP, Amdt 4
Houston, TX, David Wayne Hooks Memorial, Takeoff and Minimums and Obstacle DP, Amdt 3
Houston, TX, Ellington Field, RNAV (GPS) RWY 4, Amdt 1

Houston, TX, Ellington Field, Takeoff and Minimums and Obstacle DP, Amdt 2
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 8L, ILS RWY 8L (CAT II), ILS RWY 8L (CAT III), Amdt 1A
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 8R, Amdt 22B
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 9, Amdt 7A
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 15R, Amdt 1A
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 26L, ILS RWY 26L (CAT II), ILS RWY 26L (CAT III), Amdt 18A
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 26R, ILS RWY 26R (CAT II), ILS RWY 26R (CAT III), Amdt 1A
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 27, ILS RWY 27 (CAT II), ILS RWY 27 (CAT III), Amdt 6A
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) RWY 15R, Amdt 1A
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 8L, Amdt 2
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 8R, Amdt 1A
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 9, Amdt 2A
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 26L, Amdt 1A
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 26R, Amdt 1A
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 27, Amdt 1A
Houston, TX, George Bush Intercontinental/Houston, Takeoff and Minimums and Obstacle DP, Amdt 2
Houston, TX, Houston-Southwest, Takeoff and Minimums and Obstacle DP, Amdt 5
Houston, TX, Lone Star Executive, Takeoff and Minimums and Obstacle DP, Amdt 2
Houston, TX, Sugar Land Rgnl, Takeoff and Minimums and Obstacle DP, Amdt 7
Houston, TX, Weiser Air Park, Takeoff and Minimums and Obstacle DP, Amdt 2
Houston, TX, West Houston, Takeoff and Minimums and Obstacle DP, Amdt 2
Houston, TX, William P. Hobby, Takeoff and Minimums and Obstacle DP, Amdt 5
La Porte, TX, La Porte Muni, Takeoff and Minimums and Obstacle DP, Amdt 4
Louisa, VA, Louisa County/Freeman Field, LOC/DME RWY 27, Amdt 2
Charlotte Amalie, VI, Cyril E King, Takeoff Minimums and Obstacle DP, Amdt 1
Appleton, WI, Outagamie County Rgnl, LOC BC RWY 11, Amdt 1B, CANCELLED
Ashland, WI, John F. Kennedy Memorial, RNAV (GPS) RWY 2, Orig
Ashland, WI, John F. Kennedy Memorial, RNAV (GPS) RWY 13, Orig
Ashland, WI, John F. Kennedy Memorial, RNAV (GPS) RWY 20, Orig
Ashland, WI, John F. Kennedy Memorial, RNAV (GPS) RWY 31, Orig
Ashland, WI, John F. Kennedy Memorial, VOR RWY 2, Amdt 6
Ashland, WI, John F. Kennedy Memorial, VOR RWY 31, Amdt 7
Ashland, WI, John F. Kennedy Memorial, Takeoff and Minimums and Obstacle DP, Amdt 1
La Pointe, WI, Madeline Island, RNAV (GPS) RWY 4, ORIG
La Pointe, WI, Madeline Island, RNAV (GPS) RWY 22, ORIG
La Pointe, WI, Madeline Island, Takeoff and Minimums and Obstacle DP, Orig
Lone Rock, WI, Tri-County Rgnl, RNAV (GPS) RWY 9, Orig
Lone Rock, WI, Tri-County Rgnl, RNAV (GPS) RWY 27, Orig
Lone Rock, WI, Tri-County Rgnl, VOR–A, Amdt 7
Oshkosh, WI, Wittman Rgnl, RNAV (GPS) RWY 9, Orig
Oshkosh, WI, Wittman Rgnl, RNAV (GPS) RWY 18, Orig
Oshkosh, WI, Wittman Rgnl, RNAV (GPS) RWY 27, Orig
Oshkosh, WI, Wittman Rgnl, VOR RWY 9, Amdt 9
Oshkosh, WI, Wittman Rgnl, VOR RWY 18, Amdt 7
Oshkosh, WI, Wittman Rgnl, GPS RWY 27 Orig-A, CANCELLED
Oshkosh, WI, Wittman Rgnl, Takeoff and Minimums and Obstacle DP, Orig

** * * Effective 3 JUL 2008*

Warroad, MN, Warroad Intl Memorial, ILS OR LOC RWY 31, Amdt 1A
Rome, NY, Griffiss Airfield, Rome, NY, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. E8–10546 Filed 5–13–08; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. FDA–2008–N–0152] (Formerly Docket No. 1996N–0417)

RIN 0910–AB88

Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of June 25, 2007 (72 FR 34752). The final rule established current good manufacturing practice (CGMP) requirements in manufacturing, packaging, labeling, or holding operations for dietary supplements. The final rule was published with an inadvertent error in the codified section. This document corrects that error. This action is being taken to improve the accuracy of the agency's regulations.

DATES: This rule is effective May 14, 2008.

FOR FURTHER INFORMATION CONTACT: Vasilios H. Frankos, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1696.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 25, 2007 (72 FR 34752), FDA established CGMP requirements in manufacturing, packaging, labeling, or holding operations for dietary supplements (part 111 (21 CFR part 111)). In the codified section of the rule, § 111.75(c)(3) provides that ''You must provide adequate documentation of your basis for determining compliance with the specification(s) selected under paragraph (c)(1) of this section, through the use of appropriate tests or examinations conducted under paragraph (c)(2) of this section, will ensure that your finished batch of the dietary supplement meets all product specifications for identity, purity, strength, and composition, and the limits on those types of contamination that may adulterate, or that may lead to the adulteration of, the dietary supplement'' (72 FR 34752 at 34949). Due to an inadvertent error, the word ''that'' was omitted between ''determining'' and ''compliance.'' This document corrects that error.

List of Subjects in 21 CFR Part 111

Dietary foods, Drugs, Foods, Packaging and containers.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 111 is amended as follows:

PART 111—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKAGING, LABELING, OR HOLDING OPERATIONS FOR DIETARY SUPPLEMENTS

■ 1. The authority citation for 21 CFR part 111 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 371, 374, 381, 393; 42 U.S.C. 264.

■ 2. Section 111.75 is amended by revising paragraph (c)(3) to read as follows:

§ 111.75 What must you do to determine whether specifications are met?

* * * * *

(c) * * *

(3) You must provide adequate documentation of your basis for determining that compliance with the specification(s) selected under paragraph (c)(1) of this section, through the use of appropriate tests or examinations conducted under paragraph (c)(2) of this section, will ensure that your finished batch of the dietary supplement meets all product specifications for identity, purity, strength, and composition, and the limits on those types of contamination that may adulterate, or that may lead to the adulteration of, the dietary supplement; and

* * * * *

Dated: May 7, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–10727 Filed 5–13–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9391]

RIN 1545–BF85

Source Rules Involving U.S. Possessions and Other Conforming Changes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9391) that were published in the **Federal Register** on Wednesday, April 9, 2008 (73 FR 19350) providing rules under section 937(b) of the Internal Revenue Code for determining whether income is derived from sources within a U.S. possession or territory specified in section 937(a)(1) (generally referred to in this preamble as a ''territory'') and whether income is effectively connected with the conduct of a trade or business within a territory.

DATES: This correction is effective May 14, 2008, and is applicable on April 9, 2008.

FOR FURTHER INFORMATION CONTACT: J. David Varley, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations and removal of temporary regulations that are the subjects of this document are under sections 1, 170A, 861, 871, 876, 881, 884, 901, 931, 932, 933, 934, 935, 937, 957, 1402, 6012, 6038, 6046, 6688, and 7701 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9391) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR parts 1 and 301 are corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.881–5 is amended as follows:

In paragraph (f)(2), the language ''Section 935'' possession is defined in § 1.935–1(a)(3)(i).'' is removed and the language ''Section 935 possession'' is defined in § 1.935–1(a)(3)(i).'' is added in its place.

§ 1.884–0 [Amended]

■ **Par. 3**. Section 1.884–0 is amended as follows:

In paragraph (b)(1), the last sentence, the language ''The preceding sentence applies for taxable years ending after April 11, 2005.'' is removed and the language ''The preceding sentence applies for taxable years ending after April 9, 2008.'' is added in its place.

§ 1.932–1 [Amended]

■ **Par. 4.** Section 1.932–1 is amended as follows:

In paragraph (c)(3), the first sentence, the language ''In the case of an individual who is required to file an income tax return with the United States as a consequence of failing to satisfy the requirements of paragraphs (c)(2)(i)(A) and (B) of this section, there will be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the amount of the tax liability referred to in section 934(a) to the extent paid to the Virgin Islands.'' is removed and the language ''In the case of an individual who is required to file an income tax return with the United States as a consequence of failing to satisfy the requirements of paragraphs (c)(2)(i)(A) or (B) of this section, there will be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the amount of the tax liability referred to in section 934(a) to the extent paid to the Virgin Islands.'' is added in its place.

§ 1.937–2 [Amended]

■ **Par. 5.** Section 1.937–2 is amended as follows:

In paragraph (k) *Example 2*. (i), the fourth sentence, the language ''On June 1, 2010, R's interest in Partnership P is not a marketable security within the meaning of section 731(c)(2).'' is removed and the language ''On June 1, 2010, R's interest in Partnership P is not a marketable security within the meaning of paragraph (f)(1)(vii)(A) of this section.'' is added in its place.

§ 1.937–3 [Amended]

■ **Par. 6.** Section 1.937–3 is amended as follows:

In paragraph (e) *Example 5*. (ii), the last sentence, the language ''Accordingly, the U.S. income rule of section 937(b)(2), § 1.937–2(c)(1), and paragraph (c)(1) of this section does not operate to prevent Corporation B's services income from being Territory X source or Possession X effectively connected income within the meaning of section 937(b)(1).'' is removed and the language ''Accordingly, the U.S. income rule of section 937(b)(2), § 1.937–2(c)(1), and paragraph (c)(1) of this section does not operate to prevent Corporation B's services income from being Possession X source or Possession X effectively connected income within the meaning of section 937(b)(1).'' is added in its place.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 7.** The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 8**. Section 301.6688–1 is amended as follows:

In paragraph (c), in the first sentence of the paragraph, the language ''(1) *In general.* The penalty set forth in paragraph (a) of this section will not apply if it is established to the satisfaction of the appropriate tax authority (as defined in paragraph (c)(2) of this section) that the failure to file the information return or furnish the

information within the prescribed time was due to reasonable cause and not to willful neglect.'' is removed and the language ''The penalty set forth in paragraph (a) of this section will not apply if it is established to the satisfaction of the *Commissioner* that the failure to file the information return or furnish the information within the prescribed time was due to reasonable cause and not to willful neglect.'' is added in its place.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–10695 Filed 5–13–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9391]

RIN 1545–BF85

Source Rules Involving U.S. Possessions and Other Conforming Changes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to final regulations (TD 9391) that were published in the **Federal Register** on Wednesday, April 9, 2008 (73 FR 19350) providing rules under section 937(b) of the Internal Revenue Code for determining whether income is derived from sources within a U.S. possession or territory specified in section 937(a)(1) (generally referred to in this preamble as a ''territory'') and whether income is effectively connected with the conduct of a trade or business within a territory.

DATES: This correction is effective May 14, 2008, and is applicable on April 9, 2008.

FOR FURTHER INFORMATION CONTACT: J. David Varley, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations and removal of temporary regulations that are the subjects of this document are under sections 1, 170A, 861, 871, 876, 881, 884, 901, 931, 932, 933, 934, 935, 937, 957, 1402, 6012, 6038, 6046, 6688, and 7701 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9391) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9391), which were the subject of FR Doc. 08–1105, is corrected as follows:

1. On page 19350, column 1, in the preamble, under the caption ''Dates:'', line 5, the language ''1(k), 1.861–3(d), 1.861–8(h), 1.871–1(d),'' is corrected to read ''1(k), 1.861–3(d), 1.861–8(h), 1.871–1(c),''.

2. On page 19351, column 1, in the preamble, under the paragraph heading ''1. General Territory Source Rule'', line 8 of the first paragraph, the language ''applying the principles of section 861'' is corrected to read ''applying the principles of sections 861''.

3. On page 19353, column 1, in the preamble, line 3 from the bottom of the first paragraph of the column, the language ''of determining whether income for'' is corrected to read ''of determining whether income from''.

4. On page 19353, column 2, in the preamble, second line of the column, the language ''outside of the territories. *Id.*'' is corrected to read ''outside of the territory. *Id.*''.

5. On page 19355, column 1, in the preamble, under the paragraph heading ''*B. Guam and the Northern Mariana Islands*'', line 2 from the bottom of the paragraph, the language ''provisions of the temporary and revised'' is corrected to read ''provisions of the temporary and proposed''.

6. On page 19356, column 2, in the preamble, under the paragraph heading ''*E. Application of Subpart F to Bona Fide Residents of a Territory*'', line 7 from the bottom of the column, the language ''voting of a territory corporation are from'' is corrected to read ''voting stock of a territory corporation are from''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–10694 Filed 5–13–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB52

Sealing of Abandoned Areas

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Correcting amendments.

SUMMARY: MSHA published a final rule in the **Federal Register** on April 18, 2008 (73 FR 21182) on Sealing of Abandoned Areas in underground coal mines. The final rule incorrectly listed cross-references in § 75.336(b)(1) and § 75.336(c). This document corrects the final rule by revising these sections.

DATES: *Effective Date:* The corrections are effective May 14, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939, *silvey.patricia@dol.gov* (e-mail), (202) 693–9440 (voice), or (202) 693–9441 (telefax). This document is available on the Internet at *http://www.msha.gov/REGSINFO.HTM*.

SUPPLEMENTARY INFORMATION: As published, the preamble incorrectly referenced a section of the final rule. On page 21193, in the first column, in the first line, ''§ 75.335(a)(1)(iii)'' should be ''§ 75.336(a)(1)(iii).'' The sentence should read ''Under final § 75.336(a)(1)(iii) for less than 120 psi seals constructed after April 18, 2008, the District Manager cannot approve different sampling locations and frequencies in the ventilation plan until after a minimum of 14 days and after seals have reached design strength.''

In addition, the final rule incorrectly listed cross-references in § 75.336(b)(1) and § 75.336(c). This document corrects the final rule by revising these sections.

List of Subjects in 30 CFR Part 75

Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines, Ventilation.

■ Accordingly, 30 CFR part 75 is corrected by making the following correcting amendments:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Revise paragraph (b)(1) and the first sentence of paragraph (c) of § 75.336 to read as follows:

§ 75.336 Sampling and monitoring requirements.

* * * * *

(b) * * *

(1) Except as provided in § 75.336(d), the atmosphere in the sealed area is considered inert when the oxygen concentration is less than 10.0 percent or the methane concentration is less than 3.0 percent or greater than 20.0 percent.

* * * * *

(c) Except as provided in § 75.336(d), when a sample is taken from the sealed atmosphere with seals of less than 120 psi and the sample indicates that the oxygen concentration is 10 percent or greater and methane is between 4.5 percent and 17 percent, the mine operator shall immediately take an additional sample and then immediately notify the District Manager. * * *

* * * * *

Dated: May 8, 2008.

Jack Powasnik,

Deputy Director, Office of Standards, Regulations and Variances.

[FR Doc. E8–10662 Filed 5–13–08; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No.: MT–026/027–FOR; Docket ID: OSM–2008–0006]

Montana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving amendments to the Montana regulatory program (the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed revisions to, additions to, and deletions from its program statutes and corresponding regulations about: procedures for contested case hearings; permit fees and surety bonds; applications for increase or reduction in permit area; prospecting permits; refusal of permits; submission of actions on reclamation plans; required area mining bonds and alternative plans; planting of vegetation following grading of disturbed areas; determination of successful reclamation and final bond release; noncompliance, and suspension of permits; violations, penalties, and waivers; penalty factors; and collection of penalties, fees, late fees, and interest. Montana intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

DATES: *Effective Date:* May 14, 2008.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Fleischman, Telephone: 307.261.6550, E-mail address: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

Rules for the Montana program are contained in the Administrative Rules of Montana (ARM), Title 17 Chapter 24 (ARM 17.24.101 through 17.24.1820) entitled ''Reclamation.'' The enabling statutes for the Montana program are contained generally under Montana Code Annotated (MCA) Title 82 (MCA 82–1–101 through 82–15–207) entitled ''Minerals, Oil, and Gas,'' and more specifically, under Chapter 4 (MCA 82–4–101 through 82–4–1002) entitled ''Reclamation'' and Chapter 4, Part 2 (MCA 82–4–201 through 82–4–254) entitled ''Coal and Uranium Mine Reclamation.'' Provisions for penalties, fees, and interest are found in Chapter 4, Part 10 (MCA 82–4–1001 through 82–4–1002) and procedures for initiating and holding contested case administrative hearings are found in Chapter 4, Part 2 (MCA 82–4–206) and under Title 2, Chapter 4, Part 6 (MCA 2–4–601 through 2–4–631). Provisions providing for judicial review of contested case decisions are found under Title 2, Chapter 4, Part 7 (MCA 2–4–701 through 2–4–711).

II. Submission of the Proposed Amendments

By letter dated January 18, 2006, Montana sent us a proposed amendment to its program (MT–026–FOR, Administrative Record No. MT–23–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to an April 2, 2001, letter that we sent in accordance with 30 CFR 732.17(c) (pertaining to valid existing rights). The proposed amendment also includes revisions in response to changes in Montana's statutes enacted in 2005. The provisions of the MCA that Montana proposes to revise or add are:

MCA 82–4–206, Procedure for contested case hearings; MCA 82–4–223, Permit fee and surety bond; MCA 82–4–225, Application for increase or reduction in permit area; MCA 82–4–226, Prospecting permit; MCA 82–4–227, Refusal of permit; MCA 82–4–231, Submission of and action on reclamation plan; MCA 82–4–232, Area mining required—bond—alternative plan; MCA 82–4–233, Planting of vegetation following grading of disturbed area; MCA 82–4–235, Determination of successful reclamation—final bond release; MCA 82–4–251, Noncompliance—suspension of permits; MCA 82–4–254, Violation—penalty—waiver; MCA 82–4–1001, Penalty factors; and MCA 82–4–1002, Collection of penalties, fees, late fees, and interest.

We announced receipt of the proposed amendment in the March 27, 2006, **Federal Register** (71 FR 15090). In the same document, we provided opportunity for public comment and a public hearing or meeting on the amendment's adequacy (Administrative Record No. MT–23–5). The public comment period ended on April 26, 2006.

In addition to the proposed changes to its statute, by letter dated November 6, 2006, Montana sent us proposed changes to its program rules (MT–027–FOR, Administrative Record No. MT–24–1). These changes reflect the revisions to the statute submitted on January 18, 2006. In its November 6, 2006 letter, Montana suggested that the

regulatory changes be combined with the January 18, 2006 submittal for purposes of conducting a more efficient review. We announced receipt of the proposed rule changes in the February 6, 2007, **Federal Register** (FR 5377). In the same document, we provided opportunity for public comment and a public hearing or meeting on the amendment's adequacy (Administrative Record No. MT–24–6). The public comment period ended on March 8, 2007.

We did not hold a public hearing or meeting for either proposal because no one requested one. We received one public comment which is discussed under section IV below. This document contains our decision and findings for both submissions.

III. OSM's Findings

Following are the findings we made concerning the amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

1. Montana proposed revisions to 82–4–206, MCA, to provide that an applicant, permittee, or person with an interest that is or may be adversely affected may request a hearing before the Board of Environmental Review (Board) on decisions of the Department of Environmental Quality (Department) pertaining to (a) approval or denial of an application for a permit pursuant to 82–4–231; (b) approval or denial of an application for a prospecting permit pursuant to 82–4–226; (c) approval or denial of an application to increase or reduce a permit area pursuant to 82–4–225; (d) approval or denial of an application to renew or revise a permit pursuant to 82–4–221; or (e) approval or denial of an application to transfer a permit pursuant to 82–4–238 or 82–4–250.

In its proposed revision to 82–4–206, MCA, Montana changes the phrase from ''persons aggrieved by a final decision of the Department'' to ''applicants, permittees or persons with an interest that is or may be adversely affected.'' This defines who can request a hearing before the Board. In subparagraph (1)(a) through (e), Montana also specifies the types of permitting decisions that can be contested. The revised wording and types of decisions are in accordance with SMCRA Section 514(c) which states that any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination. The proposed State statute provides more detail as to who may request a contested case hearing and for what reasons without altering the provision's consistency with Federal law. We are approving the revisions to 82–4–206, MCA.

2. Montana proposed to revise 82–4–223, MCA, to: (1) Delete ''permit fee'' from the title; and (2) delete the provision for a permit application fee; and (3) make editorial changes. Under Section 507(a) of the Act and 30 CFR 777.17, the amount of a permit fee is to be determined by the regulatory authority. Montana proposes to delete its existing requirement for a $100 application fee because the administrative burden to collect it exceeds the value of the fee. We accept Montana's reason for deleting the fee and approve it.

The proposal to modify 82–4–223, MCA also includes minor substitutions and editorial changes which do not change the meaning of the existing statute. We approve these minor changes.

3. Montana proposed to revise 82–4–225, MCA, to delete the requirement for a $50 application fee when revising a permit to increase or decrease the permitted area. Montana claims that the administrative burden to collect this fee exceeds the fee's value. Section 507(a) of SMCRA states that applications ''* * * shall be accompanied by a fee as determined by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program.'' It is evident that Congress enacted this provision to enable the regulatory authority to (among other things) recoup administrative costs associated with processing permit applications. However, Montana has stated that, under its current program, the administrative burden to collect the $50 application fee exceeds the fee's value. Given this explanation, and given the fact that Section 507(a) of the Act vests complete discretion in the regulatory authority to determine the amount of the fee (even in this case where the amount of the fee will be zero), we find that Montana's proposed revision is in accordance with the Act, and we approve it.

A minor editorial revision replaces ''in no case shall'' with ''may not.'' This minor revision is for clarification and does not alter the meaning of the provision. We approve it.

4. Montana proposed to delete 82–4–226 (3), deleting the requirement for a $100 fee accompanying an application for a prospecting permit. Montana claims that the administrative burden to collect the fee exceeds the fee's value. Section 507(a) of SMCRA states that applications ''* * * shall be accompanied by a fee as determined by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program.'' It is evident that Congress enacted this provision to enable the regulatory authority to (among other things) recoup administrative costs associated with processing permit applications. However, Montana has stated that, under its current program, the administrative burden to collect the $100 application fee exceeds the fee's value. Given this explanation, and given the fact that Section 507(a) of the Act vests complete discretion in the regulatory authority to determine the amount of the fee (even in this case where the amount of the fee will be zero), we find that Montana's proposed revision is in accordance with the Act, and we approve it.

Other changes recodify previous subsections (4) through (8) as subsections (3) through (7) as a result of deleting the prospecting permit fee provision at original subsection (3). This recodification does not alter the content of the existing provisions. We approve these changes.

5. Montana proposed to revise 82–4–227(13)(a), MCA, to add the national system of trails, Wild and Scenic Rivers Act study rivers and study river corridors, and Federal lands within National Forests, to areas where mining is prohibited (subject to valid existing rights).

Montana submitted this proposal in response to an OSM letter dated April 2, 2001, notifying Montana that revisions to the Federal rules on valid existing rights required the State to revise equivalent provisions in the State program. There are no additions to 82–4–227(13)(a), MCA that are not fully expressed in the corresponding Federal counterpart, Section 522(e) of SMCRA, which states:

(e) After the enactment of this Act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted—

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress;

(2) on any Federal lands within the boundaries of any national forest: Provided, however, That surface coal mining operations

may be permitted on such lands if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and—(A) surface operations and impacts are incident to an underground coal mine; or

(B) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those national forests west of the 100th meridian, that surface mining is in compliance with the Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1975, the National Forest Management Act of 1976, and the provisions of this Act: And provided further, That no surface coal mining operations may be permitted within the boundaries of the Custer National Forest;

In 82–4–227(13)(b), MCA Montana adds ''* * * subject to the exceptions and limitations of 30 CFR 761.11(b) and the procedures of 30 CFR 761.13.'' 30 CFR 761.11(b) is substantively identical to Section 522(e)(1) and (2) of the Act. 30 CFR 761.13 provides that, if applicants intend to rely on the provisions in 30 CFR 761.11(b) they must request that OSM first obtain the Secretarial findings required by Section 761.11(b). Thus, by making 82–4–227(13)(b), MCA subject to the exceptions and limitations in these two Federal regulations, Montana's proposal is consistent with the Federal regulations and in accordance with Section 522(e)(1) and (2) of the Act. Also, Montana proposed changing ''systems'' to ''system'' for grammatical correctness. For the above reasons, we approve Montana's proposed changes.

6. Montana proposed to revise 82–4–231(9), MCA, to specify the Environmental Quality Board, or its hearing officer, as the authority to hold hearings appealing adverse permit decisions by the Department, and to clarify that hearings must be started, rather than held, within the 30-day timeframe. Montana is establishing that, since appeals of permit decisions of the Department are contested cases, they will be heard by the Board and not the Department in compliance with the provisions in 82–4–206, MCA. These minor changes clarify Montana's specific processes and do not alter the requirements of existing statutory provisions. Therefore, we find that they are consistent with and will not make Montana's statute less stringent than its Federal counterpart, SMCRA Section 514(c). We approve these changes to 82–4–231, MCA.

7. Montana proposed to revise 82–4–232(6), MCA, concerning bond release applications to:

(1) Change the term bond release ''requests'' to bond release ''applications'' ((6)(a));

(2) Provide that a bond release application is administratively complete if it includes:

(6)(b)(i) The location and acreage of the land for which bond release is sought;

(ii) The amount of bond release sought;

(iii) A description of the completed reclamation, including the date of performance;

(iv) A discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and

(v) Information required by rules implementing this part.

(3) Provide that:

(6)(c) The [D]epartment notify the applicant in writing of its determination no later than 60 days after submittal of the application; if the [D]epartment determines that the application is not administratively complete, it shall specify in the notice those items that the application must address; after an application for bond release has been determined to be administratively complete by the [D]epartment, the permittee shall publish a public notice that has been approved as to form and content by the [D]epartment at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(4) Provide that:

(6)(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the [D]epartment within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the [D]epartment shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The [D]epartment shall inform the interested parties of the time and place of the hearing. The date, time, and location of the public hearing must be advertised by the [D]epartment in a newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the [D]epartment shall notify the permittee and the objector of its final decision.

(5) Provide that:

(6)(e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the [D]epartment pursuant to this section, the [D]epartment may establish an informal conference to resolve written objections.

(6) Provide that:

(6)(f) For the purpose of the hearing under subsection (6)(d), the [D]epartment may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence, including but not limited to conducting inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the [D]epartment.

(7) Provide that:

(6)(g) If the applicant significantly modifies the application after the application has been determined to be administratively complete, the [D]epartment shall conduct a new review, including an administrative completeness determination. A significant modification includes, but is not limited to:

(i) The notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(ii) A material increase in the acreage for which a bond release is sought or in the amount of bond release sought; or

(iii) A material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(8) Provide that:

((6)(h)) The [D]epartment conduct an inspection and evaluation of the reclamation work involved within 30 days of determining that the application is administratively complete or as soon as weather permits;

(9) Provide that:

(6)(i) The [D]epartment shall review each administratively complete application to determine the acceptability of the application. A complete application is acceptable if the application is in compliance with all of the applicable requirements of this part, the rules adopted under this part, and the permit.

(10) Provide that:

(6)(j)(i) The [D]epartment shall notify the applicant in writing regarding the acceptability of the application no later than 60 days from the date of the inspection.

(ii) If the [D]epartment determines that the application is not acceptable, it shall specify in the notice those items that the application must address.

(iii) If the applicant revises the application in response to a notice of unacceptability, the [D]epartment shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether the revised application is acceptable.

(iv) If the revision constitutes a significant modification, the [D]epartment shall conduct a new review, beginning with an administrative completeness determination.

(v) A significant modification includes, but is not limited to:

(A) The notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(B) A material increase in the acreage for which a bond release is sought or the amount of bond release sought; or

(C) A material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(11) Recodify original subsections (6)(c) through (e) as (6)(k) through (m), with some minor editorial changes, and,

(12) Recodify original subsections (6)(f) through (6)(h) as (6)(d) through (f).

The proposed changes in Paragraph 3 above (MCA 82–4–232(6)(c)) require that public notice be published (at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation) after the bond release application has been reviewed and is determined to be administratively complete by the Department. These changes also include a provision which states that the Department will notify the applicant of its determination no later than 60 days after it receives the application. Although there is no direct Federal counterpart to this provision, we find that it is generally in accordance with Section 519 of SMCRA. The proposed changes at Paragraph (2) (MCA 82–4–232(b)(2)) state that a bond release application shall be administratively complete if it includes certain specific information specified in (6)(b)(i) through (v) listed above. The corresponding Federal counterpart to the above provisions, SMCRA 519(a), requires the operator to publish (at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation) a notice within 30 days of filing an application for bond release containing the location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed, and the portion sought to be released, the type and dates of reclamation performed, and a description of the results as they relate to the operator's approved reclamation plan. Proposed 82–4–232(6)(b) and (c) are substantively identical to and in accordance with the requirements of Section 519(a) of the Act. We approve the changes.

The changes in Paragraphs 4 through 10 above (MCA 82–4–232(6)(d) through (j)) specify requirements for bond release applications including criteria for administrative completeness and procedures for review. These provisions are similar to the provisions for permit and permit revision applications in MCA 82–4–231. While providing more specificity, revised MCA 82–4–232(6) (d), (e), (f), and (h) through (j) include all of the provisions contained in Sections 519 (a), (b), (d), (f), (g), and (h) of SMCRA regarding bond release procedures. MCA 82–4–232(6) (g), (i), and (j) elaborate on administrative completeness determinations and procedures, and have no Federal counterparts. These additions add specificity to Montana's requirements and exceed SMCRA's requirements. For the above reasons, we find these changes to be no less stringent than comparable provisions in SMCRA, and we approve them.

As discussed below, additional changes at MCA 82–4–232(11) and (12) are minor wording, editorial, punctuation, grammatical and recodification changes to existing statutes. More specifically, former MCA 82–4–232 (6)(c) through 82–4–232 (6)(e) have been recodified as 82–4–232 (6)(k) through 82–4–232 (6)(m). These changes are required by other recodification changes within the statute. ''[O]r deposit'' has been deleted from 82–4–232 (6)(k). The term ''bonds'' means deposits such as cash or securities as well as other types of bonds and therefore the term ''deposits'' is not necessary. ''[O]r county'' was added to 82–4–232 (6)(m), clarifying that an applicant for total or partial bond release must notify the municipality or county in which a prospecting or mining operation is located 30 days prior to the bond release. This minor addition clarifies applicant responsibilities and does not alter the requirements of the provision. We find that these recodification and editorial changes are minor and do not change the meaning of existing statutes. We approve these changes.

Former MCA 82–4–232(6)(f) through 82–4–232(6)(h) have been recodified as 82–4–232(6)(d) through (6)(f). These changes are required by recodification changes to the previously approved statute (January 22, 1999) (64 FR 3604). The content of these provisions was unaffected, and we approve these changes.

MCA 82–4–232(8) deals with proposals in postmining land use. Montana proposed in (a) to change ''alternate'' to ''alternative'' for consistency of terminology within the Montana statute and also with the revisions to rules approved by OSM on February 16, 2005 (70 FR 8018), where ''alternative'' was used. This is a minor wording change that is consistent with previously approved statutes and regulations. We approve this change.

8. Montana proposed to revise 82–4–233, MCA, by deleting existing Paragraph (5) concerning special revegetation requirements for land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984. Subsection (5) is no longer necessary as its provisions are now included in subsections (1) and (2) of 82–4–233, MCA. This is a result of changes to 82–4–233, MCA approved by OSM on February 16, 2005, (70 FR 8001). Subsections (1) and (2) include all the provisions of 30 CFR 816.111 for revegetation general requirements that were previously approved in subsection (5). We approve this change.

9. Existing MCA 82–4–235(a) prescribes revegetation success criteria and the time requirements for reclamation responsibility for lands with regard to coal removal and disturbance or redisturbance before and after May 2, 1978. SMCRA took effect in two stages, an initial regulatory program described in Section 502, and the permanent regulatory program. On and after nine months from the date of enactment of the Act, on lands where surface coal mining operations were regulated by States, the initial regulatory program required compliance with Section 515(b)(19) of SMCRA requiring establishment of vegetative cover but did not require compliance with Section 515(b)(20) establishing the responsibility period for successful revegetation. The initial regulatory program became effective on May 3, 1978. The permanent regulatory program became effective with permits issued under approved State regulatory or Federal programs. Under MCA 82–4–235(a), lands mined for coal or redisturbed prior to May 3, 1978 are subject to revegetation requirements listed in existing MCA 82–4–235(3)(a)(i) and (ii). Existing MCA 82–4–235 (2) sets a period of 5 years after planting as the responsibility period for lands mined for coal or redisturbed prior to May 3, 1978. Montana proposes additional language to MCA 82–4–235(3)(a) to clarify that lands disturbed by mining at any time prior to May 3, 1978 that were permitted under Montana programs that preceded SMCRA are required to meet the vegetation requirements in MCA 82–4–235(3)(a)(i) and (ii). For the most part, this additional provision deals with lands not subject to SMCRA provisions. Despite this proposed change, MCA 82–4–235 remains in accordance with requirements in SMCRA in Sections 515(b)(19) and (20) and in Section 502 (c). The addition also provides clarification to the statute that was previously approved by OSM in the January 22, 1999 **Federal Register** (64 FR 3604). We approve the changes.

10. Montana 82–4–251(3), MCA, pertains to orders issued to the permittee to show cause as to why the permit should not be suspended or revoked based on a determination that a pattern of violations exists. The existing provision provides for the opportunity for a public hearing in accordance with Section 521(a)(4) of SMCRA. In addition, Montana proposed that the permittee may request a contested case hearing. Pursuant to

Montana's Administrative Procedures Act, whenever a statute requires a license or permit decision to be preceded by a hearing, the contested case provisions apply pursuant to MCA 82–4–206(2). Procedures for contested case hearings are contained in Title 2, chapter 4, part 6, MCA (2–4–601 through 2–4–631). The contested case procedures provide for opportunity for reasonable notice, requiring the reason for and details of the hearing, and prescribe hearing procedures and time limits for decisions. Applying the contested case provisions of the Montana Administrative Procedures Act to hearings required in the Montana regulatory program is reasonable, is not inconsistent with the requirements of Section 521(a)(5) of the Act for notices and orders, public hearings conferences, and procedures associated with enforcement matters, and does not alter our previous approvals of MCA 82–4–251(3). We approve the change.

In 82–4–251(5), MCA, revisions are proposed to (a) allow an opportunity by a permittee to request an informal public hearing on any notice or order issued by the Department under this section of the Montana Code, and (b) specify the procedures for such informal hearings. More specifically, Montana proposes the above revisions to provide that informal public hearings on notices or orders that require cessation of mining must be requested by the person to whom the notice or order was issued. Further, if the Department receives a request for an informal public hearing 21 days after service of the notice or order, the period for holding the informal public hearing will be extended by the number of days after the 21st day that the request was received. Montana's previous statute did not provide for an opportunity by a permittee to request an informal public hearing on any notice or order issued by the Department under the statute. Therefore, it was inconsistent with the provisions in Section 521(a)(4) of SMCRA which provide the opportunity for a public hearing to be requested by the permittee after service of ''* * * an order to the permittee to show cause as to why the permit should not be revoked or suspended * * *.'' The proposed changes are in accordance with Section 521(a)(4) of SMCRA and the requirements for notices and orders, public hearings conferences, and procedures associated with enforcement matters contained in Section 521(a)(5). We approve these changes.

Montana proposes to revise 82–4–251(6), MCA, to allow an alleged violator to ''request a hearing before the [B]oard,'' and delete existing requirements for Departmental investigations. Previously, hearings under this subsection were limited to notices of violation and cessation orders. The previous version also specified that the hearings were to be conducted by the Department, and the Department was required to make findings and issue a decision from such hearings. By definition, this is contrary to 82–4–205(2) which requires that contested cases must be heard and decided by the Board of Environmental Review and not the Department. The above changes rectify this problem and are in accordance with the requirements for notices and orders, public hearings conferences, and procedures associated with enforcement matters contained in Section 521(a)(5) of SMCRA. Therefore, we approve these changes.

The following paragraphs, 11 through 27, address proposed changes to Montana statutes and regulations dealing with penalties. The standard for penalty provisions in a State program is established in Section 518(i) of SMCRA. This provision states that civil and criminal penalty provisions shall incorporate penalties no less stringent than those set forth in Section 518 of the Act, and shall contain the same or similar procedural requirements. OSM suspended 30 CFR 732.15(b)(7) and 840.13(a) (which implement Section 518(i) of the Act) insofar as they require State programs to establish a point system for assessing civil penalties or impose civil penalties as stringent as those appearing in 30 CFR 845.15 (which deals with the assessment of separate violations for each day) (August 4, 1980) (45 FR 51548). Hence, if the State program requires consideration of the four mandatory statutory criteria—history of previous violations, seriousness, negligence, and good faith in attempting to achieve compliance—when determining whether to assess a penalty and in determining the penalty amount, the program meets the Federal requirements. 30 CFR Part 846 covers the assessment of individual civil penalties and is the basis for State regulations.

11. Montana proposed to revise 82–4–254(1)(a), MCA, to provide individual administrative penalties determined in accordance with 82–4–1001, MCA, for persons who ''purposely or knowingly,'' rather than ''willfully,'' authorize, order, or carry out violations. Montana explains that the terms ''purposely or knowingly'' are used in the Montana Criminal Code, and ''willfully'' is not; therefore, this change will provide consistency within Montana state law. OSM believes that Montana's term ''purposely or knowingly'' is substantively the same as ''willfully and knowingly,'' as used in Section 518(e) of SMCRA and we are approving it.

Montana proposes further additions and deletions in (1)(a) that are minor wording, editorial, punctuation, grammatical and recodification changes to existing statutes. Additionally, the term ''civil'' is replaced with ''administrative'' to clarify that penalties assessed by the Department are administrative penalties, rather than judicial penalties that are levied by Montana State District Court. This proposed change is consistent with Section 518(b) of SMCRA which provides for penalties to be assessed by the regulatory body, and not through the courts. This change is therefore consistent with SMCRA, and we approve it.

Proposed part (b) references a new section, MCA 82–4–1001, which sets forth guidelines for determining the amount of administrative penalty to be assessed (discussed below).

82–4–254(2), MCA, is revised to add that the Department may not waive a penalty assessed under the section if the person or operator fails to abate the violation as directed under MCA 82–4–251. This revision does not have a Federal counterpart and is more stringent than requirements in Section 518 of SMCRA dealing with the assessment of penalties. Moreover, the addition provides clarification and specificity to existing provisions. We approve this change.

Montana also proposes additions and deletions in 82–4–254(2), MCA that are for clarification of terminology. These changes are minor and do not alter the meaning of the existing regulation. We approve these minor changes.

Montana adds new requirements at 82–4–254(3)(a), MCA, providing that:

> To assess an administrative penalty under this section, the Department shall issue a notice of violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2). The notice and order must specify the provision of this part, rule adopted or order issued under this part, or term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a statement of the proposed administrative penalty. The notice and order must be served personally or by certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order become final unless, within 30 days after the order is served, the person or operator to whom the order was issued requests a hearing before the Board.

A requirement is added to Paragraph (3)(a) that on receiving a request, the Board must schedule a hearing. The

changes in proposed MCA 82–4–254(3)(a) are for the purpose of converting the current two-step process of assessing a penalty into a more streamlined one-step process. The Department would now issue a Notice of Violation and Administrative Penalty Order (NOV/APO) that would contain all of the relevant components from the existing two-step process. If a hearing is not requested, the NOV/APO would become final and eliminate the need to issue separate findings of fact and conclusions of law.

New Paragraph (3)(b) indicates that only persons or operators issued a final order may obtain judicial review. The changes in MCA 82–4–254(3)(b) reflect the changes in (3)(a) and provide additional clarification.

New Paragraphs (3)(c) and (4) allow (1) the Department, rather than the Attorney General, to file actions for collection, (2) filing in the first judicial district (if agreed by the parties), and (3) the Department, rather than the Attorney General, to bring actions for judicial relief. Additionally, the changes in MCA 82–4–254(3)(c) specify that the Department, not the Attorney General, may file an action in District Court to recover penalties; Department attorneys are special assistants to the Attorney General and are authorized to file such cases in District Court. The changes in MCA 82–4–254(4) reflect changes in (3)(c) specifying that the Department, rather than the Attorney General, may file an action for a restraining order or temporary or permanent injunction against an operator or person meeting criteria outlined in subsections (4)(a) through (f).

These changes will result in assessment and collection of civil penalties by Montana in accordance with the provisions for assessing and collecting civil penalties found in Section 518(a), (b), (c) and (d) of SMCRA. The changes provide clarification and specificity to existing provisions. We approve the proposed changes, finding that the additions and deletions are reasonable and do not alter OSM's previous decision to approve MCA 82–4–254(1) through (3) in the January 22, 1999 **Federal Register** (64 FR 3604).

12. Montana proposed revisions to ARM 17.24.1219(1) and (2) for individual civil penalties and procedures for assessments that reflect revisions discussed above to 82–4–254(3)(a), MCA. The proposed amendments to (1) and (2) provide for the Department to issue a penalty order rather than a statement of proposed penalty. The proposed amendment to subparagraph (1) also deletes the requirement that the penalty document give an explanation for the penalty as well as its amount. These requirements are now set forth in 82–4–254(3)(a) and 82–4–1001, MCA (see Findings 11 and 15). It is, therefore, unnecessary to impose them by administrative rule. These changes to ARM 117.24.1219, reflect the changes in 82–4–254(3)(a), MCA that were approved by OSM on February 16, 2005 (70 FR 8018). We approve the changes to ARM 17.24.1219(1) and (2).

13. Montana proposed revisions to ARM 17.24.1220(1), (2) and (3) concerning individual civil penalty payments. The proposed amendment to subparagraph (1) reflects the proposed changes to MCA 82–4–254 discussed above, and requires the payment of a penalty within 30 days after the expiration of the period for requesting a hearing rather than upon issuance of the final order. Pursuant to 82–4–254, MCA, the notice of violation and penalty order become final by operation of law if a request for hearing is not made in a timely manner. Therefore, the deadline for paying the penalty must be keyed to the expiration of the period for requesting a hearing (rather than to the issuance of a final order as previously required under 82–4–254, MCA).

Subparagraph (2) replaces the phrase ''proposed individual civil penalty assessment'' with ''violation and penalty order'' to maintain consistency with MCA 82–4–254. To further maintain this consistency, the phrase ''[U]pon issuance'' (of a final administrative order) is replaced with ''within 30 days after the issuance'' (of a final administrative order).

Under 30 CFR 846.17(b), the notice of proposed individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals; or

(2) The Office [of Surface Mining] and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation.

Under 30 CFR 846.18(a) a penalty for an individual civil penalty assessed in accordance with 30 CFR 846.17, in the absence of a petition for review or abatement agreement, shall be due upon issuance of the final order.

The Federal and proposed State provisions have similar procedural requirements, differing only in that in the absence of requesting a hearing or a petition for review, the Federal notice becomes a final order and payment is due 30 days after issuance, whereas the State allows an additional 30 days (total of 60 days) for payment. The State's extra 30 days is keyed to the time allowed to file an appeal. OSM finds Montana's reference to the time period for requesting review to be reasonable since, until the time has passed to file a petition for review, the penalty may yet be subject to change. A comparison of the time frames for the Federal regulations and Montana's program, from detection of a violation, to the issuance of a notice of violation, to the issuance of civil penalties and individual civil penalties and the requirements for payment of penalties, indicates slight differences between the steps; however, the steps are similar from violation issuance to payment of the penalty. In addition, a petition for review under both the State and Federal schemes can delay the issuance of a final order affirming a penalty well beyond 30 days. These considerations reduce the importance of each specific Federal timeframe. For these reasons, Montana's proposed revisions to ARM 17.24.1220(1) and (2) are consistent with 30 CFR 846.17 and 846.18 and we approve them.

Section (3) currently provides that an individual who has entered into a written agreement with the Department for ''abatement of the violation'' or ''compliance with the unabated order'' may postpone payment until receiving a final order indicating that the penalty is due or has been withdrawn. Compliance with an unabated order is synonymous with the abatement of the violation. The proposed amendment to (3) deletes two unnecessary references to the phrase ''compliance with the unabated order.''

Section (3) is nearly identical to its Federal counterpart at 30 CFR 846.18(c), which states that ''[w]here the Office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed civil penalty assessment may postpone payment until receiving either a final order from the Office stating that the penalty is due on the date of such final order, or written notice that the abatement or compliance is satisfactory and the penalty has been withdrawn.'' The changes to subsection (3) are for clarification and reduce redundancy without altering the meaning of the existing regulation. Accordingly, we approve the proposed changes.

14. Montana proposed to revise 82–4–254(6) and (8), MCA, to provide criminal sanctions against persons who purposely or knowingly, rather than willfully, commit certain acts. The term ''willfully'' is changed to ''purposely or knowingly'' for clarification and consistency with 82–4–254(1)(a), MCA, and other provisions of State law. In a previous finding (see Paragraph 11 above), we found that the term, ''purposely and knowingly,'' is substantively the same as ''willfully and knowingly'' used in Section 518(e) of SMCRA. For the above reasons, we are approving the proposed changes to 82–4–254(6) and (8), MCA, because they are minor and do not change the meaning of the existing statute.

Montana adds a new Paragraph, 82–4–254(10), MCA, providing that within 30 days after receipt of full payment of an administrative penalty assessed under this section, the Department will issue a written release of civil liability for the violations for which the penalty was assessed. This provides a legal conclusion to violations that have been satisfactorily resolved. This is an addition for which there is no Federal counterpart. Section 518(i) of SMCRA states that ''any State program * * * shall, at a minimum, incorporate penalties no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto.'' We find the proposed addition does not jeopardize other Program requirements that ensure assessment and collection of civil penalties in accordance with the requirements of Section 518 of SMCRA. Therefore, we approve this addition.

15. Montana proposed a new section, 82–4–1001, MCA, as follows:

Penalty factors.

(1) In determining the amount of an administrative or civil penalty assessed under the statutes listed in subsection (4), the [D]epartment of [E]nvironmental [Q]uality or the district court, as appropriate, shall take into account the following factors:

(a) The nature, extent, and gravity of the violation;

(b) The circumstances of the violation;

(c) The violator's prior history of any violation, which:

(i) Must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) Must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) May not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) The economic benefit or savings resulting from the violator's action;

(e) The violator's good faith and cooperation;

(f) The amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) Other matters that justice may require.

(2) Except for penalties assessed under 82–4–254, after the amount of a penalty is determined under (1), the [D]epartment of [E]nvironmental [Q]uality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) Except for penalties assessed under 82–4–254, the [D]epartment of [E]nvironmental [Q]uality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a ''supplemental environmental project'' is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the [D]epartment of [E]nvironmental [Q]uality or the district court under 82–4–141, 82–4–254, 82–4–361, and 82–4–441.

(5) The [B]oard of [E]nvironmental [R]eview and the [D]epartment of [E]nvironmental [Q]uality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.

The purpose of this new section is to create a standard set of factors that can be used to assess and enforce penalties for the Montana Program and 15 other environmental programs under the Department's jurisdiction. This enables staff to apply fair and consistent penalties Department wide.

Section (1)(a) lists the following factor for consideration: ''the nature, extent and gravity of the violation.'' In considering the ''nature'' of a violation, Montana states in its submission that the Department will determine whether the violation harms or has the potential to harm human health or the environment, or whether the violation adversely impacts the Department's administration of the Montana Act. This is consistent with and corresponds to the consideration of ''seriousness'' in Section 518(a) of SMCRA.

Montana further explains in its submission that the consideration of ''extent'' takes into account the degree of harm or potential harm to human health and the environment, or the degree of adverse impact to the Department's administration of the Montana Act. As such, Montana states that violations resulting in a higher degree of harm or potential harm or a higher degree of adverse impact to the Department's administration of the Montana Act will be assigned higher points under ''extent.'' This too is in accordance with the ''seriousness'' factor in Section 518(a) of SMCRA.

Next, Montana states that the consideration of ''gravity'' in (1)(a) factors in the probability of occurrence. Specifically, a violation that results in a higher probability of occurrence of the event that a standard is designed to prevent is more grave than a violation with a lower probability of the occurrence of the event, and will be assigned more points. This also is consistent with the consideration of ''seriousness'' in Section 518(a) of SMCRA.

In its submission, Montana states that the consideration of ''circumstances'' in (1)(b) directly relates to the negligence or culpability of the violator. This definition also is set forth under proposed ARM 17.4.302 (1), described below. Under the Department's proposed penalty rules, the more negligent or culpable the violator is, the higher the penalty will be. This is consistent with the consideration of ''negligence'' in Section 518(a) of SMCRA.

Proposed section MCA 82–4–1001(1)(c) defines the ways a violator's prior history of violations may result in increased penalty assessment. Subsections (1)(c)(i), (ii), and (iii) specify that for violations to be considered as prior history, they must be less than 3 years old, a violation of the same chapter and part as the violation for which the penalty is assessed, and not under administrative appeal or judicial review. This section is in accordance with the requirement in Section 518(a) of SMCRA to consider the permittee's history of previous violations.

Proposed section MCA 82–4–1001(1)(d) allows the Department in assessing a penalty to consider the economic benefit or savings resulting from the violator's action. The new text in (1)(d) takes into account the extent to which a violator has gained any economic benefit as a result of its failure to comply. The Federal regulations do not contain a similar provision. However, Montana's provision can only result in an increased penalty should there have been an economic benefit or savings resulting from the violator's action. Therefore, we find new (1)(d) to be no less effective than the Federal regulations and we approve it.

The assessment of ''good faith and cooperation'' under proposed section MCA 82–4–1001(1)(e) relates to a violator's willingness to abate the violation, and measures employed to abate the violation in the timeliest manner possible, with the least amount

of environmental harm possible. In its submission, Montana explains that, if a person has a high degree of good faith and cooperation, the Department will calculate a lower penalty. This subsection is consistent with Section 518(a) of SMCRA dealing with the consideration of ''demonstrated good faith'' by the permittee in attempting to achieve compliance and we approve it.

Proposed section MCA 82–4–1001(1)(f) allows the Department to consider the amount voluntarily expended by the violator beyond what is necessary to address or mitigate the violation or impacts of the violation. There is no counterpart in the Federal regulations allowing for consideration of effort or amounts expended beyond the necessary minimum. However, a provision of 30 CFR 845.16(a) allowing for waiver of use of the formula to determine civil penalty provides that ''the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this chapter, any applicable program, or any condition of any permit or exploration approval.'' Under Montana's proposed (1)(f) the amount of funding or effort required to abate the violation cannot be considered in reducing the penalty. Rather, this provision gives the Department the authority to consider amounts expended by the operator beyond that which is necessary to abate the violation. Therefore, we find that new (1)(f) is not inconsistent with the Federal regulations and we approve it.

In its submission, Montana states that provision (1)(g) was inserted to cover other circumstances that warrant consideration in penalty assessment, e.g. to provide for fairness and effectiveness. Montana goes on to explain that the Department expects that this factor will only be used when, based on particular facts and circumstances, the application of the penalty factors would not result in a fair and just penalty. 30 CFR 845.16(a), concerning waiver of use of the formula to determine civil penalty, states that ''The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in 30 CFR 845.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.'' We find proposed (1)(g) to be consistent with this provision in the Federal regulations and we approve it.

Subsections (2) and (3) allow for penalties in other Departmental programs to be reduced and waived, but do not apply to penalties assessed in the coal regulatory program under 82–4–254, MCA. Thus, these provisions are of no concern for purposes of this amendment.

Subsection (4) states that the provisions of this section (82–4–1001, MCA) will apply to penalties assessed by the Department or District Court, and subsection (5) empowers the Department and Board to adopt rules to implement this new statute. This delegation of authority is acceptable under Montana's permanent regulatory program approved by OSM in the April 1, 1980 **Federal Register** (45 FR 21560), and we approve it.

We are approving each of the proposed changes above in MCA, 82–4–1001, finding that the additions and deletions incorporate penalties that are no less stringent than those set forth in Section 518 of the Act and contain the same or similar procedural requirements relating thereto.

16. Consistent with 82–4–254(1), MCA (discussed above), Montana proposed revisions to ARM 17.24.1218 to require that individual civil penalties be calculated based on criteria specified in 82–4–1001, MCA. The changes to ARM 17.24.1218 implement and are consistent with changes to the corresponding statute and we are approving them.

17. Montana proposed revisions to 17.4.303, ARM concerning base penalties. Montana proposes that the Department shall calculate the penalties according to the following:

(1) The base penalty is calculated by multiplying the maximum penalty amount authorized by statute by a factor from the appropriate base penalty matrix in (2) or (3). In order to select a matrix from (2) or (3), the nature of the violation must first be established. For violations that harm or have the potential to harm human health or the environment, the [D]epartment shall classify the extent and gravity of the violation as major, moderate, or minor as provided in (4) and (5). For all other violations, the extent factor does not apply, and the [D]epartment shall classify the gravity of the violation as major, moderate, or minor as provided in (5).

(2) The [D]epartment shall use the following matrix for violations that harm or have the potential to harm human health or the environment:

Extent	Gravity		
	Major	Moderate	Minor
Major	0.85	0.70	0.55
Moderate	0.70	0.55	0.40
Minor	0.55	0.40	0.25

(3) The [D]epartment shall use the following matrix for violations that adversely impact the [D]epartment's administration of the applicable statute or rules, but which do not harm or have the potential to harm human health or the environment:

Gravity		
Major	Moderate	Minor
0.50	0.40	0.30

(4) In determining the extent of a violation, the factors that the [D]epartment may consider include, but are not limited to, the volume, concentration, and toxicity of the regulated substance, the severity and percent of exceedance of a regulatory limit, and the duration of the violation. The [D]epartment shall determine the extent of a violation as follows:

(a) A violation has a major extent if it constitutes a major deviation from the applicable requirements;

(b) A violation has a moderate extent if it constitutes a moderate deviation from the applicable requirements;

(c) A violation has a minor extent if it constitutes a minor deviation from the applicable requirements.

(5) The [D]epartment shall determine the gravity of a violation as follows:

(a) A violation has major gravity if it causes harm to human health or the environment, poses a serious potential to harm human health or the environment, or has a serious adverse impact on the [D]epartment's administration of the statute or rules. Examples of violations that may have major gravity include a release of a regulated substance that causes harm or poses a serious potential to harm human health or the environment, construction or operation without a required permit or approval, an exceedance of a maximum contaminant level or water quality standard, or a failure to provide an adequate performance bond.

(b) A violation has moderate gravity if it:

(i) Is not major or minor as provided in (5)(a) or (c); and

(ii) Poses a potential to harm human health or the environment, or has an adverse impact on the [D]epartment's administration of the statute or rules. Examples of violations that may have moderate gravity include a release of a regulated substance that does not cause harm or pose a serious potential to harm human health or the environment, a failure to monitor, report, or make records, a failure to report a release, leak, or bypass, or a failure to construct or operate in accordance with a permit or approval.

(c) A violation has minor gravity if it poses no risk of harm to human health or the environment, or has a low adverse impact on the [D]epartment's administration of the statute or rules. Examples of violations that may have minor gravity include a failure to submit a report in a timely manner, a failure to pay fees, inaccurate recordkeeping, or a failure to comply with a minor operational requirement specified in a permit.

Pursuant to the above-described regulations, the first step in the penalty calculation process is to identify a base penalty, which is a percentage of the statutory maximum penalty. The percentage varies depending on how the three statutory factors of ''nature'', ''extent'', and ''gravity'' are weighed. These three statutory factors are defined and two matrices are created for determining the amount of the base penalty.

The ''nature'' of a violation is determined on the basis of whether it harms or has the potential to harm human health or the environment.

The ''extent'' of a violation is determined by considering such factors as the volume, concentration and toxicity of the regulated substance, the severity and percent exceedance of a regulatory limit, and the duration of the violation.

The ''gravity'' of a violation is determined by considering (among other things) such factors as whether a release of a regulated substance has occurred, the degree of risk to human health or the environment, and the extent of impact to the Department's ability to administer the statute and rules.

The rule clarifies how the statutory factors will be implemented, and ensures that a consistent penalty calculation process is used for all of the environmental laws subject to 82–4–1001, MCA.

The additions noted above under ARM 17.4.303 implement 82–4–1001, MCA. OSM approved the proposed changes to 82–4–1001, MCA in Paragraph 15 above. Penalties under 82–4–1001, MCA are based on the ''nature, extent, gravity, and circumstances'' of the violation. The violator's history and good faith abating the violation are also factors in determining penalties in 82–4–1001, MCA. Our approval found that 82–4–1001, MCA incorporated factors for determining penalties in accordance with Section 518 of the Act. ARM 17.4.303 clarifies how the statutory factors in 82–4–1001, MCA will be implemented. It includes a procedure for calculating penalties. As discussed above, the standard for penalty provisions in a State program is established in Section 518(i) of SMCRA. This provision states that civil and criminal penalty provisions shall incorporate penalties no less stringent than those set forth in Section 518 of the Act, and shall contain the same or similar procedural requirements. OSM suspended 30 CFR 732.15(b)(7) and 840.13(a) insofar as they require State programs to establish a point system for assessing civil penalties or to impose civil penalties as stringent as those appearing in 30 CFR 845.15 (August 4, 1980) (45 FR 51548). Hence, if the State program requires consideration of the four mandatory statutory criteria—history of previous violations, seriousness, negligence, and good faith in attempting to achieve compliance—when determining whether to assess a penalty and in determining the penalty amount, the program meets the Federal requirements. 30 CFR Part 846 covers the assessment of individual civil penalties and is the basis for State regulations.

We find that Montana's procedure for calculating penalties incorporates criteria consistent with the four criteria of Section 518(a) of SMCRA. Additionally, we find that ARM 17.4.303 is consistent with 82–4–1001, MCA, and that both of these provisions provide for civil penalties in accordance with Section 518 of the Act. Therefore, we approve the additions to ARM 17.4.303.

18. Montana proposed revisions to ARM 17.4.304, for adjusted base penalty.

(1) As provided in this rule, the [D]epartment may consider circumstances, good faith and cooperation, and amounts voluntarily expended to calculate an adjusted base penalty. Circumstances may be used to increase the base penalty. Good faith and cooperation and amounts voluntarily expended may be used to decrease the base penalty. The amount of adjustment for each of the above factors is based upon a percentage of the base penalty. The amount of the adjustment is added to the base penalty to obtain an adjusted base penalty.

(2) The [D]epartment may increase a base penalty by up to 30 percent based upon the circumstances of the violation. To determine the penalty adjustment based upon circumstances, the [D]epartment shall evaluate a violator's culpability associated with the violation. In determining the amount of increase for circumstances, the [D]epartment's consideration must include, but not be limited to, the following factors:

(a) How much control the violator had over the violation;

(b) The foreseeability of the violation;

(c) Whether the violator took reasonable precautions to prevent the violation;

(d) The foreseeability of the impacts associated with the violation; and

(e) Whether the violator knew or should have known of the requirement that was violated.

(3) The [D]epartment may decrease a base penalty by up to 10 percent based upon the violator's good faith and cooperation. In determining the amount of decrease for good faith and cooperation, the department's consideration must include, but not be limited to, the following factors:

(a) The violator's promptness in reporting and correcting the violation, and in mitigating the impacts of the violation;

(b) The extent of the violator's voluntary and full disclosure of the facts related to the violation; and

(c) The extent of the violator's assistance in the [D]epartment's investigation and analysis of the violation.

(4) The [D]epartment may decrease a base penalty by up to 10% based upon the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or the impacts of the violation. The amount of a decrease is not required to match the amounts voluntarily expended. In determining the amount of decrease for amounts voluntarily expended, beyond what is required by law or order, the [D]epartment's consideration must include, but not be limited to, the following factors:

(a) Expenditures for resources, including personnel and equipment, to promptly mitigate the violation or impacts of the violation;

(b) Expenditures of resources to prevent a recurrence of the violation or to eliminate the cause or source of the violation; and

(c) Revenue lost by the violator due to a cessation or reduction in operations that is necessary to mitigate the violation or the impacts of the violation.

This proposed rule implements 82–4–1001, MCA (discussed above), and sets out procedures for adjusting the base penalty based upon a consideration of the three statutory factors of ''circumstances,'' ''good faith and cooperation,'' and ''amounts voluntarily expended.''

The rule provides for an increase to the base penalty by up to 30 percent based upon the circumstances of the violation. In determining the adjustment for circumstances, the rule requires a consideration of factors that reflect the culpability of the violator. As discussed in Paragraph 15 above, circumstances directly relate to the negligence or culpability of the violator. Under both State and Federal regulations, a more negligent violator will receive a higher penalty. Therefore, we find that the

consideration of ''circumstances'' in Section (2) is consistent with the consideration of ''negligence'' in Section 518(a) of the Act.

The rule provides for a decrease to the base penalty up to 10 percent based upon a consideration of certain factors that reflect the good faith and cooperation of a violator, and a decrease to the base penalty up to 10 percent based upon certain voluntary expenditures. Good faith and cooperation relate to a violator's willingness to abate the violation, and measures employed to abate the violation in the timeliest manner possible, with the least amount of environmental harm possible. If a person has a high degree of good faith and cooperation, the Department will calculate a lower penalty. This is in accordance with SMCRA Section 518(a) dealing with ''good faith'' in attempting to achieve compliance. We approve ARM 17.4.304.

19. Montana proposed adding a new section 82–4–1002, MCA, covering collection of penalties, fees, late fees, and interest as follows:

(1) If the [D]epartment of [E]nvironmental [Q]uality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of this chapter, the [D]epartment of [E]nvironmental [Q]uality may assign the debt to a collection service or transfer the debt to the [D]epartment of [R]evenue pursuant to Title 17, chapter 4, part 1.

(2)(a) The reasonable collection costs of a collection service, if approved by the [D]epartment of [E]nvironmental [Q]uality, or assistance costs charged the [D]epartment of [E]nvironmental [Q]uality by the [D]epartment of [R]evenue pursuant to 17–4–103(3) may be added to the debt for which collection is being sought.

(b)(i) All money collected by the [D]epartment of [R]evenue is subject to the provisions of 17–4–106.

(ii) All money collected by a collection service must be paid to the [D]epartment of [E]nvironmental [Q]uality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the [D]epartment.

The purpose of this new section is to assist the Department in the collection of penalties. There is no Federal counterpart to this section. We are approving the proposed changes, finding that they add specificity to the Montana program and are not inconsistent with SMCRA or the Federal regulations.

In various provisions mentioned above, Montana proposes changes to paragraph numbering where provisions are proposed to be added, deleted, or provide clarity. Montana also proposes editorial revisions not specified above. Because such changes and revisions are minor and do not alter the meanings of the respective provisions, we approve them.

Montana proposes changes and additions to other regulations implementing changes to the MCA that are discussed above. The proposed regulation changes to implement 82–4–254, 1000, 1001, and 1002, MCA deal with civil penalty assessments and procedures for collection, waivers, and conferences related to penalty assessments. Montana proposes regulations that track the Federal regulations in 30 CFR 845. Normally, OSM would review these regulations for consistency with the counterpart Federal regulations. However, the Federal regulations at 30 CFR 845.12 through .15 have been suspended insofar as they require State programs to establish a point system for assessing or imposing civil penalties as stringent as those appearing in 30 CFR 845.15. Section 518(i) of SMCRA only requires the incorporation of penalties and procedures explicated in Section 518 of the Act. The system proposed by the State must incorporate the four criteria of Section 518(a) (August 4, 1980) (45 FR 51548). As previously stated, Montana proposes changes to provisions for waivers, procedures, conferences, hearings and payment. The counterpart Federal provisions at 30 CFR 845.16 through .20 have not been suspended. Therefore, Montana's provisions for these subjects are evaluated below for consistency with the Federal provisions.

20. Montana has proposed new rules at ARM 17.4.301, ARM 17.4.302, and ARM 17.4.305 through ARM 17.4.308 (as discussed in the findings that follow) to implement 82–4–1001, MCA and set out the details of how the statutory penalty factors will be used in the penalty calculation process. 82–4–1001, MCA is discussed and approved above. Specifically, Montana proposed new subchapter ARM 17.4.301:

(1)(a) Through (d) which implements 82–4–1001, MCA, and provides factors for calculating penalties assessed under several titles including Title 82, chapter 4, parts 1, 2, 3, and 4, MCA, insofar as they relate to reclamation requirements.

(2) The purpose of the penalty calculation process is to calculate a penalty that is commensurate with the severity of the violation, that provides an adequate deterrent, and that captures the economic benefit of noncompliance. The [D]epartment shall provide a copy of the penalty calculation to the alleged violator.

(3) The [D]epartment may not assess a penalty that exceeds the maximum penalty amount authorized by the statutes listed in (1).

Proposed ARM 17.4.301(2) describes the overall purpose of penalties relating to severity of the violation, adequate deterrent, and the principle that economic benefit of noncompliance is a consideration. Proposed ARM 17.4.301(3) states that the [D]epartment may not assess a penalty that exceeds the maximum penalty amount authorized by the statutes listed in subparagraph (1). The objectives for civil penalties are described in 30 CFR 845.2. Civil penalties are assessed under Section 518 of SMCRA which is intended to deter violations and ensure maximum compliance with the terms and purposes of the Act. There is no requirement for a State to incorporate counterparts to the Federal provisions describing scope and objectives. However, introductory regulations such as Montana's overall purpose states in ARM 17.4.301(2) do not conflict with purposes and objectives in SMCRA or the Federal regulations. ARM 17.4.301(3) states that penalties cannot exceed maximum authorized penalty amounts. For the reasons discussed above, we find subparagraphs (2) and (3) to be reasonable and not in conflict with Section 518 of SMCRA or 30 CFR part 845 and we approve them.

21. Montana proposed new subchapter ARM 17.4.302, Definitions. Montana adds definitions for terms used throughout its regulations and statutes. In its submittal, Montana explains that the definitions are necessary to clarify the meaning of the rules and achieve consistent and fair penalty calculations. The definitions are:

(1) ''Circumstances'' means a violator's culpability associated with a violation.

(2) ''Continuing violation'' means a violation that involves an ongoing unlawful activity or an ongoing failure to comply with a statutory or regulatory requirement.

(3) ''Extent'' of the violation means the violator's degree of deviation from the applicable statute, rule or permit.

(4) ''Gravity'' of the violation means the degree of harm, or potential for harm, to human health or the environment, or the degree of adverse effect on the [D]epartment's administration of the statute and rules.

(5) ''History of violation'' means the violator's prior history of any violation, which:

(a) Must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(b) Must be documented in an administrative order or a judicial order or judgment issued within three years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(c) May not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review.

(6) ''Nature'' means the classification of a violation as one that harms or has the potential to harm human health or the environment or as one that adversely affects the department's administration of the statute and rules.

These regulatory definitions define terms used in Montana's statutes which we approved in Paragraph 15 above. We find these definitions to be reasonable and consistent with their use within the Montana program and statutes. OSM is approving the additions noted above under ARM 17.4.302, Definitions.

22. Montana proposed the following revisions to ARM 17.4.305, Total Adjusted Penalty—Days of Violation:

(1) The [D]epartment may consider each day of each violation as a separate violation subject to penalties. The [D]epartment may multiply the adjusted base penalty calculated under [NEW RULE IV] by the number of days of violation to obtain a total adjusted penalty.

(2) For continuing violations, if the application of (1) results in a penalty that is higher than the department believes is necessary to provide an adequate deterrent; the [D]epartment may reduce the number of days of violation.

Montana represents in its submittal that the environmental laws provide the Department with discretion whether and how to bring enforcement actions, and that most of the laws state that each day of violation constitutes a separate violation. Montana goes on to explain that this rule clarifies that the Department may limit the number of days for which it assesses penalties if an assessment for the full number of violation days would result in a penalty that is higher than the Department believes is necessary to provide an adequate deterrent. Lastly, Montana states that, under this rule, the adjusted base penalty calculated under ARM 17.4.304 (as discussed in Paragraph 18 above) is multiplied by the appropriate number of days to arrive at a total adjusted penalty.

30 CFR 845.16(a) provides that ''[t]he Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or cessation order, may waive the use of the formula contained in 30 CFR 845.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.''

Montana's proposed rule at ARM 17.4.305 provides discretion similar to and consistent with that allowed in 30 CFR 845.16(a) to adjust penalties on a case by case basis to ensure a fair and just penalty. For this reason, OSM is approving the proposed revision.

23. Montana proposed revisions to ARM 17.4.306, Total Penalty, History of Violation and Economic Benefit, as follows:

(1) As provided in this rule, the [D]epartment may increase the total adjusted penalty based upon the violator's history of violation. Any penalty increases for history of violation must be added to the total adjusted penalty calculated under ARM 17.4.305 to obtain a total penalty.

(2) The [D]epartment may calculate a separate increase for each historic violation. The amount of the increase must be calculated by multiplying the base penalty calculated under ARM 17.4.303 by the appropriate percentage from (3). This amount must then be added to the total adjusted penalty calculated under ARM 17.4.305.

(3) The [D]epartment shall determine the nature of each historic violation in accordance with ARM 17.4.302(6). The [D]epartment may increase the total adjusted penalty for history of violation using the following percentages:

(a) for each historic violation that, under these rules, would be classified as harming or having the potential to harm human health or the environment, the penalty increase must be 10% of the base penalty calculated under (ARM 17.4.303); and

(b) for each historic violation that, under these rules, would be classified as adversely impacting the [D]epartment's administration of the applicable statute or rules, but not harming or having the potential to harm human health or the environment, the penalty increase must be 5% of the base penalty calculated under ARM 17.4.303.

(4) If a violator has multiple historic violations and one new violation, for which a penalty is being calculated under these rules, the percentages from (3) for each historic violation must be added together. This composite percentage may not exceed 30%. The composite percentage must then be multiplied by the base penalty for the new violation to determine the amount of the increase. The increase must be added to the total adjusted penalty for the new violation calculated under ARM 17.4.305.

(5) If a violator has one historic violation and multiple new violations, each with a separate penalty calculation under these rules, the base penalties for the new violations calculated under ARM 17.4.303 must be added together. This composite base penalty must then be multiplied by the percentage from (3) for the historic violation to determine the amount of the increase. The increase must then be added to the sum of the total adjusted penalties calculated for each new violation under ARM 17.4.305.

(6) If a violator has multiple historic violations and multiple new violations, for which a separate penalty is being calculated under these rules, the percentages from (3) for each historic violation must be added together, not to exceed 30%, and the base penalties for each new violation calculated under ARM 17.4.303 must be added together. The composite base penalties must be multiplied by the composite percentage to determine the amount of the increase. The increase must be added to the sum of the total adjusted penalties calculated for each violation under ARM 17.4.305.

In its submittal, Montana states that new ARM 17.4.306 sets out procedures for increasing the total adjusted penalty calculated under ARM 17.4.305 (discussed in Paragraph 22 above), based on certain qualifying prior violations, and clarifies how the Department will calculate the adjustment for prior violations. The definitions of what constitutes a qualifying prior violation are set out in newly-proposed and approved 82–4–1001(1)(c), MCA and ARM 17.4.302(5), respectively. Montana further explains that, under this rule, the total adjusted penalty calculated under ARM 17.4.305 is adjusted for prior violations to arrive at a total penalty.

In approving 82–4–1001, MCA (Paragraph 15) above, OSM found that the Department's consideration of a violator's prior history of certain violations to increase a penalty is in accordance with Section 518 of SMCRA. New ARM 17.4.306 implements 82–4–1001, MCA. For the reasons stated in Paragraph 15 above, we approve it.

24. Montana proposed revisions to ARM 17.4.307, Economic Benefit, as follows:

(1) The [D]epartment may increase the total adjusted penalty, as calculated under ARM 17.4.305, by an amount based upon the violator's economic benefit. The [D]epartment shall base any penalty increase for economic benefit on the [D]epartment's estimate of the costs of compliance, based upon the best information reasonably available at the time it calculates a penalty under these rules. The economic benefit must be added to the total adjusted penalty calculated under ARM 17.4.305 to obtain the total penalty.

This proposed rule implements subsection (1)(d) of 82–4–1001, MCA establishing any economic benefit or savings resulting from the violator's action as a factor for possibly increasing the total adjusted penalty. We are approving proposed ARM 17.4.307 because it implements the provisions of 82–4–1001, MCA, which we approved in Paragraph 15 above.

25. Montana proposed ARM 17.4.308, to allow the Department to consider other matters as ''justice may require'' when determining penalties. The Department may consider such matters to either increase or decrease the total penalty. This rule implements 82–4–1001(1)(g), MCA that we approved above. The Department states that this factor will be used only when, based on particular facts and circumstances, the application of the factors in new rules

ARM 17.4.301 through ARM 17.4.307 would result in an injustice.

Although worded differently, this waiver of the use of the penalty factors in certain circumstances to increase or decrease the total penalty amount is consistent with 30 CFR 845.16 that allows a penalty to be adjusted as appropriate so long as a written explanation is provided for the assessment. Accordingly, we find ARM 17.4.308 to be no less stringent than the Federal requirements at SMCRA Section 518 and consistent with 30 CFR 845.16 and we approve it.

26. Montana proposed revisions to ARM 17.24.1206(2), concerning notices and orders of abatement and cessation orders, including issuance and service. The proposed amendment implements 82–4–254(3)(a), MCA, which requires the Department to issue a Notice of Violation and Penalty Order containing (among other things) findings of fact and conclusions of law that, in the absence of a request for a hearing, becomes a final order of the Department. Therefore, for the same reasons discussed in Paragraph 11 above approving the provisions in 82–4–254(3)(a), MCA, we also approve the changes to ARM 17.24.1206(2).

27. Montana proposed revisions to ARM 17.24.1211(2), (3), and (4) addressing the procedure for assessment and waiver of civil penalties. These changes implement changes to the statute at 82–4–254, MCA, discussed in Paragraph 11 above, which we are approving. The proposed amendment to subparagraph (2) replaces the term ''proposed penalty'' with ''penalty order.'' Additionally, the time within which a person charged with a violation can request a contested case hearing is changed from 20 to 30 days to be consistent with the time allowed under 82–4–254, MCA. This proposed change is consistent with Federal regulations at 30 CFR 845.19(a), which allow a person 30 days from the date the proposed assessment or reassessment is received to request a hearing. The proposed amendment further provides that the person charged with a violation may enter into settlement negotiations with the Department prior to the notice and order being finalized (rather than prior to the Department's issuance of findings of fact, conclusions of law and order). Also in ARM 17.24.1211(2), the notice and order become final by operation of law if a request for a hearing is not timely received. As discussed above, this change is consistent with 82–4–254, MCA, and with Federal regulations at 30 CFR 845.20(a) which states ''[i]f the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in § 845.19, the proposed assessment shall become a final order * * *.''

Lastly, the proposed amendment to subparagraph (2) deletes the requirement that the Department issue findings of fact, conclusions of law and order either after the hearing or after the period of requesting a hearing has expired. This is so because, as previously discussed, the Department will now include findings of fact and conclusions of law in the Notice of Violation and Penalty Order. OSM is approving these changes to ARM 17.24.1211(2), finding that the additions and deletions are consistent with 30 CFR 845.19(a) concerning requests for hearings and 30 CFR 845.20 pertaining to final assessment and payment of penalties.

Montana's proposed amendment to ARM 17.24.1211(2) also requires the Department to serve a notice of violation within 90 days after issuance of the notice of noncompliance. The Federal regulations at 30 CFR 843.14 require the notice to be served on the person to whom it is directed or their designated agent ''promptly after issuance.'' Montana's current regulation requires service within 30 days following issuance of the notice of noncompliance. Montana states that in practice, 30 days has proven to be an insufficient amount of time within which to issue a notice of violation. This is due to the fact that an alleged violator is afforded an opportunity to submit a statement of mitigating circumstances regarding the occurrence of the violation and the assessment of the proposed penalty. The Department then reviews and responds in writing to the statement of mitigating circumstances. This process usually takes more than 30 days. The purpose of this new requirement is to provide notice of the violations as soon as possible. Under Montana's proposal, given the fact that the violator has an opportunity to submit a statement of mitigating circumstances, the operator does have such ''notice.'' Therefore, the violator does not suffer any prejudice by being issued the notice of violation 90 days after the notice of noncompliance is issued. For these reasons, we accept Montana's explanation for allowing 90 days to serve the notice of violation and find it to be consistent with the requirements of 30 CFR 843.14. We approve the change.

Montana's proposed amendment to ARM 17.24.1211(3) provides that penalties are to be calculated pursuant to new 82–4–1001, MCA, which establishes new factors for penalties that are applicable to all environmental programs administered by the Department. We are approving the new 82–4–1001, MCA in Paragraph 15 above. As a consequence, existing ARM 17.24.1212(3), Point System for Civil Penalties and Waivers, is being repealed because its method of penalty calculation is inconsistent with 82–4–1001, MCA.

For the above reasons, OSM approves the revisions to ARM 17.24.1211(3) finding that the revisions and the proposed civil penalty assessment procedure are in accordance with Section 518(i) of SMCRA, which requires State programs to incorporate penalties no less stringent than those set forth in SMCRA.

In ARM 17.24.1211(4), Montana proposes waiver provisions for minor violations. Under these proposals, decisions to waive a penalty for a violation must be based on whether the violation presents potential harm to public health, public safety, or the environment, or impairs the Department's administration of the Strip and Underground Mine Reclamation Act. Provisions for the waiver of use of the formula to determine civil penalty are found at 30 CFR 845.16 and state that, if the Director finds that exceptional factors present in a case demonstrate that the penalty is demonstrably unjust, he may waive the use of the formula for calculating penalties. Montana's provision would allow the penalty to be completely waived, while the Federal provision allows the method of calculating the penalty to be waived, which could result in a penalty being waived. Both provisions are based on a determination that the penalty is demonstrably unjust. Accordingly, OSM finds the waiver provision in revised ARM 17.24.1211(4) to be consistent with the Federal provision at 30 CFR 845.16 and we approve it.

IV. Summary and Disposition of Comments

Public Comments

One comment letter was received from an individual, dated December 28, 2006 (Administrative Record No. MT–24–7) commenting on SAT–026–FOR. The commenter's overall concern is that with recent amendments, Montana has softened its required enforcement so that it is no longer timely. Specifically, the commenter stated that Montana has no requirements for the Federal regulations at 30 CFR 843.12(b) and for Section 521(a)(4) of SMCRA. As discussed below, Montana has existing provisions that are consistent with 30 CFR 843.12(b) and in accordance with

Section 521(a)(4) of SMCRA. Nonetheless, Montana's provisions are not being changed in this amendment, and therefore are not subject to comment or revision at this time.

30 CFR 843.12(b) requires that notices of violation describe the nature of the violation, the remedial action required, the time for abatement, and a description of the area of the permit to which it applies. Montana's statute at MCA 82–4–251(2) requires that, ''When, on the basis of an inspection, the [D]epartment determines that any permittee is in violation of any requirement of this part or any permit condition required by this part that does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and environmental harm to land, air, or water resources, the director or an authorized representative shall issue a notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation * * *.''

Section 521(a)(4) of SMCRA requires reviews of violations to determine whether a pattern exists which can lead to suspension or revocation of the permit. Montana has consistent provisions in its statutes at 82–4–251(3), MCA and its regulations at ARM 17.24.1213.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and Section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record Nos. MT–23–3 and MT–24–3). We received comments from two Federal Agencies.

In its December 12, 2006, letter commenting on SATS MT–027–FOR, the United States Geological Survey said it had ''no comments'' (Administrative Record No. MT–24–4). In its December 6, 2006 letter, the Bureau of Indian Affairs (BIA) said it had ''no objections'' (Administrative Record No. MT–24–5) for SATS MT–027–FOR. In its February 7, 2006, letter on SATS MT–026–FOR (Administrative Record No. MT–23–4), BIA said that it did not recognize any deficiencies but commented on some wording in Section 7 of 82–4–226, MCA pertaining to prospecting for which no prospecting permit is required. Specifically, BIA stated that the first sentence in Section 7 is difficult to understand. In response, we note that Section 7 was previously approved by OSM and is not being changed as part of these amendments. Therefore, it is not under consideration. 82–4–226, MCA establishes requirements for prospecting permits, but only Section (3) is being changed in this amendment by eliminating the application fee (see Paragraph 4 above).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clear Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of Montana's proposed revisions pertains to air or water quality standards. Therefore we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 30, 2006, we requested comments on Montana's amendment (Administrative Record No. MT–24–3), but neither responded to our request.

V. Director's Decision

Based on the above findings, the Director approves Montana's proposed amendments as submitted on January 18 and November 6, 2006, respectively.

The Director approves, as discussed in III, OSM's Findings, amendments to MCA 82–4–206, Procedure for contested case hearings; MCA 82–4–223, Permit fee and surety bond; MCA 82–4–225, Application for increase or reduction in permit area; MCA 82–4–226, Prospecting permit; MCA 82–4–227, Refusal of permit; MCA 82–4–231, Submission of and action on reclamation plan; MCA 82–4–232, Area mining required—bond—alternative plan; MCA 82–4–233, Planting of vegetation following grading of disturbed area; MCA 82–4–235, Determination of successful reclamation—final bond release; MCA 82–4–251, Noncompliance—suspension of permits; MCA 82–4–254, Violation—penalty—waiver; MCA 82–4–1001, Penalty factors; and MCA 82–4–1002, Collection of penalties, fees, late fees, and interest; ARM 17.4.301 Purpose; ARM 17.4.302 Definitions; 17.4.303 Base Penalty; ARM 17.4.304 Adjusted Base Penalty—Circumstances, Good Faith and Cooperation, Amounts Voluntarily Expended; ARM 17.4.305 Total Adjusted Penalty—Days of Violation: ARM 17.4.306 Total Penalty—History of Violation, Economic Benefit; ARM 17.4.307 Economic Benefit; ARM 17.4.308 Other Matters as Justice may Require; ARM 17.24.1206 Notices, Orders of Abatement and Cessation Orders: Issuance and Service; ARM 17.24.1211 Procedure for Assessment and Waiver of Civil Penalties; ARM 17.24.1212 Point System for Civil Penalties and Waivers; ARM 17.24.1218 Individual Civil Penalties: Amount; ARM 17.24.1219 Individual Civil Penalties: Procedure for Assessment; and ARM 17.24.1220 Individual Civil Penalties: Payment.

The Federal regulations at 30 CFR Part 926, codifying decisions concerning the Montana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on any Tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The State of Montana, under a Memorandum of Understanding with the Secretary of the Interior (the validity of which was upheld by the U.S. District Court for the District of Columbia), does have the authority to apply the provisions of the Montana regulatory program to mining of some coal minerals held in trust for the Crow Tribe. This proposed program amendment does not alter or address the terms of the MOU.

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule approves the provision of the state submittal which applies only in the state of Montana.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal applies only in the state of Montana and will have limited economic affect.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the rule approves the state submittal and does not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 2, 2008.

Billie E. Clark,

Acting Director, Western Region.

■ For the reasons set out in the preamble, Title 30, Chapter VII Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	*	* * * *
1/18/2006	May 14, 2008 ...	Montana Code Annotated (MCA) 82–4–206; 82–4–223; 82–4–225; 82–4–226; 82–4–227; 82–4–231; 82–4–232; 82–4–233; 82–4–235; 82–4–251; 82–4–254; 82–4–1001; 82–4–1002.
11/6/2006	May 14, 2008 ...	Administrative Record of Montana (ARM) 17.4.301; 17.4.302; 17.4.303; 17.4.304; 17.4.305; 17.4.306; 17.4.307; 17.4.308; 17.24.1206; 17.24.1211; 17.24.1212; 17.24.1218; 17.24.1219; 17.24.1220.

[FR Doc. E8–10743 Filed 5–13–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0258]

Drawbridge Operation Regulations; Charles River, Boston, MA, Larry Kessler 5K Run

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Craigie Bridge across the Charles River at mile 1.0, at Boston, Massachusetts. Under this temporary deviation the bridge may remain in the closed position for one hour during a public event, the 2008 Larry Kessler 5K Run. This deviation is necessary to facilitate public safety during a public event.

DATES: This deviation is effective from 10:45 a.m. through 11:45 a.m., on June 1, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0258 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Craigie Bridge, across the Charles River at mile 1.0, at Boston, Massachusetts, has a vertical clearance in the closed position of 13.5 feet at normal pool elevation above the Charles River Dam. The existing drawbridge operation regulation is listed at 33 CFR 117.591(e).

The waterway is predominantly a recreational waterway supporting various size vessels. The facilities were notified regarding this closure and no objections were received.

The owner of the bridge, the Department of Conservation and Recreation (DCR), requested a temporary deviation to facilitate public safety during a public event, the 2008 Larry Kessler 5K Run.

Under this temporary deviation, in effect from 10:45 a.m. through 11:45 a.m. on June 1, 2008, the Craigie Bridge at mile 1.0, across the Charles River at Boston, Massachusetts, may remain in the closed position.

Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 6, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–10709 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0319]

Drawbridge Operation Regulations; Charles River, Boston, MA, Fourth of July Fireworks Celebration

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Craigie Bridge across the Charles River at mile 1.0, at Boston, Massachusetts. Under this temporary deviation the bridge may remain in the closed position for two hours to facilitate a public event, the Boston Fourth of July Fireworks Celebration. This deviation is necessary to facilitate public safety during a public event.

DATES: This deviation is effective from 11 p.m. on July 4, 2008 through 1 a.m. on July 5, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0319 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Craigie Bridge, across the Charles River at mile 1.0, at Boston, Massachusetts, has a vertical clearance in the closed position of 13.5 feet at normal pool elevation above the Charles River Dam. The existing drawbridge operation regulation is listed at 33 CFR 117.591(e).

The waterway is predominantly a recreational waterway supporting various size vessels. The facilities were notified regarding this closure and no objections were received.

The owner of the bridge, the Department of Conservation and Recreation (DCR), requested a temporary deviation to facilitate public safety during a public event, the Boston Fourth of July Celebration.

Under this temporary deviation, in effect from 11 p.m. on July 4, 2008 through 1 a.m. on July 5, 2008, the Craigie Bridge at mile 1.0, across the Charles River at Boston, Massachusetts, may remain in the closed position.

Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 6, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–10708 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0284, Formerly COTP San Juan 05–007]

RIN 1625–AA87

Security Zone: HOVENSA Refinery, St. Croix, United States Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing a final rule for a security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U.S. Virgin Islands, which makes a slight change to the current boundary established by an interim rule. The security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts. This rule excludes entry into the security zone by all vessels without permission of the U.S. Coast Guard Captain San Juan (COTP) or a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

DATES: This rule is effective June 13, 2008.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket Docket No. USCG–2008–0284 (formerly COTP San Juan 05–007), and are available online at *http://www.regulations.gov*. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday thru Friday, except Federal holidays and at Sector San Juan Prevention Operations Department in San Juan, Puerto Rico, between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule call Lieutenant A. M. Schmidt of Sector San Juan, Prevention Operations Department at (787) 289–2086. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 10, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone: HOVENSA Refinery, St. Croix, United States Virgin Islands'' in the **Federal Register** (70 FR 7065). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

On August 6, 2007, we published an interim rule (IR) with request for comments entitled ''Security Zone: HOVENSA Refinery, St. Croix, United States Virgin Islands'' in the **Federal Register** (72 FR 43535). We received no letters commenting on the interim rule. No public meeting was requested, and none was held.

Background and Purpose

Before the IR we published in August, the Coast Guard published similar temporary security zones in the **Federal Register** at 67 FR 2332, January 17, 2002; 67 FR 57952, September 13, 2002; 68 FR 22296, April 28, 2003; 68 FR 41081, July 10, 2003; 69 FR 6150, February 10, 2004; 69 FR 29232, May 21, 2004; and 70 FR 2950, January 19, 2005. Given the highly volatile nature of the substances handled at the HOVENSA facility, the Coast Guard recognizes that it could be a potential terrorist target and there is continuing risk that subversive activity could be launched by vessels or persons in close proximity to the facility. This activity could be directed against tank vessels and the waterfront facility. The COTP is reducing this risk by prohibiting all vessels from entering within approximately two miles of the HOVENSA facility unless they have been specifically authorized by the COTP or have submitted a notice of arrival in accordance with the notice of arrival requirements of 33 CFR part 160, subpart C.

Discussion of Comments and Changes

Although no comments were received on the NPRM, in the preamble of the IR the COTP proposed an amendment to the regulatory text before issuing this final rule. The purpose of the amendment was to clarify the boundaries of the security zone and reduce the potential for misinterpretation. The proposed amendment was published in the aforementioned IR with request for comments in the **Federal Register**. No comments were received, and we have made no changes from the text of the interim rule other than what was specifically proposed in the IR: To change a portion of the description of the security zone in 33 CFR 165.766(a) from ''and returning to the point of origin,'' to ''then tracing the shoreline along the water's edge to the point of origin.'' 72 FR 43535, August 6, 2008.

Discussion of Rule

The security zone includes all waters surrounded by a line connecting the following coordinates: 17°41′31″ N, 064°45′09″ W; 17°39′36″ N, 064°44′12″ W; 17°40′00″ N, 064°43′36″ W; 17°41′48″ N, 064°44′25″ W, and then tracing the shoreline along the water's edge to the point of origin. The security zone includes the waters extending approximately 2 miles seaward of the HOVENSA facility including Limetree Bay Channel and portions of Limetree Bay. All coordinates are based upon North American Datum 1983 (NAD 1983). All vessels without a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C, are prohibited from entering the zone unless specifically authorized by the COTP.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The burden imposed on the public by this rule is minimal and mariners may obtain permission to enter the zone from the COTP or by scheduling an arrival in accordance with the Notice of Arrival requirements of 33 CFR, part 160, subpart C.

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 will not have a significant economic impact on a substantial number of small entities.

Owners of small fishing or charter diving operations that operate near the

HOVENSA facility may be affected by the existence of this security zone.

This rule will not have a significant economic impact on the above-mentioned entities or a substantial number of small entities because this security zone covers an area that is not typically used by commercial fishermen or divers. Additionally, vessels can transit around the zone and may be allowed to enter the zone on a case-by-case basis with the permission of the COTP.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect 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 may 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.770 to read as follows:

§ 165.770 Security Zone: HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Regulated area.* The Coast Guard is establishing a security zone in and around the HOVENSA Refinery on the south coast of St. Croix, U.S. Virgin Islands. This security zone includes all waters from surface to bottom, encompassed by an imaginary line connecting the following points: Point 1

in position 17°41′31″ N, 064°45′09″ W; Point 2 in position 17°39′36″ N, 064°44′12″ W; Point 3 in position 17°40′00″ N, 064°43′36″ W; Point 4 in position 17°41′48″ N, 064°44′25″ W; then tracing the shoreline along the water's edge to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 1983).

(b) *Regulations.* (1) Under § 165.33, entry into or remaining within the regulated area in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port San Juan or vessels have a scheduled arrival at HOVENSA, Limetree Bay, St. Croix, in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

(2) Persons and vessels desiring to transit the Regulated Area may contact the U.S. Coast Guard Captain of the Port San Juan at telephone number 787–289–2041 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port.

Dated: April 30, 2008.

R.R. Rodriguez,

Commander, U.S. Coast Guard, Acting Captain of the Port San Juan.

[FR Doc. E8–10697 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 8

[Docket ID ED–2007–OS–0138]

Demands for Testimony or Records in Legal Proceedings

AGENCY: Office of the Secretary, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations regarding the production of information pursuant to demands in judicial or administrative proceedings. The changes are intended to promote consistency in the Department's assertion of privileges and objections, and thereby prevent harm that may result from inappropriate disclosure of confidential information or inappropriate allocation of agency resources. These changes apply only where employees are subpoenaed in litigation to which the agency is not a party. Former Department employees are expressly required to seek the Secretary's approval prior to responding to subpoenas that seek non-public materials and information acquired during their employment at the Department.

DATES: These regulations are effective June 13, 2008.

FOR FURTHER INFORMATION CONTACT: Christine M. Rose, U.S. Department of Education, 400 Maryland Avenue, SW., room 6C122, Washington, DC 20202–2110. Telephone: (202) 401–6700.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On December 26, 2007 the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (72 FR 72976). In the preamble to the NPRM, the Secretary discussed on pages 72976 and 72977 the major changes proposed in that document to clarify the instructions and procedures to be followed by current and former Department employees with respect to the production and disclosure of material or information acquired as a result of performance of the person's official duties or because of the person's official status in response to judicially enforceable subpoenas or demands in judicial or administrative proceedings, except demands from the Congress. These included the following:

- Amending § 8.1 to modify the definition of *employee* to include both current and former employees.
- Amending § 8.3(a)(2) to provide that a demand for testimony or records expressly include a statement of why the release of information would not be contrary to an interest of the Department or the United States.

There are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, two parties submitted comments on the proposed regulations. An analysis of the comments follows.

Comment: One commenter expressed support for the proposed changes.

Discussion: We appreciate this statement of support.

Change: None.

Comment: One commenter requested that we clarify the definition of *employee* in § 8.2 by changing the definition's structure to a listing so that former employees are a specific category under the definition.

Discussion: In the definition of *employee* in § 8.2, we added the words ''or former'' between the words ''current'' and ''employee'' to clarify that the regulations concerning disclosure or production of agency materials or information in judicial or administrative proceedings in response to a judicially enforceable subpoena or demand apply to both current and former employees. We do not believe that a listing, within this definition, would add additional clarity.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM at 72 FR 72977 and 72978.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO

Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 8

Courts, Government employees, Reporting and recordkeeping requirements.

Dated: May 8, 2008.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 8 of title 34 of the Code of Federal Regulations as follows:

PART 8—DEMANDS FOR TESTIMONY OR RECORDS IN LEGAL PROCEEDINGS

■ 1. The authority citation for part 8 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 20 U.S.C. 3474, unless otherwise noted.

§ 8.1 [Amended]

■ 2. The introductory text of § 8.1(a) is amended by removing the words ''if the Department or any departmental employee'' and adding, in their place, the words ''when the Department or any employee of the Department''.

§ 8.2 [Amended]

■ 3. The definition of ''Employee'' in § 8.2 is amended by adding the words ''or former'' between the words ''current'' and ''employee''.

§ 8.3 [Amended]

■ 4. Section 8.3 is amended by:

■ A. In the introductory text of paragraph (a), removing the words ''or former employee,''.

■ B. In paragraph (a)(2), removing the words ''and why the information sought is unavailable by any other means'' and adding, in their place, the words '', why the information sought is unavailable by any other means, and the reason why the release of the information would not be contrary to an interest of the Department or the United States''.

■ C. In paragraph (b), removing the words ''or former employee'' each time they appear.

■ D. In paragraph (b), removing the words ''room 4083, FOB–6,'' and adding, in their place, the words ''room 6E300, Lyndon Baines Johnson Building,''.

■ E. In paragraph (c), removing the words ''or former employee''.

■ F. In paragraph (c), removing the words ''Records Management Branch Chief, Office of Information Resources Management, U.S. Department of Education, 7th and D Streets, SW., ROB–3'' and adding, in their place, the words ''Records Officer, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 9161, PCP''.

[FR Doc. E8–10775 Filed 5–13–08; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0097; FRL–8364–6]

Tebuconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tebuconazole in or on wheat, barley, and tree nuts. Bayer CropScience LP requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 14, 2008. Objections and requests for hearings must be received on or before July 14, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0097. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tracy Keigwin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6605; e-mail address: *keigwin.tracy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any

aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0097 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before July 14, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2005–0097, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of May 18, 2005 (70 FR 28257) (FRL–7708–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F4895) by Bayer CropScience LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.474 be amended by establishing tolerances for residues of the fungicide tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, in or on food commodities nut, tree, group 14 at 0.05 ppm; almond, hulls at 5.0 ppm; pistachio at 0.05 ppm; barley, hay at 6.0 ppm; barley, straw at 1.4 ppm; wheat, forage at 3.0 ppm; wheat, hay at 6.0 ppm; wheat, straw at 1.4 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience LP, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the proposed tolerances as follows: Almond, hulls at 6.0 ppm; barley, grain at 0.15 ppm, barley, hay at 7.0 ppm; barley, straw at 3.5 ppm; wheat grain at 0.05 ppm, wheat, hay at 7.0 ppm; wheat, straw at 1.5 ppm; and a separate pistachio tolerance is not needed. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of tebuconazole. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Tebuconazole has low acute toxicity by the oral or dermal route of exposure, and moderate toxicity by the inhalation route. It is not a dermal sensitizer or a dermal irritant; however, it is slightly to mildly irritating to the eye. The main target organs are the liver, the adrenals, the hematopoetic system and the nervous system. Effects on these target organs were seen in both rodent and non-rodent species. In addition, ocular lesions are seen in dogs (including lenticular degeneration and increased cataract formation) following subchronic or chronic exposure.

Oral administration of tebuconazole caused developmental toxicity in all species evaluated (rat, rabbit, and mouse), with the most prominent effects seen in the developing nervous system. In the available toxicity studies on tebuconazole, there was no toxicologically significant evidence of endocrine disruptor effects. Tebuconazole was classified as a Group C - possible human carcinogen, based on an increase in the incidence of hepatocellular adenomas, carcinomas and combined adenomas/carcinomas in male and female mice. Submitted mutagenicity studies did not demonstrate any evidence of mutagenic potential for tebuconazole. Tebuconazole shares common metabolites with other triazole-derivative chemicals, including free triazole (1,2,4-triazole) and triazole-conjugated plant metabolites (such as triazole alanine). These common metabolites have been the subject of separate risk assessments.

Specific information on the studies received and the nature of the adverse effects caused by tebuconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document entitled *Tebuconazole: Human Health Risk Assessment to support tolerances in/on Asparagus, Barley, Beans, Beets, Brassica leafy greens, Bulb Vegetables, Coffee (import), Commercial Ornamentals, Corn, Cotton, Cucurbits, Hops, Lychee, Mango, Okra, Pome fruit, Soybean, Stone fruit, Sunflower, Tree Nut Crop Group, Turf, Turnips and Wheat*, pages 79–107 in docket ID number EPA–HQ–OPP–2005-0097.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure

(POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for tebuconazole used for human risk assessment is shown in Table 1 of this unit.

TABLE 1. — SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TEBUCONAZOLE FOR USE IN DIETARY AND NON-OCCUPATIONAL HUMAN HEALTH RISK ASSESSMENTS

Exposure/Scenario	Point of Departure	Uncertainty/FQPA Safety Factors	RfD, PAD, Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (General Population, including Infants and Children)	LOAEL = 8.8 mg/kg/day UF = 300	UF_A= 10x UF_H=10x FQPA(UF_L)= 3x	Acute RfD = 0.029 mg/kg/day aPAD = 0.029 mg/kg/day	Developmental Neurotoxicity Study - Rat. LOAEL = 8.8 mg/kg/day based on decreases in body weights, absolute brain weights, brain measurements and motor activity in offspring.
Chronic Dietary (All Populations)	LOAEL = 8.8 mg/kg/day UF = 300	UF_A= 10x UF_H=10x FQPA(UF_L)= 3x	Chronic RfD = 0.029mg/kg/day cPAD =0.029 mg/kg/day	Developmental Neurotoxicity Study - Rat. LOAEL = 8.8 mg/kg/day based on decreases in body weights, absolute brain weights, brain measurements and motor activity in offspring.
Incidental Oral Short-/Intermediate-Term (1-30 days/1-6 months)	LOAEL = 8.8 mg/kg/day UF = 300	UF_A= 10x UF_H=10x FQPA(UF_L)= 3x	Residential LOC for MOE = 300	Developmental Neurotoxicity Study - Rat. LOAEL = 8.8 mg/kg/day based on decreases in body weights, absolute brain weights, brain measurements and motor activity in offspring.
Dermal Short-/Intermediate-Term (1-30 days/1-6 months)	LOAEL = 8.8 mg/kg/day UF = 300	UF_A= 10x UF_H=10x FQPA (UF_L)= 3x DAF = 23.1%	Residential LOC for MOE = 300	Developmental Neurotoxicity Study - Rat. LOAEL = 8.8 mg/kg/day based on decreases in body weights, absolute brain weights, brain measurements and motor activity in offspring.
Inhalation Short-/Intermediate-Term (1-30 days/1-6 months)	LOAEL = 8.8 mg/kg/day UF = 300	UF_A= 10x UF_H=10x FQPA (UF_L)= 3x Inhalation and oral toxicity are assumed to be equivalent	Residential LOC for MOE = 300	Developmental Neurotoxicity Study - Rat. LOAEL = 8.8 mg/kg/day based on decreases in body weights, absolute brain weights, brain measurements and motor activity in offspring.

TABLE 1. — SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TEBUCONAZOLE FOR USE IN DIETARY AND NON-OCCUPATIONAL HUMAN HEALTH RISK ASSESSMENTS—Continued

Exposure/Scenario	Point of Departure	Uncertainty/FQPA Safety Factors	RfD, PAD, Level of Concern for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	Classification: Group C- possible human carcinogen based on statistically significant increase in the incidence of hepatocellular adenoma, carcinoma, and combined adenoma/carcinomas in both sexes of NMRI mice. Considering that there was no evidence of carcinogenicity in rats, there was no evidence of genotoxicity for tebuconazole, and tumors were only seen at a high and excessively toxic dose in mice, EPA concluded that the chronic RfD would be protective of any potential carcinogenic effect. The chronic RfD value is 0.029 mg/kg/day which is approximately 9600 fold lower than the dose that would induce liver tumors (279 mg/kg/day).			

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern. N/A = not applicable. DAF = dermal absorption factor.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to tebuconazole, EPA considered exposure under the petitioned-for tolerances, including other pending petitions, as well as all existing tebuconazole tolerances in (40 CFR 180.474). EPA assessed dietary exposures from tebuconazole in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, anticipated residues for bananas, grapes, raisins, nectarines, peaches and peanut butter were derived using the latest USDA Pesticide Data Program (PDP) monitoring data from 2002- 2006. Anticipated residues for all other registered and proposed food commodities were based on field trial data. For uses associated with PP 7F4895, 100% Crop treated was assumed. DEEM (ver. 7.81) default processing factors were assumed for processed commodities associated with petition 7F4895. For several other uses EPA used percent crop treated (PCT) data as specified in Unit III.C.1.iv.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the same assumptions as stated in Unit III. C.1.i. for acute exposure.

iii. *Cancer*. As explained in Unit III.B., the chronic risk assessment is considered to be protective of any cancer effects; therefore, a separate quantitative cancer dietary risk assessment was not conducted.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.

Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.

Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information for tebuconazole on grapes, grape, raisin, nectarine, oats, peach, and peanuts. The PCT for each crop is as follows: Grapes: 25%; grape, raisin: 25%; nectarine 25%; oats 2.5%; peach: 20%; and peanuts 45%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency used projected percent crop treated (PPCT) information for tebuconazole on cherries (pre-harvest) and cherries (post-harvest). The PCT for each crop is as follows: Cherries, pre-harvest: acute assessment 42%, chronic assessment 37%; Cherries, post-harvest: acute assessment 100%, chronic assessment 66%. EPA estimates PPCT for a new pesticide use by assuming that its actual PCT during the initial five years of use on a specific use site will not exceed the recent PCT of the market leader (i.e., the one with the greatest PCT) on that site. An average market leader PCT, based on three recent surveys of pesticide usage, if available, is used for chronic risk assessment,

while the maximum PCT from the same three recent surveys, if available, is used for acute risk assessment. The average and maximum market leader PCTs may each be based on one or two surveys if three are not available. Comparisons are only made among pesticides of the same pesticide types (i.e., the leading fungicide on the use site is selected for comparison with the new fungicide). The market leader PCTs used to determine the average and the maximum may be each for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year. Typically, EPA uses USDA/NASS as the source for raw PCT data because it is publicly available. When a specific use site is not surveyed by USDA/NASS, EPA uses other sources including proprietary data.

An estimated PPCT, based on the average PCT of the market leaders, is appropriate for use in chronic dietary risk assessment, and an estimated PPCT, based on the maximum PCT of the market leaders, is appropriate for use in acute dietary risk assessment. This method of estimating PPCTs for a new use of a registered pesticide or a new pesticide produces high-end estimates that are unlikely, in most cases, to be exceeded during the initial five years of actual use. Predominant factors that bear on whether the PPCTs could be exceeded may include PCTs of similar chemistries, pests controlled by alternatives, pest prevalence in the market and other factors. All relevant information currently available for predominant factors have been considered for tebuconazole on cherries, resulting in adjustments to the initial estimates for three crops to account for lack of confidence in projections based on less than three observations, old data and/or data based on expert opinion.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis, or conservative estimates based on information from agricultural experts. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which tebuconazole may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for tebuconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of tebuconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of tebuconazole for acute exposures are estimated to be 78.5 parts per billion (ppb) for surface water and 1.56 ppb for ground water. The EDWCs for chronic, non-cancer are estimated to be 44.9 ppb for surface water and 1.56 ppb for ground water. The EDWCs for chronic, cancer exposures are estimated to be 32.3 ppb for surface water and 1.56 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 78.5 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment (which is protective of any possible cancer effects), the water concentration value of 44.9 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Tebuconazole is currently registered for uses that could result in residential exposures. Short-term dermal and inhalation exposures are possible for residential adult handlers mixing, loading, and applying tebuconazole products outdoors to ornamental plants. Short- and intermediate-term dermal postapplication exposures to adults during golfing and children playing on treated wood structures are also possible. Children may also be exposed via the incidental oral route when playing on treated wood structures. Long-term exposure is not expected. As a result, risk assessments have been completed for residential handler scenarios as well as residential postapplication scenarios.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Tebuconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Triazole-derived pesticides can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazole alanine and triazole acetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including tebuconazole, EPA conducted a human health risk assessment for exposure to

1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide as of September 1, 2005. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's September 1, 2005 risk assessment can be found in the propiconazole reregistration docket at *http://www.regulations.gov* (Docket ID EPA–HQ–OPP–2005–0497). An addendum to the risk assessment, *Dietary Exposure Assessments for the Common Triazole Metabolites 1,2,4-triazole, Triazolylalanine, Triazolylacetic Acid and Triazolylypyruvic Acid; Updated to Include New Uses of Fenbuconazole, Ipconazole, Metconazole, Tebuconazole, and Uniconazole* can be found at *http://www.regulations.gov* in docket ID EPA–HQ–OPP–2005–0097.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The toxicity database for tebuconazole is complete, and includes prenatal developmental toxicity studies in three species (mouse, rat, and rabbit), a reproductive toxicity study in rats, acute and subchronic neurotoxicity studies in rats, and a developmental neurotoxicity study in rats. The data from prenatal developmental toxicity studies in mice and a developmental neurotoxicity (DNT) study in rats indicated an increased quantitative and qualitative susceptibility following *in utero* exposure to tebuconazole. The NOAELs/LOAELs for developmental toxicity in the mouse study were found at dose levels less than those that induces maternal toxicity or in the presence of slight maternal toxicity. In the DNT study, the LOAEL at which developmental toxicity was seen was below the NOAEL for maternal animals. No NOAEL was identified for the offspring in this study. There was no indication of increased quantitative susceptibility in the rat and rabbit developmental toxicity studies, the NOAELs for developmental toxicity were comparable to or higher than the NOAELs for maternal toxicity. In all three species, however, there was indication of increased qualitative susceptibility. For most studies, minimal maternal toxicity was seen at the LOAEL (consisting of increases in hematological findings in mice, increased liver weights in rabbits and rats, and decreased body weight gain/food consumption in rats) and did not increase substantially in severity at higher doses; however, there was more concern for the developmental effects at each LOAEL which included increases in runts, increased fetal loss, and malformations in mice, increased skeletal variations in rats, and increased fetal loss and frank malformations in rabbits. Additionally, more severe developmental effects (including frank malformations) were seen at higher doses in mice, rats and rabbits. In the developmental neurotoxicity study, maternal toxicity was seen only at the high dose (decreased body weights, body weight gains, and food consumption, prolonged gestation with mortality, and increased number of dead fetuses), while offspring toxicity (including decreases in body weight, brain weight, brain measurements and functional activities) was seen at all doses.

Available data indicated greater sensitivity of the developing organism to exposure to tebuconazole, with the exception of the effects seen in the DNT study, the degree of concern is low and there are no residual uncertainties because the toxic endpoints in the pre- and post-natal developmental toxicity studies were well characterized with clear NOAELs established and the endpoint used for all risk assessments is protective of the effects seen in these studies.

There is concern with regard to the DNT study because of the failure to achieve a NOAEL in that study. This concern is addressed by a retention of FQPA SF in the form of UF_L of 3X. Reduction of the FQPA safety factor from 10 to 3X is based on a Benchmark Dose (BMD) analysis of the datasets relevant to the adverse offspring effects (decreased body weight and brain weight) seen at the LOAEL in the DNT study. All of the BMDLs (the lower limit of a one-sided 95% confidence interval on the BMD) modeled successfully on statistically significant effects are 1-2X lower than the LOAEL. The results indicate that an extrapolated NOAEL is not likely to be 10X lower than the LOAEL and that use of a FQPA safety factor of 3X would not underestimate risk. Using a 3X FQPA safety factor in the risk assessment (8.8 mg/kg/day ÷ 3x = 2.9 mg/kg/day) is further supported by other studies in the tebuconazole toxicity database (with the lowest NOAELs being 3 and 2.9 mg/kg/day, from a developmental toxicity study in mice and a chronic toxicity study in dogs, respectively [respective LOAELs 10 and 4.5 mg/kg/day]).

3. *Conclusion.* The Agency has determined that reliable data show that it would be safe for infants and children to reduce the FQPA SF to 3x for all potential exposure scenarios. That decision is based on the following findings:

i. The toxicity database for tebuconazole is complete and includes an acceptable rat developmental neurotoxicity study.

ii. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats, mice, and rabbits, and in the 2-generation reproduction study in rats, EPA did not identify any residual uncertainties or concerns with regard to these studies after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of tebuconazole.

iii. A concern was identified with regard to the failure to identify a NOAEL for the development effects found in the DNT study. A FQPA safety factor of 3X was found sufficient to protect infants and children based on the BMD analysis summarized in Unit III.D.2.

iv. There are no residual uncertainties identified in the exposure databases. Although the acute and chronic food exposure assessments are refined, EPA believes that the assessments are based on reliable data and will not underestimate exposure/risk. The drinking water estimates were derived from conservative screening models. The residential exposure assessment utilizes reasonable high-end variables set out in EPA's Occupational/Residential Exposure SOPs (Standard Operating Procedures). The aggregate assessment is based upon reasonable worst-case residential assumptions, and

is also not likely to underestimate exposure/risk to any subpopulation, including those comprised of infants and children.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to tebuconazole will occupy 53% of the aPAD for the population group (all infants less than 1 year old) receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to tebuconazole from food and water will utilize 4% of the cPAD for the U.S. population and 11% of the cPAD for the most highly exposed population group (infants less than 1 year old).

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Tebuconazole is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to tebuconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that the short-term aggregate MOE from dietary exposure (food + drinking water) and non-occupational/residential handler exposure for adults using a hose-end sprayer on ornamentals is 400. The short-term aggregate MOE from dietary exposure and exposure from golfing is 1,800. The short-term aggregate MOE to children from dietary exposure and exposure from wood surfaces treated at the above ground use rate is 530. The short-term aggregate MOE to children from dietary exposure and exposure to wood surfaces treated at the below ground use rate is 230. The combined and aggregate MOEs for wood treated for below ground uses exceed the Agency's LOC of 300, and indicate a potential risk of concern. However, the MOE of 230 is based on the assumption that 100% of a child's exposure is to below ground wood. In reality, the probability and frequency of children contacting wood intended for below ground use is reasonably assumed to be small and incidental compared to wood intended for above ground uses. Treated wood intended for below ground use is the 4 inch X 4 inch support beams for decks and playsets, while treated wood intended for above ground use is the decking and connecting wood. Therefore, the majority of contact is reasonably assumed to be to wood intended for above ground uses. The combined/aggregate MOEs for wood treated for above ground uses does not exceed the LOC, and exposure to above ground wood is expected to more closely represent actual exposures to children. Therefore, the Agency considers this assessment to be a conservative screening level assessment.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Tebuconazole is currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to tebuconazole.

Since the POD, relevant exposure scenarios and exposure assumptions used for intermediate-term aggregate risk assessments are the same as those used for short-term aggregate risk assessments, the short-term aggregate risk assessments represent and are protective of both short- and intermediate-term exposure durations.

5. *Aggregate cancer risk for U.S. population*. Tebuconazole is classified as a Group C Carcinogen-Possible Human Carcinogen based on statistically significant increase in the incidence of hepatocellular adenoma, carcinoma, and combined adenoma/carcinomas in both sexes of NMRI mice. The Agency believes that the chronic RfD is protective of the cancer effects because the increased incidences of hepatocellular adenoma, carcinomas, and combined adenoma/carcinoma were seen only at the highest dose 1,500 ppm (279 mg/kg/day for males and 365.5 mg/kg/day for females) in the mouse carcinogenicity study. The dose was considered excessive. There was no evidence of carcinogenicity in rats, and no evidence of genotoxicity for tebuconazole. The chronic RfD value is 0.029 mg/kg/day which is approximately 9,600 fold lower than the dose that would induce liver tumors (279 mg/kg/day).

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to tebuconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate GC/NPD and LC/MS/MS methods are available for both collecting and enforcing tolerances for tebuconazole and its metabolites in plant commodities, livestock matrices and processing studies. The methods have been adequately validated by an independent laboratory in conjunction with a previous petition. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently Codex, Canadian and Mexican maximum residue limits (MRLs) for residues of tebuconazole in/on a variety of plant and livestock commodities. The tolerance definition for residues in plants is tebuconazole, *per se*, for Codex, Canada, and Mexico. For livestock commodities, the tolerance expression is for the combined residues of tebuconazole and HWG 2061 in the U.S. and Canada, and tebuconazole, *per se*, for Codex. Where possible, the proposed tolerances levels have been harmonized with the MRLs from Canada, Mexico, and Codex

C. Response to Comments

The Agency received a comment from a citizen of New Jersey. The commenter questioned the necessity of using taxpayer money through the agency of the Interregional Research Project No. 4 to develop pesticides, challenged the appropriateness of conducting some of the tebuconazole field trials outside of the United States, expressed concern over whether specific warnings were given to residents of New Jersey prior to conducting field trials in that State, and

worried that students at Rutgers University may have been injured in the tebuconazole toxicological tests on animals that were performed at that facility.

In response, EPA notes that although IR-4 has petitioned for other tebuconazole tolerances it was not a petitioner as to the tolerances being established today. The notice cited by the commenter contained petitions from both IR-4 and a pesticide manufacturer. EPA is only acting today on the petition from the pesticide manufacturer. IR-4 was established by the U.S. Department of Agriculture to help minor acreage, specialty crop producers obtain EPA tolerances and new registered uses of pesticides. As to the commenter's concern with field trials that were conducted in countries other than the United States, the field trials that are referenced do not involve the tolerances being acted on in this rulemaking. EPA notes, however, that frequently field trials are conducted in other countries as well as in the United States so that EPA can understand the range of pesticide residues that may be present on a food. Similarly, the field trial conducted in New Jersey was for a tolerance that is not involved in today's action. EPA's regulations governing use of pesticides under experimental use permits can be found at 40 CFR part 172. EPA also has regulations governing the toxicological data testing laboratories that are designed to insure data quality (40 CFR part 160). Federal jurisdiction concerning the safety of workers in testing laboratories would be under the Occupational Safety and Health Administration in the U.S. Department of Labor. EPA has responded to similar comments from this commenter on previous occasions. Refer to 70 FR 37686 (June 30, 2005), 70 FR 1354 (January 7, 2005), and 69 FR 63083 (October 29, 2004).

D. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA determined that the proposed tolerances should be revised as follows: Almond, hulls increased from 5.0 ppm to 6.0 ppm; barley, hay increased from 6.0 ppm to 7.0 ppm; barley, straw increased from 1.4 ppm to 3.5 ppm; wheat, hay increased from 6.0 to 7.0 ppm; and wheat, straw increased from 1.4 ppm to 1.5 ppm. EPA revised these tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data Standard Operating Procedure (SOP). Additionally, tolerances were not proposed, but are required for barley, grain at 0.15 ppm based on detectable residues using the Agency's Tolerance Spreadsheet and wheat, grain at 0.05 ppm, because tolerances are needed even with residues are non-detectable. Also, a separate tolerance is not needed for pistachios, as they are considered under the nut, tree, group 14.

V. Conclusion

Therefore, tolerances are established for residues of the fungicide tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, in or on food commodities nut, tree, group 14 at 0.05 ppm; almond, hulls at 6.0 ppm; barley, grain at 0.15 ppm; barley, hay at 7.0 ppm; barley, straw at 3.5 ppm; wheat, forage at 3.0 ppm; wheat, grain at 0.05 ppm; wheat, hay at 7.0 ppm; and wheat, straw at 1.5 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 2, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.474 is amended in paragraph (a)(1) in the table by alphabetically adding the commodities Almond, hulls and Nut, tree, group 14 and by revising the following commodities to read as follows:

§ 180.474 Tebuconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	6.0
* * * * *	
Barley, grain	0.15
Barley, hay	7.0
Barley, straw	3.5
* * * * *	
Nut, tree, group 14	0.05
* * * * *	
Wheat, forage	3.0
Wheat, grain	0.05
Wheat, hay	7.0
Wheat, straw	1.5

* * * * *

[FR Doc. E8–10506 Filed 5–13–08; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0149; [FRL–8362–9]

Cyproconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the free and conjugated residues of cyproconazole, α-(4-chlorophenyl)-α-(1-cyclopropylethyl)-1*H*-1,2,4-triazole-1-ethanol in or on aspirated grain fractions; field corn, forage, grain and stover; soybean, seed, forage, hay and oil; wheat, forage, hay, straw, grain, grain, milled by products; fat of cattle, goat, horse and sheep; and meat byproducts (except liver) of cattle, goat, horse and sheep. Additionally, this regulation establishes tolerances for cyproconazole and its metabolite, δ-(4-chlorophenyl)-β,δ-dihydroxy-γ-methyl-1*H*-1,2,4-triazole-1-hexenoic acid in or on milk and for cyproconazole and its metabolite, 2-(4-chlorophenyl)-3-cyclopropyl-1-[1,2,4]triazol-1-yl-butane-2,3-diol in or on liver of cattle, goat, hog, horse, and sheep. Syngenta Crop Protection, Inc., requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective May 14, 2008. Objections and requests for hearings must be received on or before July 14, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0149. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0149 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before July 14, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0149, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of November 22, 2006 (71 FR 67575) (FRL–8089–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7072) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.485 be amended by establishing tolerances for residues of the fungicide cyproconazole, in or on the following commodities: Soybean, seed at 0.05 parts per million (ppm); soybean, forage at 1.0 ppm; soybean, hay at 2.5 ppm; corn, field, grain at 0.02 ppm; corn, field, forage at 0.6 ppm; corn, field, stover at 1.5 ppm; wheat, straw at 1.0 ppm; wheat, grain at 0.05 ppm; wheat, forage at 1.0 ppm; wheat, hay at 1.5 ppm; aspirated grain fractions at 0.6 ppm; cattle, fat at 0.01 ppm; cattle, liver at 0.3 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts (except liver) at 0.01 ppm; milk at 0.01 ppm; goat, fat at 0.01 ppm; goat, liver at 0.3 ppm; goat, meat at 0.01 ppm; goat, meat byproducts (except liver) at 0.01 ppm; hog, fat at 0.01 ppm; hog, liver at 0.3 ppm; hog meat at 0.01 ppm; hog, meat byproducts (except liver) at 0.01 ppm; horse, liver at 0.3 ppm; horse, meat at 0.01 ppm; horse, meat byproducts (except liver) at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, kidney at 0.3 ppm; sheep, meat at 0.01 ppm; and sheep, meat byproducts (except liver) at 0.01 ppm. This notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA concluded that the preferred chemical name for cyproconazole is ''α-(4-chlorophenyl)-α-(1-cyclopropylethyl)-1*H*-1,2,4-triazole-1-ethanol.'' 40 CFR 180.485 is being revised to use this terminology. Also, EPA determined that the time-limited tolerance established for soybean seed under 40 CFR 180.485(b) can be deleted given that a tolerance for soybean seed without time limitation is being established in section (a).

Additionally, EPA has determined that, as a result of the tolerances sought in this petition, a tolerance is needed for the combined free and conjugated residues of cyproconazole α-(4-chlorophenyl)-α-(1-cyclopropylethyl)-1*H*-1,2,4-triazole-1-ethanol and its metabolite [δ-(4-chlorophenyl)-β,δ-dihydroxy-γ-methyl-1*H*-1,2,4-triazole-1-hexenoic acid in or on the commodity: Milk at 0.02 ppm and that tolerances are needed for the combined free and conjugated residues of cyproconazole [α-(4-chlorophenyl)-α-(1-cyclopropylethyl)-1*H*-1,2,4-triazole-1-ethanol and its metabolite [2-(4-chlorophenyl)-3-cyclopropyl-1-[1,2,4]triazol-1-yl-butane-2,3-diol in or on the commodities: Liver of cattle, goat, horse, and sheep at 0.50 ppm and hog liver at 0.01 ppm.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day–26/p30948.htm*.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for-tolerance. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Specific information on the studies received and the nature of the adverse effects caused by cyproconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the docket established by this action, which is described under **ADDRESSES**, and is identified as ''Cyproconazole: Human-Health Risk Assessment for Proposed Uses'' in that docket.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the NOAEL in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the LOAEL is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute

and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day–26/p30948.htm*.

A summary of the toxicological endpoints for cyproconazole used for human risk assessment can be found at *http://www.regulations.gov* in document ''Cyproconazole Human Health Risk Assessment for Proposed Uses on Corn, Soybean and Wheat'' in docket ID number EPA–HQ–OPP–2008–0149.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to cyproconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing cyproconazole tolerances in 40 CFR 180.485. EPA assessed dietary exposures from cyproconazole in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

ii. *Chronic exposure*. In conducting this chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996, or 1998 CSFII. As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

iii. *Cancer*. Cyproconazole has been classified by the Agency as ''Not Likely to be Carcinogenic to Humans''. The decision was based on the weight of evidence that supports a non-genotoxic mitogenic mode of action for cyproconazole. Therefore, a cancer dietary exposure assessment was not performed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for cyproconazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of cyproconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the FQPA Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of cyproconazole for acute exposures are estimated to be 1.14 parts per billion (ppb) for surface water and 0.05 ppb for ground water. The EECs for chronic exposures are estimated to be 0.11 ppb for surface water and 0.05 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Cyproconazole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding for cyproconazole and any other substance. Other than as discussed below for the cyproconazole metabolite 1,2,4-triazole for the purposes of this tolerance action, therefore, EPA has assumed that cyproconazole does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

Cyproconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazole alanine and triazole acetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including cyproconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov* (docket ID EPA–HQ–OPP–2005–0497). An addendum to the risk assessment, ''Dietary Exposure Assessments for the Common Triazole Metabolites 1,2,4-triazole, Triazolylalanine, Triazolylacetic Acid and Triazolyl Pyruvic Acid; Updated to Include New Uses of Fenbuconazole, Ipconazole, Metconazole, Tebuconazole, and Uniconazole'' can be found at *http://www.regulations.gov* in docket ID EPA–HQ–OPP–2008–0149.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the

completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility in the developmental study in rats or in the 2–generation reproduction study in rat. There is no concern for the increased susceptibility in the New Zealand white (NZW) rabbit study since clear NOAELs/LOAELs were established for maternal and developmental toxicities and malformations were observed at doses higher than the dose that produced marginal maternal toxicity. The concern is low for the increased susceptibility in the Chinchilla rabbit study since the incidences of hydrocephaly were low, there was no dose response, high concentration of the vehicle (CMC) used, and the hydrocephaly was not seen at the same doses in the NZW strain of rabbit. Therefore, there is no residual uncertainty for prenatal and/or postnatal toxicity.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for cyproconazole is complete.

ii. There is no indication that cyproconazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats and rabbits, EPA did not identify any residual uncertainties after establishing toxicity endpoints and selecting traditional UFs to be used in the risk assessment of cyproconazole.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% crop treated (CT) and tolerance-level residues. Conservative ground water and surface water modeling estimates were used. There are no residential uses of cyproconazole.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to cyproconazole will occupy 3% of the aPAD for the population group (females 13–49 years old).

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to cyproconazole from food and water will utilize 13% of the cPAD for the population group (children 1 – 2 years old). There are no residential uses for cyproconazole that result in chronic residential exposure to cyproconazole.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cyproconazole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cyproconazole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. Cancer risk is expected to be negligible because EPA concluded that cyproconazole is not likely to be a human carcinogen.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to cyproconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Method AM–0842–0790–0 for determining cyproconazole in plant commodities is an improved version of the current enforcement, which allows for use of either Nitrogen-Phosphorous Detection (NPD) or Mass-Selective Detection (MSD). As this method is superior to the current enforcement method, it will be forwarded to FDA to either replace or supplement the existing tolerance enforcement method for plant commodities. The liguid chromotography with tandem mass spectrometry (LC-MS/MS) method (Syngenta Method RAM 499/01) for determining cyproconazole in livestock commodities has undergone a successful Independent Laboratory Validation (ILV) trial and radiovalidation trial. Therefore, a copy of the method will be forwarded to the Analytical Chemistry Branch for evaluation as an enforcement method. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

As metabolites in liver and in milk need to be included in the tolerance expression, enforcement methods will be required for these residues. Methods have been sent to the Analytical Chemistry Branch for evaluation.

B. International Residue Limits

There are no established or proposed Canadian or Codex maximum residue limits (MRLs) for cyproconazole on food or feed crops. Mexico has established tolerances for cyproconazole at 0.05 ppm in barley and wheat grain, which is equivalent to the recommended U.S. tolerance for wheat grain. Therefore, there are generally no questions about the compatibility of the proposed tolerances with international tolerances. However, EPA notes that Japan has established numerous tolerances for cyproconazole, including MRLs on wheat (0.2 ppm), corn (0.1 ppm), and soybeans (0.05 ppm).

C. Response to Comment

Comments were received on the notice of filing. EPA has responded to similar comments from the commenter on previous occasions. Refer to **Federal Register** cites: 70 FR 37686 (June 30, 2005); 70 FR 1354 (January 7, 2005); and 69 FR 63083 (October 29, 2004).

V. Conclusion

Therefore, the tolerance is established for free and conjugated residues of

cyproconazole, α-(4-chlorophenyl)-α-(1-cyclopropylethyl)-1*H*-1,2,4-triazole-1-ethanol in or on the following commodities at the indicated tolerance levels in parts per million.

Aspirated grain fractions . . . 2.5
Corn, field, forage, . . . 0.60
Corn, field, grain . . . 0.01
Corn, field, stover . . . 1.2
Fat of cattle, goat, horse and sheep. . . 0.01
Meat byproducts (except liver) of cattle, goat, horse and sheep . . .0.01
Soybean, seed . . . 0.05
Soybean, forage . . . 1.0
Soybean hay . . .3.0
Soybean, oil . . . 0.10
Wheat, forage . . . 0.80
Wheat, hay . . . 1.3
Wheat, straw . . . 0.90
Wheat, grain . . . 0.05
Wheat, grain, milled byproducts . . . 0.10

A tolerance is also established for the combined free and conjugated residues of cyproconazole [α-(4-chlorophenyl)-α-(1-cyclopropylethyl)-1*H*-1,2,4-triazole-1-ethanol] and its metabolite [δ-(4-chlorophenyl)-β,δ-dihydroxy-γ-methyl-1*H*-1,2,4-triazole-1-hexenoic acid in or on the following commodity:

Milk. . . 0.02

Also, tolerances are established for the combined free and conjugated residues of cyproconazole α-(4-chlorophenyl)-α-(1-cyclopropylethyl)-1*H*-1,2,4-triazole-1-ethanol and its metabolite [2-(4-chlorophenyl)-3-cyclopropyl-1-[1,2,4]triazol-1-yl-butane-2,3-diol in or on the following commodities:

Liver of cattle, goat, horse, and sheep . . . 0.50
Hog liver . . . 0.01

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 6, 2008.

Deborah McCall,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.485 is amended by revising paragraph (a) and removing the text from paragraph (b) and reserving to read as follows:

§ 180.485 Cyproconazole; tolerances for residues.

(a) *General.* (1) Tolerances are established for the free and conjugated residues of the fungicide cyproconazole, α-(4-chlorophenyl)-α-(1-cyclopropylethyl)-1*H*-1,2,4-triazole-1-ethanol, in or on the following food commodities:

Commodity	Parts per million
Aspirated grain fractions	2.5
Cattle, fat	0.01
Cattle, meat byproducts (except liver)	0.01
Coffee bean, green (Imported)[1]	0.1
Corn, field, forage	0.60
Corn, field, grain	0.01
Corn, field, stover	1.2
Goat, fat	0.01
Goat, meat byproducts (except liver)	0.01
Horse, fat	0.01
Horse, meat byproducts (except liver)	0.01
Sheep, fat	0.01
Sheep, meat byproducts (except liver)	0.01
Soybean, forage	1.0
Soybean, hay	3.0
Soybean, oil	0.10
Soybean, seed	0.05
Wheat, forage	0.80
Wheat, grain	0.05
Wheat, grain, milled byproducts	0.10
Wheat, hay	1.3
Wheat, straw	0.90

[1]There are no U.S. registrations as of February 15, 2008 for use on coffee bean.

(2) A tolerance is established for the combined free and conjugated residues

of cyproconazole α-(4-chlorophenyl)-α-(1-cyclopropylethyl)-1*H*-1,2,4-triazole-1-ethanol] and its metabolite [δ-(4-chlorophenyl)-β,δ-dihydroxy-γ-methyl-1*H*-1,2,4-triazole-1-hexenoic acid in or on the following commodity:

Commodity	Parts per million
Milk	0.02

(3) Tolerances are established for the combined free and conjugated residues of cyproconazole α-(4-chlorophenyl)-α-(1-cyclopropylethyl)-1*H*-1,2,4-triazole-1-ethanol and its metabolite 2-(4-chlorophenyl)-3-cyclopropyl-1-[1,2,4]triazol-1-yl-butane-2,3-diol in or on the following commodities:

Commodity	Parts per million
Cattle, liver	0.50
Goat, liver	0.50
Hog, liver	0.01
Horse, liver	0.50
Sheep, liver	0.50

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. E8–10829 Filed 5–13–08; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[EPA–HQ–RCRA–2007–0936; FRL–8565–9]

Land Disposal Restrictions: Site-Specific Treatment Variance for P- and U-Listed Hazardous Mixed Wastes Treated by Vacuum Thermal Desorption at the Energy Solutions' Facility in Clive, UT

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is promulgating a final rule granting a site-specific treatment variance to Energy*Solutions* LLC (Energy*Solutions*) in Clive, Utah for the treatment of certain P- and U-listed hazardous waste containing radioactive contamination (''mixed waste'') using vacuum thermal desorption (VTD). This variance is an alternative treatment standard to treatment by combustion (CMBST) required for these wastes under EPA's rules in implementing the land disposal restriction (LDR) provisions of the Resource Conservation and Recovery Act (RCRA). The Agency has determined that combustion of the solid treatment residue generated from the VTD unit is technically inappropriate due to the effective performance of the VTD unit. Thus, once the P- and U-listed mixed waste are treated using the VTD unit, the solid treatment residue can be land disposed without further treatment. This variance is conditioned upon Energy*Solutions* complying with a Waste Family Demonstration Testing (WFDT) plan specifically addressing the treatment of these P- and U-listed wastes, which is to be implemented through a RCRA Part B permit modification for the VTD unit.

DATES: This final rule will be effective June 13, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2007–0936. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, because for example, it may be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Certain material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Elaine Eby, Hazardous Waste Minimization and Management Division, Office of Solid Waste (MC 5302 P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (703) 308–8449; fax (703) 308–8443; or *eby.elaine@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Does This Action Apply to Me?

This action applies only to Energy*Solutions* located in Clive, Utah.

B. Table of Contents

I. Summary of This Action
II. Background
III. Development of This Variance
A. Energy*Solutions'* Petition
B. Comments Received on Variance and the Agency's Response
C. What Type and How Much Mixed Waste Are Subject to This Variance?
D. Description of the VTD Process
IV. EPA's Reasons for Granting This Variance
V. Conditions of the Variance
VI. Statutory and Executive Orders
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act of 1995
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Summary of This Action

EPA is promulgating, as proposed, a site-specific treatment variance to Energy*Solutions* in Clive, Utah for the treatment of certain P- and U-listed mixed waste using an alternative treatment standard of VTD.[1] The current treatment standard for these wastes is combustion (CMBST). See 40 CFR 268.40 and 268.42.

Energy*Solutions'* VTD unit currently operates pursuant to a Part B RCRA permit issued by the State of Utah which (among other things) authorizes the treatment of mixed waste containing both semi-volatile organic compounds (SVOC) and volatile organic compounds (VOC). In 2006, Energy*Solutions* submitted a petition to EPA for a site-specific treatment variance from the LDR treatment standard of CMBST for various P- and U-listed mixed waste. The petitioner is seeking an alternative treatment standard of VTD.

[1] Mixed waste is defined as radioactive waste that contains hazardous waste that either: (1) Is listed as a hazardous waste in Subpart D of 40 CFR Part 261; or (2) causes the waste to exhibit any of the hazardous waste characteristics identified in Subpart C of 40 CFR Part 261. Mixed waste is regulated under multiple authorities: RCRA (for the non-radioactive component), as implemented by EPA or authorized States; and the Atomic Energy Act (AEA) (for the source, special nuclear, or by-product material component), as implemented by the Nuclear Regulatory Commission (NRC), NRC agreement States (for commercially-generated mixed wastes), or the Department of Energy (DOE) (for defense-related mixed waste generated by DOE activities). The variance is limited to the RCRA requirements for treatment of the hazardous waste portion of the mixed waste and does not affect the regulations under AEA authority.

Energy*Solutions* provided data and information indicating that the VTD unit is capable of achieving at least 99.99% removal of analyzable SVOC [2] and VOC [3] constituents in the solid treatment residue generated from the VTD unit; analysis of the solid treatment residue shows that the LDR concentration-based treatment standards for these chemical constituents are consistently achieved. (Concentration-based treatment standards for specific chemical constituents are found in 40 CFR 268.48.) The petitioner also supplied performance data demonstrating that the VTD unit effectively removes chemical compounds (in the SVOC and VOC families) from the mixed waste having similar chemical and physical properties (i.e., boiling points and vapor pressures) to the regulated hazardous constituents in the P- and U-listings that are the subject of this site-specific treatment variance. These P- and U-listed wastes are not analyzable, hence the treatment standard of CMBST. Energy*Solutions* contends that additional treatment of the solid treatment residue from the VTD unit, using the treatment method of CMBST, would be technically inappropriate in that substantial treatment, as measured with the use of similar chemical compounds, has already been achieved using the VTD unit.

The Agency has reviewed the information and data presented by the petitioner and has determined that additional treatment of the solid treatment residue (i.e., complying with the existing CMBST treatment standard) is technically inappropriate given the documented performance of the VTD unit. The Agency is therefore taking final action to grant a site-specific treatment variance to Energy*Solutions* for an alternative LDR treatment standard of VTD for certain P- and U-listed mixed wastes that have undergone treatment using the VTD process. Once treated, the solid treatment residue can be land disposed: in this case, in Energy*Solutions'* on-site hazardous mixed waste landfill. As a condition of this treatment variance, Energy*Solutions* must comply with a WFDT plan that establishes conditions on the treatment process that will assure optimized treatment of the mixed waste, which is implemented through a RCRA Part B permit modification of the VTD unit.

[2] The SVOC waste family is defined as those chemical compounds that are detected using SW–846 Method 8270.

[3] The VOC waste family is defined as those chemical compounds that are detected using SW–846 Method 8260.

II. Background

Under sections 3004(d) through (g) of RCRA, the land disposal of hazardous wastes is normally prohibited unless such wastes are able to meet the treatment standards established by EPA. Section 3004(m) of RCRA requires EPA to set levels or methods of treatment that substantially diminish the hazardous waste's toxicity or substantially reduce the likelihood of hazardous constituents migrating from the waste so that short-term and long-term threats to human health and the environment posed by the waste's land disposal are minimized. EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the D.C. Circuit in *Hazardous Waste Treatment Council* v. *EPA,* 886 F.2d 355 (D.C. Cir. 1989).

However, facilities can apply for a site-specific treatment variance in cases when a hazardous waste that is generated cannot be treated to the specified levels or when it is technically inappropriate for the waste to undergo such treatment (See 51 FR at 40605–40606 (November 7, 1986)). In such cases, the generator or treatment facility may apply for a variance from a treatment standard. The requirements for a treatment variance are found at 40 CFR 268.44.[4]

An applicant for a site-specific treatment variance may demonstrate that it is inappropriate to require a waste to be treated by the method specified as the treatment standard, even though such treatment is technically possible (40 CFR 268.44(h)(2)). This is the criterion pertinent to today's action in that Energy*Solutions* claims it is technically inappropriate to further treat the waste (i.e., solid treatment residue) that has already been treated to remove over 99.99% of the hazardous organic constituents contained in the waste.

[4] In the case where the rules specify that a method of treatment must be used to treat a particular constituent or constituent(s), EPA also allows facilities to demonstrate that an alternative treatment method can achieve a measure of performance equivalent to that achievable by the EPA-specified treatment method (40 CFR 268.42(b)). This demonstration of equivalency, known as a Determination of Equivalent Treatment (DET), is typically both waste-specific and site-specific. EPA notes that the petition submitted by Energy*Solutions* appears to meet the criteria of 40 CFR 268.42(b) in that the VTD unit removes SVOC and VOC constituents with the same efficiency as hazardous waste combustion units. However, while the Agency could choose to evaluate the petition under the criteria developed for a DET, we are processing Energy*Solutions* petition under the criteria found in 40 CFR 268.44, as requested in Energy*Solutions's* petition to EPA. Today's decision is thus based on the rationale provided by Energy*Solutions'* treatment variance petition, i.e., that it is inappropriate to require the waste to be treated by the method specified as the treatment standard (i.e., CMBST), even though such treatment is technically possible (see 40 CFR 268.44(h)(2)).

III. Development of This Variance

A. EnergySolutions' Petition

On April 28, 2006, Energy*Solutions* petitioned EPA for a site-specific treatment variance from the treatment standard of combustion (CMBST) for certain P- and U-listed mixed wastes.[5] Energy*Solutions* requested an alternative treatment standard of VTD [6] which would allow the land disposal of the solid treatment residue from the VTD unit without having to combust the treatment residue (as required by the CMBST treatment standard). The petitioner contends that additional treatment is inappropriate and would result in little if any additional reduction of the waste's toxicity.

Energy*Solutions* provided data and information indicating that treatment using their VTD unit achieves substantial reductions in the concentrations of organic constituents (greater than 99.99%) in the solid treatment residue. Data included SVOC and VOC concentrations in the untreated waste, organic liquid condensate and solid treatment residue from demonstration tests conducted in August and September of 2004 and October of 2006. The petitioner also supplied performance data indicating that the VTD unit can remove 99.99% of organic constituents with chemical and physical properties (i.e., boiling points and vapor pressures) similar to the organic constituents in the P- and U-listed hazardous waste identified in their petition.[7] The petitioner also

[5] Under 40 CFR 268.42, ''CMBST'' is defined as ''[h]igh temperature organic destruction technologies, such as combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of 40 CFR Part 264, Subpart O, or 40 CFR Part 265, Subpart O, or 40 CFR Part 266, Subpart H, and in other units operated in accordance with applicable technical operating requirements; and certain non-combustive technologies, such as the Catalytic Extraction Process.'' Energy*Solutions'* VTD does not meet this definition.

[6] For certain P- and U-listed wastes, EPA was not able to identify an analytical method by which treatment effectiveness could be determined in the regulated constituent. As a result, EPA promulgated CMBST as the treatment standard for these P- and U-listed wastes. CMBST was selected as the method of treatment because it is relatively indiscriminate in the destruction of organics due to the high temperatures, efficient mixing, and consistent residence times present in a well-designed and well-operated facility (see 55 FR 22611, June 1, 1990.)

[7] The specific P- and U-listed hazardous wastes associated with the untreated mixed waste had been conservatively determined by the facility, in

provided a description of the analytical and methodological protocol established by the State of Utah that describes how the VTD unit will be optimized to assure continued optimized removal of hazardous organic constituents from P- and U-listed mixed waste.

On March 6, 2008 (73 FR 12043), the Agency issued a direct final rule and a parallel proposal (73 FR 12043) granting a site-specific treatment variance to Energy*Solutions* for the treatment of certain P- and U-listed mixed waste using the VTD unit. The treatment variance established an alternative treatment standard to treatment by combustion (CMBST) required for these wastes under EPA's rules implementing the LDR provisions of RCRA. The Agency made the determination that combustion of the solid treatment residue generated from the VTD unit was technically inappropriate due to the effective performance of the VTD unit. The treatment variance was conditioned upon Energy*Solutions* complying with a WFDT plan specifically addressing the treatment of these P- and U-listed wastes, which is to be implemented through a RCRA Part B permit modification for the VTD unit.

We stated in the preamble to the direct final rule and parallel proposal that if we received adverse comment we would withdraw the direct final rule and proceed with a subsequent final rule. We received adverse comment on the direct final rule and therefore withdrew the direct final rule as of May 2, 2008.

B. Comments Received on Variance and Agency's Response

The Agency received four comments on the direct final rule. Two of the comments were identical, and urged the Nuclear Regulatory Commission (NRC) to deny Energy*Solutions'* request to import nuclear waste into the United States for disposal. We have concluded that these comments are not germane to the treatment variance and addressed an issue outside the scope of this rulemaking. The third comment supported granting the site-specific treatment variance to Energy*Solutions*. The final comment raised concerns about radioactive waste being treated in Utah and EPA's determination that the only regulated entity that would be affected by the rule would be Energy*Solutions* (see 73 FR at 12044). The commenter argued that Energy*Solutions* was not the only affected party and stated that the commenter, the State of Utah, and the United States would be affected by granting this treatment variance. The commenter, however, did not state why or how these entities would be affected. While the commenter's assertion that citizens, the States, and the federal government could be affected by this action may be correct in the broadest sense, we believe that it has no relation to the narrow question at issue here of whether the criteria for a treatment variance are satisfied. However, EPA believes firmly that no entities will be adversely affected by granting the treatment variance. First, Energy*Solutions* is a permitted hazardous waste treatment, storage and disposal facility and is subject to regulations and permit conditions which assure protection of human health and the environment. Second, the unchallenged record indicates that Energy*Solutions'* method of treatment fully satisfies the criterion for a treatment variance; that is, the method of treatment is one that minimizes threats to human health and the environment posed by land disposal of the wastes being treated.[8]

After review of the comments, the Agency has determined that the site specific treatment variance to Energy*Solutions* should be promulgated.

C. What Type and How Much Mixed Waste Are Subject to This Variance?

The wastes subject to this variance are mixed waste consisting of discarded commercial chemical products (P- and U-listed hazardous wastes) that are required to meet the technology performance standard of CMBST.[9] It also includes secondary waste (e.g., carbon filter media) generated by the Energy*Solutions'* VTD unit during the processing of the mixed waste.

The Department of Energy (DOE) has identified approximately 50 cubic meters (m^3) of mixed waste (tank sludges and decontamination residues) in legacy storage in Oak Ridge, Tennessee. Energy*Solutions* has also identified an additional 900 m^3 of hardened tank sludge at a commercial facility. Another potential source of hazardous waste to be treated by Energy*Solutions'* VTD unit is from a commercial chemical manufacturer. The waste can be characterized as tank sludge, much of which is in a hardened/compressed form, identified as U053 (crotonaldehyde) and U122 (formaldehyde) mixed waste.[10]

D. Description of the VTD Process

Energy*Solutions'* VTD unit holds a permit from the State of Utah as a RCRA Subpart X miscellaneous treatment unit. This permit allows the facility to treat mixed waste that contains SVOC and VOC waste families. The VTD unit has been in operation since March 2005, and has processed more than 304,000 kilograms (kg) of mixed waste. Energy*Solutions'* VTD process design achieves a removal efficiency of 99.99% for SVOC and VOC waste families in the VTD solid treatment residue and meets all applicable LDR concentration-based treatment standards. Treatment residue from the unit is land disposed at Energy*Solutions'* on-site permitted mixed waste landfill after all other regulatory requirements are met.

The VTD unit consists of four subsystems: (1) A thermal separation system (dryer); (2) a processed material discharge system; (3) an off-gas treatment train; and (4) a condensate tank system.[11] The treatment system operates by indirectly heating the raw waste fed into the unit, vaporizing the volatile and semi-volatile organic constituents and capturing these constituents as a condensate. The process has one input stream (the raw waste) and three output streams. The three output streams are: (1) The solid treatment residue; (2) the concentrated liquid condensate; and (3) an off-gas, which is released to the atmosphere after passing through a series of filters and condensers. It should be noted that the liquid condensate and the off-gas are not subject to this rulemaking. The condensate is still subject to the CMBST treatment standard before it can be land disposed, and is sent off-site for incineration. The off-gas emission is regulated under a state-issued Part B Permit (its emission limits established using a risk assessment under 40 CFR 270.32(b)(2) (the so-called omnibus provision) and by an Air Approval Order issued by the Utah Department of Environmental Quality).

The thermal separation unit or dryer is a completely enclosed cylindrical

consultation with the State of Utah, using the ''derived-from rule'' described in 40 CFR 261.3(c)(2)(i). A listing of the specific waste codes and chemical applicable to this rule can be found in the docket supporting this rule.

[8] It should be noted that even if the Agency were to deny Energy*Solutions'* petition, it would not prevent them from treating these wastes, although the solid treatment residue generated from the VTD unit would need to be further treated by CMBST. However, the data and information provided by Energy*Solutions* demonstrates that such further treatment is inappropriate.

[9] A list of these chemicals, with associated boiling point data, is included as part of the docket supporting this rulemaking.

[10] Waste codes are assigned by the generator based upon process knowledge of raw feed materials and by-products within the chemical manufacturing process.

[11] A process diagram of the Energy*Solutions'* VTD unit can be found in the docket supporting this rulemaking. Schematic drawings of the equipment are also provided.

tank with a processing capacity of approximately 29 cubic feet (ft^3) of feed material per process cycle. Several process cycles can be run per day. It is indirectly heated by a propane-fired furnace and is permitted to reach process temperatures up to 650 °C. The feed material is introduced into the dryer through a hopper. The system is maintained below atmospheric pressure by a vacuum pump. Nitrogen is introduced to displace oxygen to a level no greater than 7%, which is below the oxygen ignition point for the volatile and semi-volatile contaminants. The nitrogen purge gas carries the volatilized contaminants from the dryer to the off-gas treatment train. Treatment time and temperature in the dryer are established for each process cycle following the characterization of the raw waste.

The processed material discharge system is fully enclosed and consists of a hopper with a cooling jacket, a conveyor system, and a collection container. The system includes water spray nozzles to aid in cooling the processed material and to provide dust control. The dry processed material is collected in the discharge system after the process cycle is completed. An auger conveys the discharged solid to a metal receiving box. Post-treatment analytical samples are collected from the box or directly from the processed material discharge system and tested for all analyzable regulated constituents originally identified in the waste feed. Once successful verification results are received, the process material is land disposed at Energy*Solutions'* on-site mixed waste landfill.

Off-gas is generated within the dryer and is purged with a nitrogen carrier gas. The off-gas treatment train, also called the air pollution control (APC) system, consists of condensers in series, a vacuum pump, and a filtration adsorption system with a pre-filter, HEPA filter, and carbon adsorption beds. The nitrogen provides a relatively inert atmosphere (oxygen content less than 7%), which prevents combustion of the volatile or semi-volatile constituents. The gas stream then passes through the filtration system to remove the remaining SVOC and VOC.

Hot gas from the dryer is fed to the condensers and the condensers cool the gas stream and the majority of the volatile and semi-volatile compounds are brought to a liquid phase. The condensate tank system consists of traps, for temporary storage, from which the liquid condensate can either be transferred to permanent tanks or to portable totes. Traps located in the liquid discharge line from the condensers collect the condensate. It is then sent off-site for incineration at a RCRA permitted facility.

The liquid condensate is more amenable to combustion than the untreated waste.[12] Incineration of the liquid condensate optimizes the destruction of toxic organics and yields a smaller volume of post-incineration waste. The liquid condensate contains approximately 5% of the total amount of radionucliides in the untreated waste and presents a significantly lower potential for radioactive materials to be emitted to the atmosphere through the combustion process.

The off-gas emission is vented to the atmosphere through a stack that discharges approximately 35 feet above ground level. The gas emission leaves the APC system and its exit velocity is boosted with outside air through a blower in order to provide good dispersion of any remaining emissions. The APC system also is designed to allow the carrier gas to be recycled back to the dryer. System data are displayed as an electronic process flow diagram that is continuously monitored by trained technicians. Dryer temperature, dryer pressure, oxygen level and off-gas exit temperature are included in the parameters that are measured.[13]

The facility currently ships separately the solid treatment residue, containing the majority of the radionucliides (over 95%) and negligible concentration of organics to its on-site hazardous mixed waste landfill, and the liquid condensate, containing the majority of the organic constituents, to an incinerator to meet the CMBST requirement. The incineration takes place in a unit permitted for both the radioactive component and for RCRA hazardous wastes.[14]

IV. EPA's Reasons for Granting This Variance

EPA has determined that given the similarities in chemical and physical properties and separation characteristics between the SVOC and VOC mixed waste and the P- and U-listed mixed wastes, that processing the P- and U-listed mixed waste through the VTD unit will achieve the same level of treatment performance achieved for the SVOC and VOC mixed waste (i.e., 99.99% removal in the solid treatment residue). Furthermore, EPA has concluded that subsequent combustion of the solid treatment residue from the VTD unit will not substantially reduce its toxicity so that subsequent treatment by the required treatment standard of CMBST is unnecessary and will achieve no additional benefit. This is because the solid treatment residue has negligible concentrations of the residual organics. Put another way, EPA has determined that additional treatment with CMBST, as required by the treatment standard of CMBST, is technically inappropriate due to the effectiveness of the VTD treatment for the removal of organic constituents. Therefore, EPA is promulgating this final action to grant a site-specific treatment variance to Energy*Solutions* for an alternative treatment standard of VTD for the land disposal of the solid treatment residue from the treatment of certain P- and U-listed mixed waste.

Not only would further treatment of the residue be technically inappropriate, but it could have environmentally detrimental effects. Under their state-issued Part B permit, Energy*Solutions* is required to operate the VTD unit so that most (generally over 95%) of the radioactive component remains in the solid treatment residue.[15] Combustion of that treatment residue could release some of the radioactive component to the atmosphere through the combustion process. To limit this potential, the Agency believes that processing the P- and U-listed hazardous wastes through the VTD unit followed by disposal of the solid treatment residue in the on-site mixed waste landfill is environmentally preferable.

V. Conditions of the Variance

Although EPA believes the applicant has made a technically sound presentation, and believes further that the VTD process should continue to result in highly effective treatment, EPA (and the applicant, and the State of Utah (the authorized permit-issuer)) believes that conditions can and should be imposed on the treatment process to assure its continued effective operation. Therefore, as a condition of its RCRA permit, Energy*Solutions* is required to submit to the State of Utah all the appropriate data and documentation, as part of a RCRA Part B permit modification, addressing the treatment of these P- and U-listed mixed wastes using VTD. Most significantly for

[12] Analytical data on the organic condensate and solid process residuals from the VTD demonstration tests completed in August and September of 2004 and October of 2006 can be found in the docket supporting this rulemaking.

[13] More detailed information on the Energy*Solutions*' VTD technology process can be found in the docket for this rulemaking.

[14] There are only two permitted mixed waste incinerators in the U.S. These facilities, due to the operational design of their units, have greater available capacity to accept liquid condensate waste and have a backlog of solid mixed wastes.

[15] Data relating to radiochemical properties of the condensate generated through the process is included in the docket supporting this rulemaking.

purposes of the treatment variance, this submission is to include a new WFDT plan for P- and U-listed mixed wastes developed by the facility and approved by the State of Utah. This plan identifies the surrogate compounds that reflect treatment of the most difficult to treat CMBST-coded organic compounds (e.g., those with the highest vapor pressures and boiling points).[16] Surrogates will have to be selected to measure the level of treatment of the organic compounds that do not have analytical methods of detection or quantification. The RCRA permit, when modified, will require compliance with this WFDT plan for each batch of P- and U-listed mixed waste that requires CMBST.[17] EPA's site-specific treatment variance is conditioned on Energy*Solutions*' adhering to the WFDT plan specifically addressing the treatment of these P- and U-listed wastes.

A WFDT plan is required in the state-issued Part B permit for every new waste type to be treated in the Energy*Solutions*' VTD unit. Because many of the organic chemicals in P- and U-listed hazardous waste do not have analytical methods for detection or quantification, the WFDT plan, as required by the permit, will need to identify individual surrogate compounds that reflect treatment of the non-analyzable organic compounds in the waste family. The volatility of each target contaminant is the most important factor in thermal desorption separation.[18] Most of these chemicals (99 of 139) have boiling points less than 200 °C, 28 have boiling points between 200 °C and 300 °C, seven have boiling points between 300 °C and 400 °C, four have boiling points between 400 °C and 500 °C, and only one of the compounds has a boiling point greater than 500 °C; at 534 °C. The VTD system is permitted to operate at temperatures up to 650 °C. Based on the volatility of the organic constituents in the boiling point table and the operational temperature of the VTD unit, processing these P- and U-listed hazardous waste through the VTD system can be expected to remove the organic constituents (especially those organics requiring CMBST) from the solid feed material and concentrate them within the liquid condensate, including the surrogates chosen to represent the non-analyzable P- and U-listed organic constituents.

Surrogates are also used to measure the performance of the VTD unit. Rather than test each specific organic constituent associated with each waste family, the facility chooses surrogate compounds to represent the most difficult to treat organic chemicals in the entire waste family matrix (i.e., highest boiling points and pressure vapors). The WFDT plan must identify these surrogate compounds to be spiked into the waste as indicators for the entire waste family performance in the VTD unit.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action grants a site-specific treatment variance to Energy*Solutions* for the treatment of certain P- and U-listed mixed wastes using their VTD unit instead of the treatment standard required under RCRA's LDR program, CMBST. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR 268.42 and 268.44 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0085. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

This site-specific treatment variance does not create any new requirements. Rather, it establishes an alternative treatment standard for specific waste codes and applies to only one facility. Therefore, we hereby certify that this rule will not add any new regulatory requirements to small entities. This rule, therefore, does not require a regulatory flexibility analysis.

D. Unfunded Mandates Reform Act of 1995

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 UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, sections 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments

[16] The objectives of the WFDT are: (1) Determine if the P- and U-listed hazardous wastes that have CMBST as the LDR treatment standard are amenable to VTD processing and that the processed material meets the LDR standards for all analyzable P and U hazardous organic constituents; (2) identify and justify representative surrogate compounds for the demonstration for those P and U hazardous organic constituents that do not have an analytical method of detection; (3) determine the optimal operational and system parameters for the new waste family that will ensure at least 99.99 percent removal efficiency is attained for such hazardous wastes; (4) account for toxic waste constituents through material balances; (5) verify compliance of the VTD unit with all applicable conditions of the Energy*Solutions*' state-issued Part B Permit; and (6) determine concentration levels for the hazardous organic constituents in treatment residuals to determine that they are below analytical reporting levels, including surrogate compounds chosen for non-analyzable or difficult to treat organics.

[17] If the conditions outlined in the WFDT plan are not met for each batch of P- and U-listed mixed waste, Energy*Solutions* must re-treat the batch of waste to meet the conditions established in the plan or send the waste off-site for CMBST.

[18] The CMBST Code Boiling Point Table is included in the docket supporting this rulemaking. It provides boiling point data for those non-analyzable hazardous organics that require CMBST as the LDR treatment standard.

to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. Energy*Solutions* will obtain from the State of Utah a RCRA permit modification for their VTD unit to treat these P- and U-listed wastes. This action, however, does not impose any new duties on the state's hazardous waste program. EPA has determined, therefore, that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action finalizes a site-specific treatment variance applicable to one facility. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This action is a site-specific treatment variance that applies to only one facility, which is not a tribal facility or located on tribal lands. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

The final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The site-specific treatment variance being finalized applies to certain P- and U-listed mixed waste that is treated in an existing, permitted RCRA facility, ensuring protection to human health and the environment. Therefore, the rule will not result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 U.S.C. 804(2). This rule will be effective June 13, 2008.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Mixed waste and variances.

Dated: May 8, 2008.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

■ 1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 2. In § 268.42, Table 1 in paragraph (a) is amended by adding in alphabetical order an entry for ''VTD'' to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

* * * * *

(a) * * *

TABLE 1.—TECHNOLOGY CODES AND DESCRIPTION OF TECHNOLOGY-BASED STANDARDS

Technology code	Description of technology-based standards
*	* * * * * * *
VTD	Vacuum thermal desorption of low-level radioactive hazardous mixed waste in units in compliance with all applicable radioactive protection requirements under control of the Nuclear Regulatory Commission.
*	* * * * * * *

■ 3. In § 268.44, the table in paragraph (o) is amended by adding in alphabetical order an entry for ''Energy*Solutions* LLC, Clive, UT'' and adding a new footnote 14 to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE.—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name [1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
*	*	*	*	*	*	*	
Energy*Solutions* LLC, Clive, UT [14].	P- and U-listed hazardous waste requiring CMBST.	Standards under 268.40.	NA	NA	NA	CMBST or VTD	NA
*	*	*	*	*	*	*	

[1] A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

[14] This site-specific treatment variance applies only to solid treatment residue resulting from the vacuum thermal desorption (VTD) of P- and U-listed hazardous waste containing radioactive contamination (''mixed waste'') at the Energy*Solutions*' LLC facility in Clive, Utah that otherwise requires CMBST as the LDR treatment standard. Once the P- and U-listed mixed waste are treated using VTD, the solid treatment residue can be land disposed at Energy*Solutions*' onsite RCRA permitted mixed waste landfill without further treatment. This treatment variance is conditioned on Energy*Solutions* complying with a Waste Family Demonstration Testing Plan specifically addressing the treatment of these P- and U-listed wastes, with this plan being implemented through a RCRA Part B permit modification for the VTD unit.

Note: NA means Not Applicable.

[FR Doc. E8–10786 Filed 5–13–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0612242903–7445–03 and 0612242886–7464–03]

RINs 0648–AU48 and 0648–AU68

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; American Fisheries Act Sideboards

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

ACTION: Final rule; correction.

SUMMARY: NMFS is correcting a final rule that appeared in the **Federal Register** on September 4, 2007. The final rule implemented Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) as partially approved by NMFS. In addition, NMFS is correcting another final rule that appeared in the **Federal Register** on September 14, 2007. This final rule implemented Amendment 80 to the FMP.

DATES: Effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION:

Background

Two final rules recently promulgated by NMFS contained several unintended errors that need to be corrected.

A final rule published on September 4, 2007 (72 FR 50788) implemented Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 85 modified the current allocations of Bering Sea and Aleutian Islands (BSAI) Pacific cod total allowable catch, and seasonal apportionments thereof, among various harvest sectors. The final rule also included the allocation of Pacific cod to the Western Alaska Community Development Quota Program. All of the provisions of the Amendment 85 final rule were effective January 1, 2008 (September 4 rule). The final rule to implement Amendment 80 to the FMP was published on September 14, 2007 (72 FR 52668) (September 14 rule). Amendment 80 primarily allocated several BSAI non-pollock trawl groundfish fisheries among fishing sectors, facilitated the formation of harvesting cooperatives in the non-American Fisheries Act trawl catcher/processor sector, and established a limited access privilege program for that sector. Most provisions of the Amendment 80 final rule were effective October 15, 2007, but some provisions were effective January 1, 2008, or January 20, 2008. Some errors in the amendatory instructions became apparent when the Office of the **Federal Register** (OFR) tried to make certain revisions to the 50 CFR Part 679 regulations in several paragraphs. This notice corrects those errors.

Need for Corrections

Each of the requested corrections is necessary to properly codify several provisions of final rules for Amendments 80 and 85 in the Code of Federal Regulations.

Tables follow the description for each needed correction in the September 4 or September 14 rule to provide a visual presentation of the problems.

In the September 4 rule, revisions to § 679.20(b)(1)(i) were necessary to remove Pacific cod from the non-specified reserve for BSAI groundfish fisheries and were to be effective January 1, 2008. This section, however, was re-written under the September 14 rule which incorporated the change made by Amendment 85 with new language for Amendment 80 that included Pacific cod under ''Amendment 80 species'', and the revisions in the September 14 rule were effective October 15, 2007. NMFS intended the revision made by the September 14 rule to be the final change to § 679.20(b)(1)(i) made by the two rules. The September 4 rule is corrected by revising § 679.20(b)(1)(i) by inserting the phrase ''which includes Pacific cod,'' in between ''Amendment 80 species,'' and ''is automatically'' from the regulatory language implemented under the September 14 rule.

Revisions to § 679.20(b)(1)(i)			
Federal Register Document	Page number	Paragraph § 679.20	Instruction
(72 FR 50788; September 4, 2007 [Amendment 85] Effective: January 1, 2008	50818, in Remove/Add table	(b)(1)(i)	Remove text: ″except pollock and the″
			Replace text with: ″except pollock, Pacific cod, and the″
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52720, third column	(b)(1)(i)	Revise paragraph

In the September 4 rule, changes to § 679.31 were necessary to revise three cross-references. Prior to the effective date of the September 4 rule, the September 14 rule revised and moved one of these cross-references, so that the cross-reference revision in the September 4 rule cannot be made as instructed. This action removes this cross-reference revision from the September 4 rule. The September 14 rule redesignated the paragraph containing the other two cross-reference revisions in the September 4 rule, so this action corrects the paragraph to be revised.

Changes to § 679.31			
Federal Register Document	Page number	Paragraph § 679.31	Instruction
(72 FR 50788; September 4, 2007 [Amendment 85] Effective: January 1, 2008	50818, in Remove/Add table	(c)	Remove: (See § 679.20(b)(1)(iii))
			Replace with: (See § 679.20(a)(7)(i) and (b)(1)(iii).)
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52725, column 1	(c)	Instruction 12 a. Remove paragraphs (a)(2), (c), and (f); b. Redesignate paragraphs (b), (d), and (e) as paragraphs (a)(2), (3), and (4), respectively; e. Add and reserve paragraph (b);

Federal Register Document	Page number	Paragraph § 679.31	Instruction
(72 FR 50788; September 4, 2007 [Amendment 85] Effective: January 1, 2008	50818, in Remove/Add table	(e)	Remove: (See § 679.21(e)(1)(i) and (e)(2)(ii))
			Replace : (See § 679.21(e)(3)(i)(A) and (e)(4)(i)(A))
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52725, column 1	(e)	Instruction 12 b. Redesignate paragraphs (b), (d), and (e) as paragraphs (a)(2), (3), and (4), respectively;

In the September 4 rule, amendment instruction 7.A concerning § 679.64(a)(1) inadvertently resulted in two paragraphs (a)(1)(ii). NMFS expected the new paragraph (a)(1)(ii) in amendment instruction 7.E to overwrite the original paragraph, but that is not what occurred. Therefore, this action revises amendment instruction 7.A so that it removes the original paragraph (a)(1)(ii). The intention to remove the original paragraph was noted in the preamble to the proposed rule for Amendment 85 published on February 7, 2007 (72 FR 5654). The establishment of a separate Pacific cod allocation to the American Fisheries Act trawl catcher/processor sector eliminated the need for this sideboard.

§ 679.64(a)(1)			
Federal Register Document	Page number	Paragraph § 679.64	Instruction
(72 FR 50788; September 4, 2007 [Amendment 85] Effective: January 1, 2008	50818, column 1	(a)(1)(ii)	Instruction 7 Not redesignated nor removed
	50818, column 1	(a)(3) introductory text	Instruction 7 Redesignate as (a)(1)(ii)
			Result: Two (a)(1)(ii)

In the September 14 rule, in amendment instruction 14.c., § 679.64 (a)(1)(iii) was redesignated as (a)(i)(iv). The instruction should have included the revision of this paragraph, and this notice corrects that error. The paragraph was correctly proposed for revision in the proposed rule to implement Amendment 80, and the revision was set out in both the proposed and final rules. Therefore, this notice corrects the instruction error.

Federal Register Document	Page number	Paragraph § 679.64	Instruction
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52725, column 3	(a)(1)(iii)	Instruction 14 c. Redesignate paragraph (a)(1)(iii) as (a)(1)(iv);

In the September 14 rule, amendment instruction 14.f. instructed that § 679.64 (a)(3) was to be revised. However, paragraph (a)(3) could not be revised because no corresponding text for that paragraph was set out. NMFS never intended to revise paragraph (a)(3), and this paragraph was not proposed for revision in the proposed rule to implement Amendment 80. Therefore, this notice removes that text from the instruction.

Federal Register Document	Page number	Paragraph § 679.64	Instruction
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52725	(a)(3)	Revise paragraph Result: no corresponding text for that paragraph is set out on the following page after (a)(2), only five stars.

In the September 14 rule, on page 52668 in the **DATES** section, § 679.64(a)(3) and § 679.64(a)(1)(vi) were listed to be effective January 1, 2008. However, paragraph (a)(3) was not revised in the September 14 rule, as noted above, and paragraph (a)(1)(vi) does not exist. These effective date citations were made inadvertently and, therefore, this notice removes that text from the **DATES** section.

Federal Register Document	Page number	Paragraph	Instruction
72 FR 52668; September 14, 2007 [Amendment 80] Effective: October 15, 2007	52668	DATES	Says 679.64 (a)(1)(vi), to be effective on 1-1-08, but no such paragraph exists

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries finds good cause to waive prior notice and opportunity for public comment otherwise required by the section. NOAA finds that prior notice and opportunity for public comment are unnecessary because the changes to the amendatory instructions do not substantively change the requirements of these final rules. It was not the intention under Amendment 85 or Amendment 80 to retain obsolete language, incorrect cross-references, or incorrect instructions. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* are inapplicable.

The rule does not make any substantive change in the rights and obligations of fishermen managed under Amendment 80 or Amendment 85. Because this action makes only non-substantive changes to Part 679 described above, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

Correction

Accordingly, the final rule, FR Doc. E7–17140, published on September 4, 2007 (72 FR 50788) is corrected as follows:

1. On page 50818, in the Remove/Add table, first row, revise column two to read ''Amendment 80 species, is automatically''; revise column three to read ''Amendment 80 species, which includes Pacific cod, is automatically''; and revise column four to read ''1''. This refers to paragraph 679.20(b)(1)(i).

2. On page 50818, in the Remove/Add table, revise the tenth row under the ''Paragraph(s)'' column, which refers to § 679.31(e), to read ''§ 679.31(a)(4)''.

3. On page 50818, in the Remove/Add table, columns one, two, and three, remove the ninth row, which refers to paragraph 679.31(c).

4. On page 50818, first column, first paragraph, second and third lines, revise Instruction 7.A. to read ''Remove paragraph (a)(1) introductory text and paragraph (a)(1)(ii).''

Accordingly, the final rule, FR Doc. 07–4358, published on September 14, 2007 (72 FR 52668) is corrected as follows:

5. On page 52668, column 1, **DATES** paragraph, remove ''§ 679.64(a)(1)(vi)'' and § 679.64(a)(3).''

6. On page 52725, column 3, revise Instruction 14.c. to read ''Redesignate paragraph (a)(1)(iii) as (a)(1)(iv) and revise it.''

7. On page 52725, column 3, revise Instruction 14.f. to read ''Revise paragraph (a)(2).''

Dated: May 7, 2008.

James W. Balsiger,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. E8–10645 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 94
Wednesday, May 14, 2008

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

[Docket No. PRM–34–06; NRC–2005–0019]

Organization of Agreement States, Inc., Consideration of Petition in Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Resolution and closure of petition docket.

SUMMARY: The Nuclear Regulatory Commission (NRC) will consider the issues raised in a petition for rulemaking (PRM–34–06) submitted by Barbara Hamrick, Chair, Organization of Agreement States, Inc. (OAS) in the NRC's rulemaking process. The petitioner requested that the NRC amend its regulations to require that an individual receive at least 40 hours of radiation safety training before using sources of radiation for industrial radiography, to revise the requirements for at least two qualified individuals to be present at a temporary job site, and to clarify how many individuals are required to meet surveillance requirements. The petitioner also requested that NUREG–1556, Volume 2, be revised to reflect the proposed amendments. The NRC has determined that this petition will be considered through NRC's rulemaking process.

DATES: The docket for the petition for rulemaking PRM–34–06 is closed on May 14, 2008.

ADDRESSES: Further NRC action on the issues raised by this petition will be accessible at the Federal rulemaking portal, *http://www.regulations.gov*, by searching on rulemaking Docket ID: NRC–2008–0173. The NRC also tracks all rulemaking actions in the ''NRC Regulatory Agenda: Semiannual Report (NUREG–0936).''

You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID: NRC–2005–0019.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agency Wide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–899–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas Young, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–5795, e-mail: *Thomas.Young@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On December 28, 2005 (70 FR 76724), the NRC published a notice of receipt of a petition for rulemaking filed by the OAS. The petitioner requested that 10 CFR 34.41, ''Conducting industrial radiographic operations,'' paragraph (a) be amended to remove the requirement that the additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. The petitioner requested that 10 CFR 34.43, ''Training,'' be amended to limit a licensee from permitting an individual to act as a radiographer or a radiographer's assistant until the individual has successfully completed an accepted course of at least 40 hours on the applicable subjects listed in paragraph (g), *e.g.*, concerning fundamentals of radiation safety, radiation detection instrumentation, and equipment. The petitioner requested that 10 CFR 34.51, ''Surveillance,'' be amended to clarify that only the radiographer is required to ensure direct visual surveillance of the operation to protect against unauthorized entrance into a high radiation area. The petitioner also requested that NUREG–1556, Volume 2, be revised to reflect the performance-based changes in the proposed amendments.

The petitioner considers 10 CFR 34.41(a) to be an important safety requirement, but believes the surveillance component of that rule is more appropriately implemented and enforced as a performance-based requirement, rather than the NRC's prescriptive interpretation of the rule. The petitioner stated that at least six Agreement States are currently implementing this component differently than the NRC. The petitioner believes that a shift in the NRC's focus to a performance-based implementation of the final rule, based on its acceptance of the expertise in this arena derived from the States, would foster a regulatory partnership that benefits the licensed community by minimizing confusion for those licensees who operate in multiple jurisdictions.

The petitioner stated that when 10 CFR 34.41(a) was developed, there was strong and sustained support from the States, licensees, and industry for the concept of having at least two qualified individuals present whenever radiography is performed at temporary job sites. The petitioner stated that Texas has had a requirement for a two-person crew since 1986, which was adopted at that time along with specific training requirements. The petitioner stated that by the effective date of the NRC final rule, seven States were already nationally recognized as having comparable industrial radiography program components and were issuing industrial radiographer certifications. The Texas program did not require two people to observe operations. The petitioner provided information to support their conclusion that there was no evidence of negative performance regarding the Texas program that warranted a different surveillance strategy.

The petitioner stated that NRC's regulations require, ''The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent

unauthorized entry.'' The petitioner believes that the expectation of the two-person rule, as expressed in the May 28, 1997, final rule, is that at a temporary job site the second qualified individual would be able to secure the restricted area and the source, and provide aid as needed. The petitioner stated that in the final rule, the Commission stressed that having a second qualified individual is particularly important when radiography is performed where a radiographer alone may not be able to control access to the restricted area. The petitioner also stated that, additionally, the second person should be trained to provide a safe working environment for radiography personnel, workers, and other members of the public at a temporary job site.

The petitioner stated that safety was the basis for having two individuals at a job site. The petitioner believes that requiring a trainee/assistant to have more extensive training (e.g., completion of a 40-hour radiation safety training course) before handling radiographic equipment increases the probability that he or she would be able to observe the area and provide assistance if needed. The petitioner stated that while there were many comments on the desirability of the trainer/trainee or radiographer/assistant crew combination as opposed to the two radiographer crew, and an acceptance of the requirement that the trainee/assistant be under the direct supervision of the trainer/radiographer, the issue regarding whether both individuals of a two radiographer crew had to be physically present during actual exposures was never addressed by the NRC. The petitioner stated that in several States, if a two-person crew consists of two radiographers, one may be in the darkroom while the other is exposing film, provided the surveillance requirement is met.

The petitioner stated that the apparent inconsistency in the surveillance component of §§ 34.41(a) and 34.51, along with the conflicting guidance found in NUREG–1556, Volume 2, raise substantial doubts as to whether the NRC's current interpretation of the rule is, in terms of safety, the most desired approach. The petitioner stated that the recommended language that amends § 34.51 puts the access control responsibility with a radiographer, but allows the radiographer the latitude to use additional personnel to control radiographic operations if needed. The petitioner believes that additional personnel may include persons not qualified as a radiographer or a radiographer's assistant, but capable of providing needed support to control access to the restricted area while remaining at the perimeter of the restricted area. The petitioner believes that, as the rule recommends, the rule does not require two persons to constantly monitor operations, nor does it limit it to two persons. The petitioner believes that the rule allows the radiographer in charge to make that decision.

The petitioner stated that the final rulemaking has been interpreted in guidance document NUREG–1556, Volume 2, to mean, ''Both individuals must maintain constant surveillance of the operations and be capable of providing immediate assistance to prevent unauthorized entry to the restricted area.'' The petitioner stated that if the temporary job site presents a situation in which the surveillance requirement of § 34.51 is met, the NRC interpretation means that even if a two-person crew consists of two certified radiographers, both must be with the camera. If one of the members is in the darkroom, then radiography cannot be performed. The petitioner believes that the impact of this interpretation on the industry is that companies must employ a third person to develop film in the darkroom while two individuals are exposing film and preventing unauthorized entry, regardless of what the situation warrants. The petitioner also believes that the licensee must use additional time at a job site to expose film and then develop it. Either situation results in added, unnecessary cost to the industry. The petitioner contends that in a temporary job site situation in which the crew consists of two qualified radiographers and the surveillance requirement can be met, the second individual is available to provide immediate assistance, whether in the darkroom or performing other job-related duties nearby. The petitioner stated there is no justification for imposing additional costs and negative impact on an industry that has not demonstrated performance that would warrant this cost and impact.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on March 13, 2006. NRC received two comment letters; one from the Conference of Radiation Control Program Directors, Inc., and one from the Texas Department of State Health Services. These organizations approved the petitioner's request. The main reasons cited by these commenters were that the proposed changes would help to: (1) Facilitate a better understanding of industrial radiography operational requirements, (2) promote a safer work environment, and (3) encourage the collaborative partnership with NRC and OAS for the development and implementation of uniform and consistent regulations that support public health and safety.

The industrial radiography community did not comment on the petitioner's request. In the past, the industry strongly supported the two person requirement at 10 CFR 34.41(a) and indicated that the additional cost of safety would be borne by the customers, not necessarily by the licensees. The industry had not supported a requirement to specify the number of hours for radiation safety training that is required in 10 CFR 34.43.

On August 15, 2007 (72 FR 35203), the NRC held an open meeting via a teleconference with the petitioner and members of the public. The meeting transcript is available in ADAMS (Accession No. ML080370403). The purpose of the meeting was to ensure full understanding of two specific issues, training and economic impact, which the NRC identified during evaluation of the petitioner's request. The meeting was attended by two members of the OAS Executive Board who represented the petitioner, three individuals from three Agreement State programs, and two members of the public who were consultants for industrial radiography licensees. Regarding the training issue, the petitioner indicated that a trainee in Texas is required to complete an approved, 40-hour course in basic radiation safety before the trainee would obtain on-the-job experience under the supervision of a certified trainer. Eventually a trainee may take an approved certification exam and become a certified radiographer if a passing score is obtained on the exam. The petitioner explained how the two person rule is implemented in the State of Texas to allow one radiographer to observe the area in certain situations. Regarding the issue of economic impact, the petitioner indicated there was no apparent economic impact from the two person rule in Texas since 1986 when the requirement was first implemented. However, since 10 CFR 34.41(a) was effective in 1997, assigning radiography personnel to jobs becomes more complicated for Texas licensees that operate in a non-Agreement State. For example, a licensee from Texas who has a job site in a non-Agreement State would most likely have to send additional radiography personnel or allow additional time to complete a job that could have been done by a team

comprised of two certified radiographers if the job site had been in Texas. Of the State personnel in attendance, one of the three individuals assisted with the petitioner's presentation, the second individual was neutral and did not indicate approval of, or opposition to the petitioner's request, and the third individual indicated that the inspection program in their State should be more aggressive. The two consultants opposed the petition. The main reasons cited by the consultants were: (1) An approved, 40-hour requirement should not be prescribed because various ways and means exist for a licensee to provide instructions to workers as required in 10 CFR 19.12; (2) a 40-hour basic radiation safety training requirement for a radiographer's assistant would be a major economic impact on a licensee due to frequent and unexpected personnel turnover; (3) the duration of basic radiation safety training need not be specified in the regulations because an individual's understanding of essential information can be readily determined during a performance-based safety inspection completed by a radiation safety officer or a regulatory agency; (4) resources would be better spent to increase the number of performance-based safety inspections at temporary job sites and enforce the current requirements than to expend resources to revise the regulations as per the petitioner's request; (5) the two person rule is necessarily prescriptive to require an additional qualified individual to observe operations during radiography because an individual radiographer working alone with an unshielded gamma radiation source of high energy and activity is unsafe even at a remote field site where the entire area is unobstructed; (6) both the radiographer and the additional qualified individual must work together and be checking on each other to ensure safety during operations; and (7) under the approach proposed by the petitioner even a certified radiographer will have problems at times because a second qualified individual is not checking against the radiographer in certain cases.

Reasons for Closure

The NRC is closing the petition because we have determined that issues and concerns raised in the petition merit further NRC consideration and inclusion in a future rulemaking. The NRC's rationale for closing the petition is based on the following points:

- The Texas program has been in place for a number of years and appears to successfully regulate industrial radiography licensees. To date, there is no significant evidence that reveals the Texas regulations have failed to protect public health and safety. There is no apparent difference in the performance outcomes of the Texas approach or the NRC approach.
- The NRC used the previous experience from Texas and other Agreement State programs and NRC and Agreement State licensees when it developed 10 CFR part 34.
- The NRC analyzed the Agreement States' requirements equivalent to 10 CFR 34.41(a) and compared those regulations not compatible with a Compatibility Category B to the compatibility requirements for a Compatibility Category C and a Compatibility Category H & S. The NRC determined that a compatibility change to a Compatibility Category C would not resolve all the issues for the Agreement States that are non-compatible with Compatibility Category B.
- Enforcement outcomes differ between the NRC and Texas. The NRC's Enforcement Policy indicates a violation of 10 CFR 34.41(a) as an example of a Severity Level III violation that would result in escalated enforcement action. Under the Texas approach, no violation would be cited if one radiographer is observing operations in the area and the additional radiography personnel is in the dark room and aware of operations in the area.
- The Regulatory Flexibility Act (RFA) has a requirement for Federal agencies to review regulations every 10 years that affect small businesses. As an independent regulatory agency, the NRC has voluntarily complied with some RFA provisions and the NRC believes it is reasonable to review 10 CFR part 34 because it affects small businesses.
- The NRC could use an enhanced public participatory process to evaluate whether to revise 10 CFR part 34 into a more performance based regulation.
- During the time and development of the rulemaking process, NRC could continue the Integrated Materials Performance Evaluation Program reviews and if an Agreement State's regulations are found to be noncompliant for 10 CFR 34.41(a) then the finding(s) would be held in abeyance as indicated previously in the All Agreement States Letter dated March 25, 2005 (STP–05–025).

The NRC will consider the issues raised by the petition in the rulemaking process; however, the petitioner's concerns may not be addressed exactly as the petitioner has requested. During the rulemaking process the NRC will solicit comments from the public and will consider all comments before finalizing the rule. Future actions for PRM–34–06 will be reported in NUREG–0936, ''NRC Regulatory Agenda'' which is publicly available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0936/*. The regulatory agenda is a semiannual compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC is working to resolve. Further information on this petition may also be tracked through *http://www.Regulations.gov* under Docket I.D. NRC–2008–0173.

Existing NRC regulations provide the basis for reasonable assurance that the common defense and security and public health and safety are adequately protected.

For the reasons cited in this document, the NRC closes this docket PRM–34–06.

Dated at Rockville, Maryland, this 24th day of April 2008.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E8–10819 Filed 5–13–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[PRM–35–20; NRC–2006–0020]

E. Russell Ritenour, PhD; Consideration of Petition Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Resolution of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) will consider the issues raised in the petition for rulemaking submitted by E. Russell Ritenour, PhD, on behalf of the American Association of Physicists in Medicine (AAPM), in the rulemaking process. The petitioner requested that the NRC amend its regulations that address training requirements for experienced Radiation Safety Officers (RSOs) and Authorized Medical Physicists (AMPs). In its review and resolution of the petition, the NRC concluded that revisions made to the regulations in 2005 may have inadvertently affected a group of board certified professionals.

DATES: The docket for the petition for rulemaking PRM–35–20 is closed on May 14, 2008.

ADDRESSES: Further NRC action on the issues raised by this petition will be accessible at the federal rulemaking portal, *http://www.regulations.gov*, by searching on rulemaking docket ID: [NRC–2008–0175]. The NRC also tracks all rulemaking actions in the ''NRC Regulatory Agenda: Semiannual Report (NUREG–0936).''

You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under the following rulemaking docket ID: [NRC–2006–0020].

NRC's Public Document Room: The public may examine and have copied for a fee publicly available documents at the NRC' Public Document Room (PDR), Public File Area, Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

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

FOR FURTHER INFORMATION CONTACT: Edward M. Lohr, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–0253, e-mail: *Edward.Lohr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On November 1, 2006 (71 FR 64168), the NRC published a notice of receipt of a petition for rulemaking filed by E. Russell Ritenour, PhD on behalf of the AAPM. The petitioner requested that the NRC amend its regulations in 10 CFR 35.57 to recognize (1) medical physicists certified by the American Board of Radiology (ABR) or the American Board of Medical Physics (ABMP) on or before October 25, 2005, the date when former 10 CFR Part 35, Subpart J, expired, as grandfathered for the modalities that they practiced as of October 24, 2005, independent of whether or not they have been named on an NRC or Agreement State license as of October 24, 2005; and (2) all diplomates that were certified by named boards in former 10 CFR Part 35, Subpart J, for RSOs who have relevant timely work experience even if they have not been formally named as an RSO or as either Assistant or Associate RSO. These diplomates would be grandfathered as RSOs by virtue of certification providing the appropriate preceptor statement is submitted.

Specific Issues Raised by the Petitioner

The issues asserted by the petitioner can be summarized as follows:

1. Medical physicists have demonstrated their competence to practice through certification by the ABR or the ABMP.

2. There is no evidence to support a rulemaking assertion that Training and Experience (T&E) requirements for listing as an AMP or RSO acceptable before October 25, 2005, are no longer acceptable as of October 25, 2005.

3. As a result of the present rule, individuals certified prior to the effective date will have to use the alternate pathway for recognition. AAPM believes that requiring individuals to pursue the alternate pathway for recognition on an NRC or Agreement State license places an undue burden on the medical community without an increase in public or worker health safety and potentially results in an insufficient number of AMPs and RSOs.

4. The number of AMPs and RSOs available to provide preceptor statements are limited and may result in a shortage of AMPs and RSOs.

5. The regulation, as currently written, marginalizes specialty boards.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on January 16, 2007. The NRC received 168 comments from professional organizations and individuals. The majority of the commenters supported approving the petition. The main reasons cited can be summarized as follows:

1. Board certifications establish credentials to qualify individuals to serve as RSOs and AMPs, regardless of when the certification was issued.

2. There is no evidence that individuals certified before October, 25, 2005, are less qualified, competent or capable to perform as RSOs or AMPs. Therefore, a board certified individual should not have to use the alternate pathway to qualify as RSO or AMP.

3. The current regulations pose a burden without a corresponding increase in health and safety.

Petition Resolution

In resolving the petition, the NRC determined that the current NRC regulations may inadvertently have an effect on a group of board certified professionals insofar as they may now have to use the alternate pathway option to demonstrate that they meet the T&E requirements in Part 35 rather than the certification pathway for recognition on an NRC license as a RSO or AMP. As a result of revisions of 10 CFR Part 35 T&E requirements in 2005, the requirements that medical specialty boards had to meet in order for their certification processes to be recognized by the NRC were changed. These new requirements applied to the certification processes of new boards and those listed in former 10 CFR Part 35, Subpart J, and affected the status of certifications that had been issued by boards prior to the effective date of the new regulations. Specifically, the previously issued certifications now have to align with the new requirements in order for diplomates holding these certifications to apply for authorized status via board certification pathways.

A provision in the revised regulations ''grandfathered'' certain individuals. Under 10 CFR 35.57(a), only those individuals identified as an RSO, a teletherapy or medical physicist, or a nuclear pharmacist on a Commission or Agreement State license or permit before October 24, 2002, or an individual identified as a RSO, AMP, or an authorized nuclear pharmacist between October 24, 2002, and April 29, 2005, were ''grandfathered;'' *i.e.*, need not comply with the training requirements of 10 CFR 35.50, 35.51 or 35.55. The rationale for grandfathering these individuals was that their credentials had been reviewed and accepted during the licensing process and that they had been functioning in their positions and had established an acceptable record of performance. NRC's Advisory Committee on the Medical Use of Isotopes and other stakeholders agreed to this approach.

The petitioner identified a group of board certified professionals that may have been inadvertently affected by the 2005 revisions to the T&E requirements in 10 CFR Part 35. Specifically, certain individuals certified by boards that had been listed in NRC's former Subpart J, who had not been named on an NRC or Agreement State license or permit prior to October 25, 2005, and therefore were not grandfathered under 10 CFR 35.57, cannot use their board issued

certifications to qualify them as AMPs or RSOs. Many board certified individuals were working as medical physicists and in radiation safety positions when the T&E requirements were revised but were not named as the authorized individuals on the NRC or Agreement State licenses and, therefore, were not grandfathered under 10 CFR 35.57. These individuals, under the current regulations, may now have to use the alternate pathway option to demonstrate that they meet the T&E requirements in Part 35.

Under the current 10 CFR Part 35 requirements, two individuals, one listed on an NRC or Agreement State license or permit prior to October 25, 2005, and one who was not, with identical certifications, are treated differently. The individual listed on the license is not required to comply with the T&E requirements in Part 35 and the individual not listed must meet the T&E requirements.

In conclusion, the NRC has determined that the petitioner raised a valid concern regarding the impact of the revisions to the T&E requirements in 10 CFR Part 35. Although in the rulemaking process the NRC staff would need more data than was presented in the petition, sufficient information was presented for the NRC to conduct a review and to determine that the petitioner's concern may warrant relief for certain individuals. Therefore, in resolving the petition, the NRC concluded that the issues raised in the petition will be considered in the rulemaking process in the following way. The NRC will attempt to develop a technical basis to support a rulemaking that would address the issues raised in the petition. If a technical basis which supports rulemaking can be developed, the issues will be addressed in a future rulemaking. If a technical basis to support a rulemaking cannot be developed, the issues will not be further considered by the NRC.

Dated at Rockville, Maryland, this 30th day of April, 2008.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E8–10736 Filed 5–13–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–141998–06]

RIN 1545–BG13

Withdrawal of Regulations Under Old Section 6323(b)(10); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–141998–06) that was published in the **Federal Register** on Thursday, April 17, 2008 (73 FR 20877) relating to the validity and priority of the Federal tax lien against certain persons under section 6323 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Debra A. Kohn, (202) 622–7985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 6323 of the Internal Revenue Code.

Need for Correction

As published, a notice of proposed rulemaking (REG–141998–06) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking (REG–141998–06), which was the subject of FR Doc. E8–8082, is corrected as follows:

1. On page 20879, column 2, under the title heading ''PART 301—PROCEDURE AND ADMINISTRATION'', the second entry of Paragraph 2., the language ''2. Paragraphs (d)(3) *Example 1* and *Example 3* are revised.'' is corrected to read ''2. Paragraphs (d)(3) *Example 1* and (d)(3) *Example 3* are revised.''.

2. On page 20879, column 2, under the title heading ''PART 301—PROCEDURE AND ADMINISTRATION'', the third entry of Paragraph 2., the language ''3. Paragraphs (g)(1), and (g)(2) *Example 1* through *Example 3* are revised.'' is corrected to read ''3. Paragraphs (g)(1) and (g)(2) *Example 1* through *Example 3* are revised.''.

3. On page 20881, column 1, the first entry of Paragraph 5., the language ''1. Paragraphs (a)(1), (a)(4), (b)(3) *Example 1*, (b)(3) *Example 5*, and (c)(1) are revised.'' is corrected to read ''1. Paragraphs (a)(1), (a)(4), (b)(3) introductory text, (b)(3) *Example 1*, (b)(3) *Example 5*, and (c)(1) are revised.''.

4. On page 20881, column 1, the fourth entry of Paragraph 5., the language ''4. Newly-designated paragraph (a)(3)(i) introductory text is revised.'' is corrected to read ''4. Newly-designated paragraph (a)(3)(i) is revised.''.

5. On page 20881, column 1, the seventh, eighth, and ninth entries of Paragraph 5. are re-designated as eighth, ninth, and tenth entries of Paragraph 5. respectively.

6. On page 20881, column 1, the language ''7. Paragraphs (c)(1) through (c)(1)(ii) are revised.'' is added as the newly designated seventh entry of Paragraph 5.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–10692 Filed 5–13–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–0027]

RIN 1625–AA01

Anchorage Regulations; Port of New York

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the boundaries of three anchorage grounds in Upper New York Bay adjacent to Ellis and Liberty Islands. This proposed action is necessary due to the proposed increase in size of the Safety and Security Zones surrounding Ellis and Liberty Islands.

DATES: Comments and related material must reach the Coast Guard on or before July 14, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0027 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil.*

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2008–0027), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0027), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. 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 your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ 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. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0027) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This proposed rule is intended to reduce confusion that would be caused by the proposed expansion of the adjacent safety and security zones surrounding Ellis and Liberty Islands (See Docket No. USCG–2007–0074). This proposed rule would decrease the western boundaries of Anchorage Grounds 20–A, 20–B, and 20–C. If these revised western anchorage ground boundaries were not proposed then the revised safety and security zones would overlap with the current Anchorage Ground boundaries. Without these proposed revisions mariners reading the Code of Federal Regulations may think that they were authorized to anchor within the revised Ellis and Liberty Island safety and security zones. The purpose of this proposed rule is to conform the Anchorage Ground boundaries to those of the proposed security zone.

Discussion of Proposed Rule

The proposed rule would revise the western boundaries of Anchorage Grounds 20–A, 20–B, and 20–C located east of Ellis and Liberty Islands on Upper New York Bay.

The revised boundary of Anchorage Grounds 20–A and 20–B would be revised to correspond to what is already depicted on the National Oceanic and Atmospheric Administration's navigation charts.

The revised western boundary of Anchorage Ground 20–C would be moved eastward 375–790 yards.

We are proposing to revise the western boundaries of these three Anchorage Grounds to reduce confusion that would be caused by the proposed expansion of the adjacent safety and security zones surrounding Ellis and Liberty Islands. Without these proposed revisions mariners navigating by the Code of Federal Regulations may think that they were authorized to anchor within the revised Ellis and Liberty Island safety and security zones.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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.

We expect the economic impact of this proposed rule to be so minimal that

a full Regulatory Evaluation is unnecessary.

This finding is based on the fact that this proposal conforms to the changing security needs of the Port of NY/NJ, the three anchorage grounds are rarely used by commercial vessels due to the already limited available area in the anchorage grounds, and the availability of additional anchorage grounds in Upper New York Bay and the Hudson River.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of recreational or commercial vessels intending to anchor, in a portion of Upper New York Bay in and around the anchorage grounds. However, decreasing the size of the three anchorage grounds would not have a significant economic impact on these entities for the following reasons: Commercial vessels rarely use the three anchorage grounds due to the already limited size and the availability of other anchorage grounds in Upper New York Bay and the Hudson River. Recreational vessels may still anchor northwest of Ellis Island and southwest of Liberty Island.

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 (see **ADDRESSES**) 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 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact John J. Mauro, Waterways Management Branch, First Coast Guard District Boston at (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 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.

Energy Effects

We have analyzed this proposed 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination

that this action is not likely to have a significant effect on the human environment. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.155, by revising paragraphs (d)(1), (d)(2), and (d)(3) to read as follows:

§ 110.155 Port of New York.

* * * * *

(d) Upper Bay—(1) Anchorage No. 20–A. That area bound by the following coordinates: 40°41′53.8″ N, 074°02′11.6″ W; thence to 40°41′54.8″ N, 074°01′58.0″ W; thence to 40°42′05.0″ N, 074°01′57.0″ W; thence to 40°42′06.8″ N, 074°02′17.9″ W; thence to 40°42′06.2″ N, 074°02′18.8″ W; thence to 40°41′57.4″ N, 074°02′07.0″ W; thence to 40°41′54.4″ N, 074°02′11.2″ W.

(i) See 33 CFR 110.155(d)(6), (d)(16), and (l).

(2) Anchorage No. 20–B. That area bound by the following coordinates: 40°41′45.8″ N, 074°02′22.7″ W; thence to 40°41′42.3″ N, 074°02′00.5″ W; thence to 40°41′35.9″ N, 074°02′02.5″ W; thence to 40°41′30.2″ N, 074°02′06.5″ W; thence to 40°41′41.4″ N, 074°02′29.0″ W.

(i) See 33 CFR 110.155(d)(6), (d)(16), and (l).

(3) Anchorage No. 20–C. That area bound by the following coordinates: 40°41′25.6″ N, 074°02′09.4″ W; thence to 40°41′02.0″ N, 074°02′24.6″ W; thence to 40°41′09.2″ N, 074°02′39.7″ W; thence to 40°41′11.0″ N, 074°02′25.0″ W; thence to 40°41′27.0″ N, 074°02′20.8″ W; thence to 40°41′35.9″ N, 074°02′29.6″ W.

(i) See 33 CFR 110.155(d)(6), (d)(16), and (l).

* * * * *

Dated: January 18, 2008.

Timothy V. Skuby,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. E8–10706 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 160

[USCG–2007–28648]

RIN 1625–AB19

Crewmember Identification Documents

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require each crewmember on a foreign commercial vessel en route to a U.S. port or place of destination or at a U.S. port or place, or on a U.S. commercial vessel coming from a foreign port or place of departure to a U.S. port or place of destination, to carry and present upon demand an acceptable identification when in U.S. navigable waters. The vessel operator would also be required to ensure that crewmembers comply with this requirement. This proposed rule would implement a Maritime Transportation Security Act mandate and help ensure that we can authoritatively identify crewmembers on vessels in U.S. waters.

DATES: Comments and related material must reach the Docket Management Facility on or before July 14, 2008. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 14, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–28648 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

You must also send comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure that the comments are received on time, the preferred method is by e-mail at *oira_submission@omb.eop.gov* or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, contact either Lieutenant Commander Derek A. D'Orazio, U.S. Coast Guard Office of Operating and Environmental Standards, telephone 202–372–1405 and e-mail address *derek.a.dorazio@uscg.mil*, or Lieutenant Commander Jonathan H. Maiorine, U.S. Coast Guard Office of Port and Facility Activities, telephone 202–372–1133 and e-mail address *jonathan.h.maiorine@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Public Meeting
II. Table of Abbreviations
III. Background and Purpose
IV. Discussion of Proposed Rule
V. Regulatory Evaluation
A. Executive Order 12866
B. Small Entities
C. Collection of Information
D. Federalism
E. Unfunded Mandates Reform Act
F. Taking of Private Property
G. Civil Justice Reform
H. Protection of Children
I. Indian Tribal Governments
J. Energy Effects
K. Technical Standards
L. Environment

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking as USCG–2007–28648, indicate the specific section of this

document to which each comment applies, and give the reason for each comment. We recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. 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 your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ 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. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (''USCG–2007–28648'') in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

D. Public Meeting

We do not currently plan to hold a public meeting, but you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Table of Abbreviations

CBP U.S. Customs and Border Protection
CFR Code of Federal Regulations
DOT Department of Transportation
FR Federal Register
ILO International Labour Organization
INA Immigration and Naturalization Act
IMO International Maritime Organization
MMC Merchant Mariner Credential
MMD Merchant Mariner's Document
MTSA Maritime Transportation Security Act
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PWSA Ports and Waterways Safety Act
SID Seafarer's Identification Document
TSA Transportation Security Administration
TWIC Transportation Worker Identification Credential
USC United States Code

III. Background and Purpose

In the Maritime Transportation Security Act of 2002 (MTSA), Congress directed the Secretary of the Department in which the Coast Guard is operating to require all crewmembers on vessels calling at U.S. ports to carry and present on demand any identification the Secretary decides is necessary. The Act also directed the Secretary to develop forms and processes for the identification and verification of crewmembers. Sec. 102 of Public Law 107–295, 116 Stat. 2064, 2080–81. In section 103 of the MTSA, Congress indicated the objective of requiring crewmember identification is to be able to establish authoritatively, the identity of any seafarer aboard a vessel within U.S. jurisdiction, including U.S. territorial waters. 116 Stat. 2084, and 46 U.S.C. 70111, note.

Congress directed the Secretary to consult with the Attorney General and Secretary of State when developing these crewmember identification requirements. 46 U.S.C. 70111. The Secretary of the Department of Homeland Security delegated this rulemaking authority to the Commandant of the Coast Guard and directed the Commandant to develop these requirements in cooperation with U.S. Customs and Border Protection (CBP) and the Transportation Security Administration (TSA). Section 2(97)(g) of DHS Delegation No. 0170.1, Delegation to the Commandant of the U.S. Coast Guard. A copy of this delegation is available in the docket. Accordingly, we have collaborated with CBP and TSA and we have consulted with the Attorney General and Secretary of State in the development of this proposed rule.

On October 13, 2006, Congress revised 46 U.S.C. 70111 through the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) and established a deadline for these requirements to be in place not later than October 13, 2007. Sec. 110 of Public Law 109–347, 120 Stat. 1891, 1893. Therefore, in this proposed rule, the Coast Guard seeks to fulfill Congress' mandate to require that crewmembers on vessels calling at U.S. ports must carry and present on demand an identification that allows the identity of crewmembers to be authoritatively validated.

IV. Discussion of Proposed Rule

The Coast Guard proposes to add a new subpart to the regulations in 33 CFR part 160 for ports and waterways safety. This new subpart, subpart D, would apply to the following vessels calling at a port or place of destination in the navigable waters of the United States:

- Each foreign commercial vessel, and
- Each U.S. commercial vessel coming from a foreign port or place of departure.

In this proposed rule, we have included a force majeure exception for vessels that had not planned to visit a U.S. port or place, but are forced to do so because of unforeseen factors such as severe weather conditions. Vessels engaged in innocent passage through U.S. navigable waters do not require an exception because they would not be en route to a U.S. port or place of destination and therefore would not be subject to this proposed rule. Likewise, public vessels not engaged in commercial service would not be subject to this proposed rule.

Under the requirements in new subpart D, each crewmember on a vessel to which this proposed rule would apply would be required to carry and present on demand an acceptable identification when the vessel is in the navigable waters of the United States. The term ''navigable waters of the United States'' is defined in 33 CFR 2.36(a).

The operator of the vessel would be responsible for ensuring crewmembers comply with this requirement. We understand that crewmembers commonly secure their identification and other important documents on the vessel, typically with the master, and we consider this practice consistent with the requirements of this proposed rule if the identification is aboard and can be presented upon demand.

Congress gave the Secretary discretion to determine what crewmember identification is necessary. In carrying out Congress's mandate, the Coast

Guard considered the types of identification normally available and carried by crewmembers, recent developments such as the Transportation Worker Identification Credential (TWIC) final rule (72 FR 3492, January 25, 2007), and existing regulations for the landing of alien crewmen in 8 CFR part 252. This proposed rule aligns with current practices for verifying the identification of crewmembers on vessels calling at U.S. ports and meets our goal to improve maritime security while minimizing the burden placed on crewmembers and operators.

Compliance with the requirements of this proposed rule would not relieve vessel crewmembers and operators of any requirements under the Immigration and Nationality Act (INA) (66 Stat. 163, 8 U.S.C. 1101 *et seq.*), or INA implementing regulations. Likewise, compliance with existing INA requirements would not relieve vessel crewmembers and operators of their requirements under this proposed regulation.

We do not plan to institute a new enforcement program whereby Coast Guard personnel would routinely duplicate the efforts of CBP personnel, who already verify the identification of crewmembers on foreign and U.S. commercial vessels under existing regulations and policies. We would, however, rely on these proposed regulations to improve maritime domain awareness and control vessel and crewmember movement when warranted under our maritime security and law enforcement responsibilities. After considering the characteristics of identification accepted by CBP, existing types of identification required by other Coast Guard and DHS regulations, and applicable international conventions, we determined the following identifications to be acceptable means to authoritatively identify crewmembers:

- A passport;
- A U.S. Permanent Resident Card;
- A U.S. Merchant Mariner's Document (MMD) issued by the U.S. Coast Guard;
- A Transportation Worker Identification Credential (TWIC) issued by TSA under their credentialing and security threat assessments regulations in 49 CFR part 1572; and
- A Seafarer's Identification Document (SID) issued by or under the authority of the government of a country that has ratified the International Labour Organization Seafarers' Identity Documents Convention (Revised), 2003 (ILO 185), meeting all the requirements of ILO 185.

We chose the passport, U.S. Permanent Resident Card, MMD and TWIC, in addition to the SID, to authoritatively identify crewmembers because these documents have certain characteristics we have determined are necessary to ensure verifiable, uniform and reliable identification.

The SID is the international standard for the desired characteristics of a seafarer's identification. The current SID was developed by the International Labour Organization (ILO) (to find out more about ILO, visit *http://www.ILO.org)* and was adopted by that organization on June 19, 2003. ILO undertook updating the Seafarers' Identity Document Convention, 1958 (No. 108), partly at the International Maritime Organization's (IMO) request, as a means of improving global maritime security through tighter controls on crewmember identification (to find out more about IMO, visit *http://www.IMO.org).* See IMO resolution titled, ''Enhancement of Security in Co-operation with the International Labour Organization'' which was adopted by the IMO Diplomatic Conference on Maritime Security as Resolution 8 on December 12, 2002.

Under Article 3 of the updated Seafarers' Identity Documents Convention (No. 185) (ILO 185), the SID must include the following characteristics:

- The identification must be designed in a simple manner, be made of durable material, with special regard to conditions at sea and be machine-readable. The materials used must:

(a) prevent tampering with the identification or falsification, as far as possible, and enable easy detection of alterations; and

(b) be generally accessible to governments at the lowest cost consistent with reliably achieving the purpose set out in (a) above.

- The identification must be no larger than a normal passport.
- The identification must contain the name of the issuing authority, indications enabling rapid contact with that authority, the date and place of issue of the document.
- Particulars about the holder included in the seafarer's identity document shall be restricted to the following:

(a) full name (first and last names where applicable);

(b) gender;

(c) date and place of birth;

(d) nationality;

(e) any special physical characteristics that may assist identification;

(f) digital or original photograph;

(g) signature; and

- The identification must have a biometric feature.

While the characteristics of the passport, MMD, U.S. Permanent Resident Card and TWIC are not identical to the SID, they all share some of the same essential characteristics as the SID:

- Issued under government authority, indicated on the document;
- Made of tamper resistant materials with appropriate security features;
- Contains a photograph of the individual;
- Shows the full name and date of birth of the individual;
- Contains the date of issuance and the expiration date;
- Contains a unique and traceable number that can be verified.

Furthermore, we have determined that, like the SID, the underlying government systems supporting the passport, MMD, U.S. Permanent Resident Card and TWIC are reliable, secure and promote ready verification. Our proposed approach is consistent with current practices of accepting for crewmember identification purposes documents that are not strictly seafarer documents, such as a passport reported on a notice of arrival.

Using the SID as a reference is also consistent with our longstanding practice of harmonizing, where appropriate, U.S. safety, security and environmental regulations with international standards. By doing so, we improve opportunities for U.S. industries in the global marketplace and reinforce the partnerships we enjoy with international and domestic industry and intergovernmental groups while working towards common goals.

With regard to the MMD, the Coast Guard has proposed in a separate rulemaking entitled ''Consolidation of Merchant Mariner Qualification Credentials'' (RIN 1625–AB02) that over a 5-year period, starting August 2008, it would replace the MMD with a Merchant Mariner Credential (MMC). 72 FR 3605, 3607, January 25, 2007. If an MMC effective rule is issued in that rulemaking before we issue an effective rule in this crewmember identification rulemaking, we propose to change the crewmember identification final rule by including the MMC in our 33 CFR 160.310 definition of ''acceptable identification.'' The MMC would be an addition to the list and would not be an immediate replacement of the MMD. We invite your comments on this proposed conditional inclusion of the MMC as an acceptable identification.

We expect that nearly all U.S. crewmembers on vessels impacted by this proposed rule possess an acceptable

identification because, under 46 U.S.C. 8701, every crewmember on almost every seagoing vessel of at least 100 GRT must have an MMD. We expect that nearly all foreign crewmembers carry a passport because, under the INA and implementing DHS regulations in 8 CFR 252.1(d), a passport is required for shore leave.

In addition, under Coast Guard notice of arrival regulations, most operators subject to this proposed rule are already required to submit passport or mariner's document information for all crewmembers on the vessel. 33 CFR part 160, subpart C. Thus, we anticipate that very few mariners, U.S. or foreign, would be required to obtain a new identification to meet the requirements of this proposed rule.

This approach would not require the United States to ratify ILO 185 because we are not attaching shore leave to the SID we propose to accept for purposes of this rule. Instead, the SID would be one type of identification that would satisfy the requirements of 46 U.S.C. 70111 and new 33 CFR part 160, subpart D. The SID will not, by virtue of this rule, confer any shore leave or admission status on the holder. The U.S. Government continues to require a passport and visa for shore leave, unless the crewmember is exempt. 8 U.S.C. 1181, 1185, 8 CFR 212.1, 8 CFR part 252, 33 CFR parts 41 and 53.

To ensure vessel control options if a crewmember's identification is not acceptable or the identification is not presented on demand, we also propose to require the vessel operator to ensure that all crewmembers on the vessel have an acceptable identification by the time the vessel enters U.S. navigable waters. This would be enforceable under the authority of MTSA 2002, 46 U.S.C. Chapter 701, and the Ports and Waterways Safety Act (PWSA), 33 U.S.C. Chapter 25.

V. Regulatory Evaluation

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes or executive orders.

A. Executive Order 12866

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and it 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.

We expect nearly every crewmember, U.S. and foreign, already possesses an acceptable identification. The characteristics of the acceptable identifications in this proposed rule are consistent with current identifications accepted by the Coast Guard and CBP to identify crewmembers. In addition, we expect that all crewmembers carry their identification with them and that vessel operators examine the identification because carriers are required under 19 CFR 4.7b(d) and 4.64(d) to view these documents when preparing crew manifests, and because vessel operators are required to record the document number on the notice of approval under 33 CFR 160.206.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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.

Although the proposed rule requires vessel operators to ensure that all crewmembers on the vessel have acceptable identification, we expect that vessel operators already look for an acceptable identification from each crewmember in order to record the document number on the notice of arrival. Otherwise, the burdens proposed by this rule fall on crewmembers and not on ''small entities'' as that term in defined in the Regulatory Flexibility Act. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. 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 the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Collection of Information

This proposed rule would call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Crewmember Identification Documents.

Summary of the Collection of Information: This collection of information comprises the recordkeeping necessary to possess, present on demand, and ensure compliance with requirements for identification of crewmembers on foreign and U.S. vessels in navigable waters of the United States.

Need for Information: In the MTSA, Congress directed the Secretary of the Department in which the Coast Guard is operating to require all crewmembers on vessels calling at U.S. ports to carry and present on demand any identification the Secretary decides is necessary. The acceptable identification required by this proposed rule would allow the Coast Guard to authoritatively identify crewmembers on vessels within U.S. waters.

Proposed Use of Information: The information collected would be used to authoritatively identify crewmembers on vessels within U.S. waters.

Description of the Respondents: The respondents include all crewmembers on a foreign vessel in the navigable waters of the U.S. en route to a U.S. port or place of destination or at a U.S. port or place, and all crewmembers on a U.S. commercial vessel in the navigable waters of the U.S. coming from a foreign port or place of departure to a U.S. port or place of destination. The respondents also include the operators of those foreign and U.S. vessels.

Number of Respondents: We estimate the number of respondents is 838,084 persons, comprising crewmembers and vessel operators. This figure is based on Coast Guard records of the number of affected vessels that enter U.S. ports, Coast Guard estimates of the number of crewmembers on vessels, and estimates of the frequency of crew rotation. Using Coast Guard Notice of Arrival data, we estimate 10,649,843 responses per year from all crewmembers and operators.

Frequency of Response: We estimate, on average, a typical crewmember would respond 13 times per year. Vessel operators would respond each time a vessel submits a notice of arrival.

Burden of Response: Coast Guard records indicate the burden imposed on

the respondents is negligible. From our records, we expect nearly all crewmembers already possess and carry an acceptable identification. We also expect vessel operators already check crewmembers' identifications since the type and number must be reported on the Notice of Arrival.

Estimate of Total Annual Burden: According to our Notice of Arrival records for the 12 months between June 2006 and June 2007, 10,328,992 (97.0 percent) of responses were passport, U.S. Permanent Resident Card, or MMD numbers. This period predates TWIC cards and, at this time, few nations are issuing the SID. The figure includes U.S. crewmembers sailing on coastal voyages to whom this proposed rule would not apply and who might have presented some other form of identification that would not be accepted under this proposed rule. Therefore, the percentage of crewmembers that already possess an acceptable identification under this proposed rule is likely higher than 97 percent. In the worst case, this would leave 320,851 (3.0 percent) responses reporting other identifications. Based on an average of 13 visits per crewmember per year, this translates to 24,681 crewmembers reporting an identification other than passports, U.S. Permanent Resident Cards, and MMDs. Therefore, in the worst case, the total cost burden of response is estimated to be $2,714,910, using $97 as the cost of obtaining an acceptable ID, and $13 as the opportunity cost.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless we have published a currently valid control number from OMB for that collection in the **Federal Register**. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection. If OMB approves the collection, our publication of that control number in the **Federal Register** or the CFR will constitute display of that number; see 5 CFR 1320.3(f)(3), as required under 44 U.S.C. 3506(c)(1)(B).

D. 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 proposed rule under that Order and have determined that it does not have implications for federalism.

E. 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Taking of Private Property

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

G. Civil Justice Reform

This proposed 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.

H. Protection of Children

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

I. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 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.

J. Energy Effects

We have analyzed this proposed 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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

L. Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under the ''Public Participation and Request for

Comments'' section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Identification, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Seamen, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 160 as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

1. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

2. Add subpart D, consisting of §§ 160.300 through 160.320, to read as follows:

Subpart D—Crewmember Identification

Sec.
160.300 Applicability.
160.305 Exceptions.
160.310 Definitions.
160.315 Crewmember identification requirement.
160.320 Sanctions and vessel control.

§ 160.300 Applicability.

(a) This subpart applies to crewmembers on the following vessels in the navigable waters of the United States en route to a U.S. port or place of destination or at a U.S. port or place:

(1) A foreign vessel engaged in commercial service, and

(2) A U.S. vessel engaged in commercial service and coming from a foreign port or place of departure.

(b) This subpart also applies to the operators of the vessels listed in paragraph (a) of this section.

§ 160.305 Exceptions.

Requirements in this subpart will not be enforced against crewmembers and operators on a vessel bound for a U.S. port or place of destination under a claim of *force majeure.*

§ 160.310 Definitions.

As used in this subpart, and only for purposes of this subpart—

Acceptable identification means a:

(1) Passport;

(2) U.S. Permanent Resident Card,

(3) U.S. merchant mariner's document;

(4) Transportation Worker Identification Credential issued by the Transportation Security Administration under 49 CFR part 1572; or

(5) Seafarer's Identification Document (SID) issued by or under the authority of the government of a country that has ratified the International Labour Organization Seafarers' Identity Documents Convention (Revised), 2003 (ILO 185), meeting all the requirements of ILO 185.

Commercial service means any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

Crewmember means all persons carried on board a vessel to provide: Navigation services; maintenance of the vessel, its machinery, or systems; arrangements essential for propulsion or safe navigation; or services for other persons on board.

Foreign vessel means a vessel of foreign registry or operated under the authority of a country except the United States.

Navigable waters of the United States means the same as this term is defined in 33 CFR 2.36(a).

Operator means any person including, but not limited to, an owner, a charterer, or another contractor who conducts, or is responsible for, the operation of a vessel.

Passport means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

Port or place of departure means any port or place in which a vessel is anchored or moored.

Port or place of destination means any port or place in which a vessel is bound to anchor or moor.

§ 160.315 Crewmember identification requirement.

(a) A crewmember subject to this subpart must carry and present on demand an acceptable identification. An operator subject to this subpart must ensure that every crewmember on the vessel has an acceptable identification in his or her possession when the vessel is in the navigable waters of the United States. For purposes of this section, a crewmember may secure his or her acceptable identification with the vessel's master, so long as the identification can be presented on demand.

(b) Compliance with the requirements in this section does not relieve vessel crewmembers and operators of any requirements under the Immigration and Nationality Act (INA) or INA implementing regulations. Likewise, compliance with INA requirements does not relieve vessel crewmembers and operators of the requirements in this section.

§ 160.320 Sanctions and vessel control.

Failure to comply with this subpart will subject the crewmember and operator to a civil penalty under 46 U.S.C. 70119 and the vessel to control under 33 U.S.C. 1223(b).

Dated: April 24, 2008.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Stewardship.

[FR Doc. E8–10707 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0178; FRL–8565–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Columbia County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as a 2002 base-year inventory for the Columbia County Area. EPA is proposing approval of the maintenance plan and the 2002 base-year inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 13, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0178 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0178, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2008–0178. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: On December 17, 2007, PADEP formally submitted for approval, under section 110(a)(1) of the CAA, a SIP revision for the 8-hour ozone maintenance plan and the 2002 base-year inventory for the Columbia County Area.

I. Background

Section 110(a)(1) of the CAA requires that states submit to EPA plans to maintain the NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS, but attainment for the 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS.

On May 20, 2005, EPA issued guidance that applies to areas that are designated unclassifiable/attainment for the 8-hour ozone standard. The purpose of this guidance is to address the maintenance requirements in section 110(a)(1) of the CAA, and to assist the states in the development of a SIP. The components from EPA's guidance include: (1) An attainment emissions inventory, which is based on actual ''typical summer day'' emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for a 10-year maintenance period, from a base-year chosen by the state; (2) a maintenance demonstration, which demonstrates how the area will remain in compliance with the 8-hour ozone standard for a period of 10 years following the effective date of designation unclassifiable/attainment (June 15, 2004); (3) an ambient air monitoring network, which will be in continuous operation in accordance with 40 CFR Part 58 to verify maintenance of the 8-hour ozone standard; (4) a contingency plan, that will ensure that in the event of a violation of the 8-hour ozone NAAQS, measures will be implemented as promptly as possible; (5) a verification of continued attainment, indicating how the state intends on tracking the progress of the maintenance plan.

II. Summary of SIP Revision

The Commonwealth of Pennsylvania has requested approval of its 8-hour ozone maintenance plan and 2002 base-year inventory for the Columbia County Area. The PADEP 8-hour ozone maintenance plan addresses the five components of EPA's May 20, 2005 guidance, which pertains to the maintenance requirements in section 110(a)(1) of the CAA.

Attainment Emission Inventory: An attainment emissions inventory includes emissions during the time period associated with the monitoring data showing attainment. PADEP has provided an emissions inventory for VOCs and NO_X, using 2002 as the base-year from which to project emissions. The 2002 inventory is consistent with EPA guidance, is based on actual ''typical summer day'' emissions of VOCs and NO_X, and consists of a list of sources and their associated emissions. PADEP prepared comprehensive VOCs and NO_X emissions inventories for the Columbia County Area. In the maintenance plan, PADEP included information on the man-made sources of ozone precursors, VOCs and NO_X (e.g., ''stationary sources,'' ''stationary area sources,'' ''highway vehicles,'' and ''nonroad sources'').

Pennsylvania projected emissions for beyond 10 years from the effective date of the April 30, 2004 designations for the 8-hour ozone standard. PADEP has developed an emissions inventory for ozone precursors for the year 2002, 2009, and 2018. Tables 1 and 2 show the VOCs and NO_X emissions reduction summary for 2002, 2009, and 2018.

TABLE 1.—VOC EMISSIONS SUMMARY: 2002, 2009 AND 2018

[Tons per summer day]

Major source category	2002	2009	2018
Stationary Point Sources	0.32	0.35	0.45
Stationary Area Sources	4.72	4.50	4.67
Highway Vehicles	4.47	2.52	1.47
Nonroad Sources	1.83	1.83	1.72
Total	11.34	9.20	8.31

TABLE 2.—NO_X EMISSIONS SUMMARY: 2002, 2009 AND 2018

[Tons per summer day]

Major source category	2002	2009	2018
Stationary Point Sources	0.42	0.44	0.46
Stationary Area Sources	0.38	0.40	0.41
Highway Vehicles	8.89	4.84	2.13
Nonroad Sources	1.72	1.37	0.83
Total	11.41	7.05	3.83

EPA believes Pennsylvania has demonstrated that the VOCs and NO_X emissions in the Columbia County Area will improve due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state-adopted measures.

Maintenance demonstration: As Table 1 and 2 indicate, the Columbia County Attainment Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that future emissions of VOCs and NO_X remain at or below the 2002 base-year emissions levels through the year 2018.

Based upon the comparison of the projected emissions and the 2002 base-year inventory emissions, along federal and state measures, EPA concludes that PADEP successfully demonstrates that the 8-hour ozone standard will be maintained in the Columbia County Area. Further details of Columbia County Attainment Area's 8-hour ozone maintenance demonstration can be found in a Technical Support Document (TSD) prepared for this rulemaking.

Ambient Air Quality Monitoring: With regard to the ambient air monitoring component of the maintenance plan, Pennsylvania commits to continue operating its current air quality monitoring stations in accordance with 40 CFR Part 58, to verify the attainment status of the area, with no reductions in the number of sites from those in the existing network unless pre-approved by EPA.

Contingency Plan: Section 110(a)(1) of the CAA requires that the state develop a contingency plan which will ensure that any violation of a NAAQS is promptly corrected. The purpose of the contingency plan is to adopt measures, outlined in the maintenance plan, in order to assure continued attainment in the event of a violation of the 8-hour ozone NAAQS. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

Since the Columbia County Area does not have a monitor, contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentrations at the design monitor for the Scranton-Wilkes-Barre Area are above 84 parts per billion (ppb). If this trigger point occurs, PADEP will evaluate whether additional local emission control measures should be implemented in Columbia County in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of federal, state, and local measures that have been adopted but not yet implemented at the time the excessive ozone levels occurred. PADEP will then begin the process of implementing the contingency measures outlined in their maintenance plan.

Verification of continued attainment: PADEP will track the attainment status of the 8-hour ozone NAAQS for Columbia County by reviewing air quality at the design monitor for the Scranton-Wilkes-Barre Area and emissions data during the maintenance period. An annual evaluation of vehicle miles traveled and emissions reported from stationary sources will be performed and compared to the assumptions about the factors used in the maintenance plan. PADEP will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, Subpart A) for any unanticipated increases. Based on these evaluations, PADEP will consider whether any further emission control measures should be implemented.

III. Proposed Action

EPA is proposing to approve the maintenance plan and the 2002 base-year inventory for the Columbia County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan and 2002 base-year inventory for the Columbia County Area because it meets the requirements of section 110(a)(1) of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• 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);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve the maintenance plan and the 2002 base-year inventory for the Columbia County Area in the Commonwealth of Pennsylvania does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 5, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–10811 Filed 5–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0181; FRL–8565–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Somerset County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as a 2002 base-year inventory for the Somerset County Area. EPA is proposing approval of the maintenance plan and the 2002 base-year inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 13, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0181 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0181, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2008–0181. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 17, 2007, PADEP formally

submitted for approval, under section 110(a)(1) of the CAA, a SIP revision for the 8-hour ozone maintenance plan and the 2002 base-year inventory for the Somerset County Area.

I. Background

Section 110(a)(1) of the CAA requires that states submit to EPA plans to maintain the NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS, but attainment for the 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS.

On May 20, 2005, EPA issued guidance that applies to areas that are designated unclassifiable/attainment for the 8-hour ozone standard. The purpose of this guidance is to address the maintenance requirements in section 110(a)(1) of the CAA, and to assist the states in the development of a SIP. The components from EPA's guidance include: (1) An attainment emissions inventory, which is based on actual ''typical summer day'' emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for a 10-year maintenance period, from a base-year chosen by the state; (2) a maintenance demonstration, which demonstrates how the area will remain in compliance with the 8-hour ozone standard for a period of 10 years following the effective date of designation unclassifiable/attainment (June 15, 2004); (3) an ambient air monitoring network, which will be in continuous operation in accordance with 40 CFR Part 58 to verify maintenance of the 8-hour ozone standard; (4) a contingency plan, that will ensure that in the event of a violation of the 8-hour ozone NAAQS, measures will be implemented as promptly as possible; (5) a verification of continued attainment, indicating how the state intends on tracking the progress of the maintenance plan.

II. Summary of SIP Revision

The Commonwealth of Pennsylvania has requested approval of its 8-hour ozone maintenance plan and 2002 base-year inventory for the Somerset County Area. The PADEP 8-hour ozone maintenance plan addresses the five components of EPA's May 20, 2005 guidance, which pertains to the maintenance requirements in section 110(a)(1) of the CAA.

Attainment Emission Inventory: An attainment emissions inventory includes emissions during the time period associated with the monitoring data showing attainment. PADEP has provided an emissions inventory for VOCs and NO_X, using 2002 as the base-year from which to project emissions. The 2002 inventory is consistent with EPA guidance, is based on actual ''typical summer day'' emissions of VOCs and NO_X, and consists of a list of sources and their associated emissions. PADEP prepared comprehensive VOCs and NO_X emissions inventories for the Somerset County Area. In the maintenance plan, PADEP included information on the man-made sources of ozone precursors, VOCs and NO_X (e.g., ''stationary sources,'' ''stationary area sources,'' ''highway vehicles,'' and ''nonroad sources'').

Pennsylvania projected emissions for beyond 10 years from the effective date of the April 30, 2004 designations for the 8-hour ozone standard. PADEP has developed an emissions inventory for ozone precursors for the year 2002, 2009, and 2018. Tables 1 and 2 show the VOCs and NO_X emissions reduction summary for 2002, 2009, and 2018.

TABLE 1.—VOC EMISSIONS SUMMARY: 2002, 2009 AND 2018

[Tons per summer day]

Major source category	2002	2009	2018
Stationary Point Sources	0.21	0.18	0.24
Stationary Area Sources	5.63	5.09	5.24
Highway Vehicles	6.10	3.11	1.81
Nonroad Sources	3.05	3.04	2.29
Total	14.99	11.42	9.58

TABLE 2.—NO_X EMISSIONS SUMMARY: 2002, 2009 AND 2018

[Tons per summer day]

Major source category	2002	2009	2018
Stationary Point Sources	0.62	0.66	0.74
Stationary Area Sources	0.54	0.57	0.57
Highway Vehicles	15.44	8.15	3.14
Nonroad Sources	5.39	4.22	3.25
Total	21.99	13.60	7.70

EPA believes Pennsylvania has demonstrated that the VOCs and NO_X emissions in the Somerset County Area will improve due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state-adopted measures.

Maintenance demonstration: As Table 1 and 2 indicate, the Somerset County Attainment Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that future emissions of VOCs and NO_X remain at or below the 2002 base-year emissions levels through the year 2018.

Based upon the comparison of the projected emissions and the 2002 base-year inventory emissions, along federal and state measures, EPA concludes that PADEP successfully demonstrates that the 8-hour ozone standard will be maintained in the Somerset County Area. Further details of Somerset County Attainment Area's 8-hour ozone maintenance demonstration can be found in a Technical Support Document (TSD) prepared for this rulemaking.

Ambient Air Quality Monitoring: With regard to the ambient air monitoring component of the maintenance plan, Pennsylvania commits to continue operating its current air quality

monitoring stations in accordance with 40 CFR part 58, to verify the attainment status of the area, with no reductions in the number of sites from those in the existing network unless pre-approved by EPA.

Contingency Plan: Section 110(a)(1) of the CAA requires that the state develop a contingency plan which will ensure that any violation of a NAAQS is promptly corrected. The purpose of the contingency plan is to adopt measures, outlined in the maintenance plan, in order to assure continued attainment in the event of a violation of the 8-hour ozone NAAQS. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

Since the Somerset County Area does not have a monitor, contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentrations at the design monitor for the Cambria County Area are above 84 parts per billion (ppb). If this trigger point occurs, PADEP will evaluate whether additional local emission control measures should be implemented in Somerset County in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of federal, state, and local measures that have been adopted but not yet implemented at the time the excessive ozone levels occurred. PADEP will then begin the process of implementing the contingency measures outlined in their maintenance plan.

Verification of continued attainment: PADEP will track the attainment status of the 8-hour ozone NAAQS for Somerset County by reviewing air quality at the design monitor for the Cambria County Area and emissions data during the maintenance period. An annual evaluation of vehicle miles traveled and emissions reported from stationary sources will be performed and compared to the assumptions about the factors used in the maintenance plan. PADEP will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, subpart A) for any unanticipated increases. Based on these evaluations, PADEP will consider whether any further emission control measures should be implemented.

III. Proposed Action

EPA is proposing to approve the maintenance plan and the 2002 base-year inventory for the Somerset County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan and 2002 base-year inventory for the Somerset County Area because it meets the requirements of section 110(a)(1) of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve the maintenance plan and the 2002 base-year inventory for the Somerset County Area in the Commonwealth of Pennsylvania does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 1, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8–10813 Filed 5–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0182; FRL–8565–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Susquehanna County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as a 2002 base-year inventory for

the Susquehanna County Area. EPA is proposing approval of the maintenance plan and the 2002 base-year inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 13, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0182 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0182, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2008–0182. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 17, 2007, PADEP formally submitted for approval, under section 110(a)(1) of the CAA, a SIP revision for the 8-hour ozone maintenance plan and the 2002 base-year inventory for the Susquehanna County Area.

I. Background

Section 110(a)(1) of the CAA requires that states submit to EPA plans to maintain the NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS, but attainment for the 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS.

On May 20, 2005, EPA issued guidance that applies to areas that are designated unclassifiable/attainment for the 8-hour ozone standard. The purpose of this guidance is to address the maintenance requirements in section 110(a)(1) of the CAA, and to assist the states in the development of a SIP. The components from EPA's guidance include: (1) An attainment emissions inventory, which is based on actual ''typical summer day'' emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for a 10-year maintenance period, from a base-year chosen by the state; (2) a maintenance demonstration, which demonstrates how the area will remain in compliance with the 8-hour ozone standard for a period of 10 years following the effective date of designation unclassifiable/attainment (June 15, 2004); (3) an ambient air monitoring network, which will be in continuous operation in accordance with 40 CFR Part 58 to verify maintenance of the 8-hour ozone standard; (4) a contingency plan, that will ensure that in the event of a violation of the 8-hour ozone NAAQS, measures will be implemented as promptly as possible; and (5) a verification of continued attainment, indicating how the state intends on tracking the progress of the maintenance plan.

II. Summary of SIP Revision

The Commonwealth of Pennsylvania has requested approval of its 8-hour ozone maintenance plan and 2002 base-year inventory for the Susquehanna County Area. The PADEP 8-hour ozone maintenance plan addresses the five components of EPA's May 20, 2005 guidance, which pertains to the maintenance requirements in section 110(a)(1) of the CAA.

Attainment Emission Inventory: An attainment emissions inventory includes emissions during the time period associated with the monitoring data showing attainment. PADEP has provided an emissions inventory for VOCs and NO_X, using 2002 as the base-year from which to project emissions. The 2002 inventory is consistent with EPA guidance, is based on actual ''typical summer day'' emissions of VOCs and NO_X, and consists of a list of sources and their associated emissions. PADEP prepared comprehensive VOCs and NO_X emissions inventories for the Susquehanna County Area. In the maintenance plan, PADEP included information on the man-made sources of ozone precursors, VOCs and NO_X (e.g., ''stationary sources,'' ''stationary area sources,'' ''highway vehicles,'' and ''nonroad sources'').

Pennsylvania projected emissions for beyond 10 years from the effective date of the April 30, 2004 designations for the 8-hour ozone standard. PADEP has developed an emissions inventory for ozone precursors for the year 2002, 2009, and 2018. Tables 1 and 2 show the VOCs and NO_X emissions reduction summary for 2002, 2009, and 2018.

TABLE 1.—VOC EMISSIONS SUMMARY: 2002, 2009 AND 2018

[Tons per summer day]

Major source category	2002	2009	2018
Stationary Point Sources*	0.00	0.00	0.00
Stationary Area Sources	6.21	6.15	6.92
Highway Vehicles	3.17	1.71	1.00
Nonroad Sources	2.36	2.14	1.63
Total	11.74	10.00	9.55

*Values are greater than zero. Values appear as zero due to rounding.

TABLE 2.—NO_X EMISSIONS SUMMARY: 2002, 2009 AND 2018

[Tons per summer day]

Major source category	2002	2009	2018
Stationary Point Sources	0.10	0.10	0.11
Stationary Area Sources	0.24	0.26	0.28
Highway Vehicles	8.56	4.87	1.90
Nonroad Sources	1.37	1.16	0.85
Total	10.27	6.39	3.14

EPA believes Pennsylvania has demonstrated that the VOCs and NO_X emissions in the Susquehanna County Area will improve due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state-adopted measures.

Maintenance demonstration: As Table 1 and 2 indicate, the Susquehanna County Attainment Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that future emissions of VOCs and NO_X remain at or below the 2002 base-year emissions levels through the year 2018.

Based upon the comparison of the projected emissions and the 2002 base-year inventory emissions, along federal and state measures, EPA concludes that PADEP successfully demonstrates that the 8-hour ozone standard will be maintained in the Susquehanna County Area. Further details of Susquehanna County Attainment Area's 8-hour ozone maintenance demonstration can be found in a Technical Support Document (TSD) prepared for this rulemaking.

Ambient Air Quality Monitoring: With regard to the ambient air monitoring component of the maintenance plan, Pennsylvania commits to continue operating its current air quality monitoring stations in accordance with 40 CFR part 58, to verify the attainment status of the area, with no reductions in the number of sites from those in the existing network unless pre-approved by EPA.

Contingency Plan: Section 110(a)(1) of the CAA requires that the state develop a contingency plan which will ensure that any violation of a NAAQS is promptly corrected. The purpose of the contingency plan is to adopt measures, outlined in the maintenance plan, in order to assure continued attainment in the event of a violation of the 8-hour ozone NAAQS. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

Since the Susquehanna County Area does not have a monitor, contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentrations at the design monitor for the Scranton-Wilkes-Barre Area are above 84 parts per billion (ppb). If this trigger point occurs, PADEP will evaluate whether additional local emission control measures should be implemented in Susquehanna County in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of federal, state, and local measures that have been adopted but not yet implemented at the time the excessive ozone levels occurred. PADEP will then begin the process of implementing the contingency measures outlined in their maintenance plan.

Verification of continued attainment: PADEP will track the attainment status of the 8-hour ozone NAAQS for Susquehanna County by reviewing air quality at the design monitor for the Scranton-Wilkes-Barre Area and emissions data during the maintenance period. An annual evaluation of vehicle miles traveled and emissions reported from stationary sources will be performed and compared to the assumptions about the factors used in the maintenance plan. PADEP will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, subpart A) for any unanticipated increases. Based on these evaluations, PADEP will consider whether any further emission control measures should be implemented.

III. Proposed Action

EPA is proposing to approve the maintenance plan and the 2002 base-year inventory for the Susquehanna County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan and 2002 base-year inventory for the Susquehanna County Area because it meets the requirements of section 110(a)(1) of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations.

42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve the maintenance plan and the 2002 base-year inventory for the Susquehanna County Area in the Commonwealth of Pennsylvania does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 5, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–10809 Filed 5–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0180; FRL–8565–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Crawford County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as a 2002 base-year inventory for the Crawford County Area. EPA is proposing approval of the maintenance plan and the 2002 base-year inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 13, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0180 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0180, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2008–0180. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 17, 2007, PADEP formally submitted for approval, under section 110(a)(1) of the CAA, a SIP revision for the 8-hour ozone maintenance plan and the 2002 base-year inventory for the Crawford County Area.

I. Background

Section 110(a)(1) of the CAA requires that states submit to EPA plans to maintain the NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS, but attainment for the 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS.

On May 20, 2005, EPA issued guidance that applies to areas that are designated unclassifiable/attainment for the 8-hour ozone standard. The purpose of this guidance is to address the maintenance requirements in section 110(a)(1) of the CAA, and to assist the states in the development of a SIP. The components from EPA's guidance include: (1) An attainment emissions inventory, which is based on actual ''typical summer day'' emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for a 10-year maintenance period, from a base-year chosen by the state; (2) a maintenance demonstration, which demonstrates how the area will remain in compliance with the 8-hour ozone standard for a period of 10 years following the effective date of designation unclassifiable/attainment (June 15, 2004); (3) an ambient air monitoring network, which will be in continuous operation in accordance with 40 CFR Part 58 to verify maintenance of the 8-hour ozone standard; (4) a contingency plan, that will ensure that in the event of a violation of the 8-hour ozone NAAQS, measures will be implemented as promptly as possible; (5) a verification of continued attainment, indicating how the state intends on tracking the progress of the maintenance plan.

II. Summary of SIP Revision

The Commonwealth of Pennsylvania has requested approval of its 8-hour ozone maintenance plan and 2002 base-year inventory for the Crawford County Area. The PADEP 8-hour ozone maintenance plan addresses the five components of EPA's May 20, 2005 guidance, which pertains to the maintenance requirements in section 110(a)(1) of the CAA.

Attainment Emission Inventory: An attainment emissions inventory includes emissions during the time period associated with the monitoring data showing attainment. PADEP has provided an emissions inventory for VOCs and NO_X, using 2002 as the base-year from which to project emissions. The 2002 inventory is consistent with EPA guidance, is based on actual ''typical summer day'' emissions of VOCs and NO_X, and consists of a list of sources and their associated emissions. PADEP prepared comprehensive VOCs and NO_X emissions inventories for the Crawford County Area. In the maintenance plan, PADEP included information on the man-made sources of ozone precursors, VOCs and NO_X (*e.g.*, ''stationary sources,'' ''stationary area sources,'' ''highway vehicles,'' and ''nonroad sources'').

Pennsylvania projected emissions for beyond 10 years from the effective date of the April 30, 2004 designations for the 8-hour ozone standard. PADEP has developed an emissions inventory for ozone precursors for the year 2002, 2009, and 2018. Tables 1 and 2 show the VOCs and NO_X emissions reduction summary for 2002, 2009, and 2018.

TABLE 1.—VOC EMISSIONS SUMMARY: 2002, 2009 AND 2018

[Tons per summer day]

Major source category	2002	2009	2018
Stationary Point Sources	0.50	0.63	0.85
Stationary Area Sources	5.44	5.25	5.79
Highway Vehicles	4.51	2.42	1.39
Nonroad Sources	5.87	4.63	3.12
Total	16.32	12.93	11.15

TABLE 2.—NO_X EMISSIONS SUMMARY: 2002, 2009 AND 2018

[Tons per summer day]

Major source category	2002	2009	2018
Stationary Point Sources	7.87	9.59	11.96
Stationary Area Sources	0.74	0.79	0.83
Highway Vehicles	8.44	4.61	1.84
Nonroad Sources	3.05	2.51	1.80
Total	20.10	17.50	16.43

EPA believes Pennsylvania has demonstrated that the VOCs and NO_X emissions in the Crawford County Area will improve due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state-adopted measures.

Maintenance demonstration: As Table 1 and 2 indicate, the Crawford County Attainment Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that future emissions of VOCs and NO_X remain at or below the 2002 base-year emissions levels through the year 2018.

Based upon the comparison of the projected emissions and the 2002 base-year inventory emissions, along federal and state measures, EPA concludes that PADEP successfully demonstrates that the 8-hour ozone standard will be maintained in the Crawford County Area. Further details of Crawford County Attainment Area's 8-hour ozone

maintenance demonstration can be found in a Technical Support Document (TSD) prepared for this rulemaking.

Ambient Air Quality Monitoring: With regard to the ambient air monitoring component of the maintenance plan, Pennsylvania commits to continue operating its current air quality monitoring stations in accordance with 40 CFR Part 58, to verify the attainment status of the area, with no reductions in the number of sites from those in the existing network unless pre-approved by EPA.

Contingency Plan: Section 110(a)(1) of the CAA requires that the state develop a contingency plan which will ensure that any violation of a NAAQS is promptly corrected. The purpose of the contingency plan is to adopt measures, outlined in the maintenance plan, in order to assure continued attainment in the event of a violation of the 8-hour ozone NAAQS. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

Since the Crawford County Area does not have a monitor, contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentrations at the design monitor for the Erie Area are above 84 parts per billion (ppb). If this trigger point occurs, PADEP will evaluate whether additional local emission control measures should be implemented in Crawford County in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of federal, state, and local measures that have been adopted but not yet implemented at the time the excessive ozone levels occurred. PADEP will then begin the process of implementing the contingency measures outlined in their maintenance plan.

Verification of continued attainment: PADEP will track the attainment status of the 8-hour ozone NAAQS for Crawford County by reviewing air quality at the design monitor for the Erie Area and emissions data during the maintenance period. An annual evaluation of vehicle miles traveled and emissions reported from stationary sources will be performed and compared to the assumptions about the factors used in the maintenance plan. PADEP will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, Subpart A) for any unanticipated increases. Based on these evaluations, PADEP will consider whether any further emission control measures should be implemented.

III. Proposed Action

EPA is proposing to approve the maintenance plan and the 2002 base-year inventory for the Crawford County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan and 2002 base-year inventory for the Crawford County Area because it meets the requirements of section 110(a)(1) of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve the maintenance plan and the 2002 base-year inventory for the Crawford County Area in the Commonwealth of Pennsylvania does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 5, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–10815 Filed 5–13–08; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 73, No. 94
Wednesday, May 14, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Health for All Seasons LLC of Mountain View, California, an exclusive license to U.S. Patent Application Serial No. 11/641,318, ''Extruded Legumes,'' filed on December 18, 2006.

DATES: (**Federal Register**.) Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Health for All Seasons LLC of Mountain View, California has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E8–10828 Filed 5–13–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Nawgan Products, LLC of Chesterfield, Missouri, an exclusive license to U.S. Patent Application Serial No. 11/387,312, ''Food-Grade Formulations for Long-Term Stabilization of Lycopene,'' filed on March 26, 2006.

DATES: **Federal Register** comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Nawgan Products, LLC of Chesterfield, Missouri has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E8–10826 Filed 5–13–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Floodwater Retarding Structure No. 5 of the Plum Creek Watershed, Hays County, Texas

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure No. 5 of the Plum Creek Watershed, Hays County, Texas.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, Telephone (254) 742–9800.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project. The project will rehabilitate Floodwater Retarding Structure No. 5 to maintain the present level of flood control benefits and comply with the current performance and safety standards.

Rehabilitation of the site will require the dam to be modified to meet current performance and safety standards for a high hazard dam. The modification will

consist of raising the top of dam 3.5 feet, extending the back toe of the embankment to maintain a 3:1 slope, installation of an additional principal spillway (24″ hooded inlet type), installation of a foundation drain system along the back toe of the embankment, lowering the crest elevation of the auxiliary spillway 0.4 feet, installing a splitter dike in the auxiliary spillway and realigning the entrance section of the auxiliary spillway. An impact basin that will serve both principal spillway outlets will be added to replace the existing plunge pool. All disturbed areas will be planted to adapted native and/or introduced species. The proposed work will not have a significant affect on any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (Section 313, Pub. L. 106–472). Total project cost is estimated to be $2,383,400, of which $1,693,800 will be paid from the Small Watershed Rehabilitation funds and $689,600 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: April 28, 2008.

Donald W. Gohmert,

State Conservationist.

[FR Doc. E8–10698 Filed 5–13–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

West Tarkio Creek Watershed, Montgomery, Fremont and Page Counties, Iowa and Atchison County, MO

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: Al Garner, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, PL–109–97, in the State of Iowa, is hereby providing notification that a record of decision to proceed with the installation of West Tarkio Creek Watershed project is available. Copies of this record of decision may be obtained from the Iowa NRCS Web site *http://www.ia.nrcs.usda.gov/,* or from Al Garner at the address shown below.

FOR FURTHER INFORMATION CONTACT: Al Garner, Acting State Conservationist, Natural Resources Conservation Service, 693 Federal Building, 210 Walnut Street, Iowa, 50309, telephone 515–284–6655.

Dated: April 30, 2008.

Al Garner,

Acting State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials.)

[FR Doc. E8–10699 Filed 5–13–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Corrected 2007 Calculation of Expected Non-Market Economy Wages

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

ACTION: Correction of 2007 Expected Non-Market Economy Wage Calculation.

SUMMARY: On May 9, 2008 the Department published finalized 2007 expected NME wage rates. *See* 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 26363, (May 9, 2008). However, those results inadvertently omitted observation #1 (the data for Albania) from the regression analysis. That error has been corrected.

DATES: These expected NME wage rates are finalized on the date of publication of this notice in the **Federal Register** and will be in effect for all antidumping proceedings for which the Department's final decision is due after the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Anthony Hill, Economist, Office of Policy, or Juanita Chen, Special Assistant to the Senior Enforcement Coordinator, China/NME Group, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1843 and (202) 482–1904, respectively.

Correction of Clerical Error

The Department inadvertently omitted observation #1 (the data for Albania) from the regression analysis. That error has now been corrected.

Results

After correction of the clerical error, the regression results are:

Wage = 0.257585 + 0.000448* GNI.

The final expected NME wage rates, as calculated after this correction, are shown in Attachment 1.

Dated: May 12, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Attachment 1

Country	Expected NME	
	2005 GNI (USD per annum)	Wage rate (USD per hour)
Armenia	1,470	0.92
Azerbaijan	1,270	0.83
Belarus	2,760	1.49

Country	Expected NME	
	2005 GNI (USD per annum)	Wage rate (USD per hour)
China	1,740	1.04
Georgia	1,300	0.84
Kyrgyz Republic	450	0.46
Moldova	960	0.69
Tajikistan	330	0.41
Uzbekistan	530	0.50
Vietnam	620	0.54

The World Bank did not publish a GNI for Turkmenistan.

The final results and underlying data for the 2007 calculation have been posted on the Import Administration Web site at (*http://ia.ita.doc.gov*).

[FR Doc. E8–10903 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–808]

Certain Cut-to-Length Carbon Steel Plate From the Russian Federation; Final Results of Administrative Review of the Suspension Agreement

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

ACTION: Notice of Final Results of the Administrative Review of the Suspension Agreement on Certain Cut–to-Length Carbon Steel Plate from the Russian Federation

SUMMARY: On February 6, 2008, the Department of Commerce (the Department) published the preliminary results of an administrative review of the suspension agreement on certain cut–to-length carbon steel plate from the Russian Federation (the Agreement). *See Certain Cut–to-Length Carbon Steel Plate from Russia; Preliminary Results of Administrative Review of the Suspension Agreement*, 73 FR 6929 (February 6, 2008) (*Preliminary Results*). The period of review is January 1, 2006 through December 31, 2006. No interested parties submitted comments. Therefore, for these final results, we have made no changes to our preliminary results.

EFFECTIVE DATE: May 14, 2008.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Jay Carreiro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0162 or (202) 482–3674, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2002, the Department signed an agreement under section 734(b) of the Tariff Act of 1930, as amended (the Act), with Russian steel producers/exporters, including J.S.C. Severstal (Severstal), which suspended the antidumping duty investigation on certain cut–to-length carbon steel plate (CTL plate) from Russia. *See Suspension of Antidumping Duty Investigation: Certain Cut–to-Length Carbon Steel Plate from the Russian Federation*, 68 FR 3859 (January 27, 2003).

On January 31, 2007, Nucor submitted a request for an administrative review pursuant to *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 99 (January 3, 2007). On February 28, 2007, the Department initiated a review of the Agreement. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 8969 (February 28, 2007). On March 14, 2007, and October 5, 2007, the Department issued its Questionnaire and Supplemental Questionnaire, respectively, to Severstal. Severstal submitted its responses on April 20, 2007, and October 26, 2007, respectively.

On October 1, 2007, the Department postponed the preliminary results of this review until January 31, 2008. *See Notice of Extension of Time Limit for the Preliminary Results of Administrative Review of the Suspension Agreement on Certain Cut–to-Length Carbon Steel Plate from Russia*, 72 FR 55744 (October 1, 2007). On February 6, 2008, the Department published its preliminary results of review. *See Preliminary Results.* We invited interested parties to comment on our preliminary results. No interested parties submitted comments, and we have made no changes to our preliminary results.

Scope of Review

The products covered by the Agreement are hot–rolled iron and non–alloy steel universal mill plates (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 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non–alloy steel flat–rolled products not in coils, of rectangular shape, hot–rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat–rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')--for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of this Agreement is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Review

The period of review (POR) is January 1, 2006 through December 31, 2006.

Final Results of Review

Our review of the information submitted by Severstal indicates that the company has adhered to the terms of the Agreement, as indicated in our preliminary results. *See Preliminary Results*. The Department finds no evidence in the information submitted by Severstal of any discrepancies in Severstal's exports to the United States, either directly or through third countries, which would constitute a violation of the Agreement. Furthermore, the Department has not received any comments on the matter from Nucor nor any other interested party, either prior or subsequent to the issuance of the *Preliminary Results*. Therefore, we continue to find that Severstal has been in compliance with the Agreement.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

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

Dated: May 6, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–10816 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, June 4, 2008 from 1 p.m. until 5 p.m., Thursday, June 5, 2008, from 8:30 a.m. until 5 p.m., and Friday, June 6, 2008 from 8 a.m. until 4:30 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html/*.

DATES: The meeting will be held on June 4, 2008 from 1 p.m. until 5 p.m., June 5, 2008 from 8:30 a.m. until 5 p.m. and June 6, 2008, from 8 a.m. until 4:30 p.m.

ADDRESSES: The meeting will take place at George Washington University, 1918 F Street, NW., Dining Room Conference, Washington, DC on June 4, 2008 and the George Washington University Cafritz Conference Center 800 21st Street, NW., Room 310, Elliott Room, Washington, DC on June 5–6, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Pauline Bowen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2938.

SUPPLEMENTARY INFORMATION:

Agenda

—Welcome and Overview;
—Federal Initiatives Due in June;
(Trusted Internet Connection, Federal Desktop Core Configuration, Homeland Security Policy Directive 12, & Internet Protocol version 6);
—FISMA Report Briefing;
—FISMA Metrics Efficacy Discussion;
—Privacy Technology Report Review;
—NIST FISMA Program Phase II Discussion;
—FISMA Implementer Panel;
—CSIS Commission Briefing;
—ISPAB Work Plan Discussion;
—Telecommuting Security Discussion;
—VA Data Breach Follow-up Briefing;
—Chief Privacy Officer Training;
—Cryptographic HASH;
—Authentication of the Future—Looking Ahead To Advise NIST and OMB.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public (Friday, June 6, 2008 at 3:15–3:45 p.m.). Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated above. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Approximately 15 seats will be available for the public and media.

Dated: May 6, 2008.

James M. Turner,

Deputy Director.

[FR Doc. E8–10762 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH90

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeastern Data, Assessment, and Review (SEDAR) Steering Committee; Public Meeting

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

ACTION: Notice of SEDAR Steering Committee Meeting.

SUMMARY: The SEDAR Steering Committee will meet via conference call to discuss assessment updates to be completed during 2009. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Steering Committee will meet on Tuesday, June 10, 2008, from 12 noon to 1 p.m.

ADDRESSES: The meeting will be held via conference call. See **SUPPLEMENTARY INFORMATION** for available listening stations.

FOR FURTHER INFORMATION CONTACT: John Carmichael, Science and Statistics Program Manager, SAFMC, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: Listening stations are available at the following locations:

1. South Atlantic Fishery Management Council, 4055 Faber Place Drive #201, North Charleston, SC 29405;

2. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; and

3. Caribbean Fishery Management Council, 268 Munoz Rivera Ave., Suite 1108, San Juan, Puerto Rico 00918.

The South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils; in conjunction with NOAA Fisheries, the Atlantic States Marine Fisheries Commission, and the Gulf States Marine Fisheries Commission; implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks. The SEDAR Steering Committee provides oversight of the SEDAR process, establishes assessment priorities, and provides coordination of assessment and management activities.

During this conference call the Steering Committee will follow-up on activities from its May 5, 2008 meeting to finalize assessment update priorities for 2009.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the South Atlantic Fishery Management Council office at the address listed above at least 10 business days prior to the meeting.

Dated: May 9, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–10719 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH68

Gulf of Mexico Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of a revision of a public meeting agenda.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a joint meeting of The Standing and Special Reef Fish SSCs (SSC).

DATES: The Joint Standing and Special Reef Fish SSC meeting will begin at 1:30 pm on Tuesday, May 27, 2008 and conclude by 3 pm on Thursday, May 29, 2008.

ADDRESSES: The meeting will be held at the Quorum Hotel, 700 N. Westshore Blvd., Tampa, FL 33609; telephone: (813) 289–8200.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on May 6, 2008 (73 FR 24953). The notice adds the following agenda item to that notice:

Finally, the SSC will discuss the red snapper stock assessment update.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

All other previously-published information remains unchanged.

Dated: May 9, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–10714 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH89

Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held June 2–5, 2008.

ADDRESSES: The meetings will be held at the Hilton Hobby Hotel, 8181 Airport Drive, Houston, TX 77061.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–348–1630.

SUPPLEMENTARY INFORMATION:

Committees

Monday, June 2, 2008–CLOSED SESSION

1 pm–5:30 pm–CLOSED SESSION–Budget/Personnel Committee and Full Council will interview and select an Executive Director.

Tuesday, June 3, 2008

8 am–12 pm&1:30 pm–5:30 pm–The Reef Fish Management Committee will meet to discuss Draft of Reef Fish Amendment 30B; Approval of Public Hearing Draft of Reef Fish Amendment 29, including IFQ Referendum Language; Ad Hoc Recreational Red Snapper AP Management and Bycatch Reduction Ideas; Review of NMFS Guidelines for ACL/AMs (if available); SEDAR TOR for Hogfish; and Ecosystem Workshop Report.

5:30 pm–6:30 pm–Informal Question and Answer Session on Gulf of Mexico Fishery Management Issues.

Wednesday, June 4, 2008

8:30 am–9:30 am–The Reef Fish Management Committee continued.

9:30 am–10:30 am–The Administrative Policy Committee will meet to discuss Report on Lenfest Annual Catch Limits (ACL's).

10:30 am–12 pm–The Joint Reef Fish/Mackerel/Red Drum Management Committee will meet to discuss the Generic Aquaculture Amendment.

1:30 pm–2:30 pm–The Outreach and Education Committee will meet to discuss Proposed Activities.

2:30 pm–4:30 pm–The Ad Hoc Allocation Committee will meet to discuss Development of Guidelines and Principles for Allocations.

4:30 pm–5:30 pm–The Stone Crab/Spiny Lobster Committee will meet to discuss the Spiny Lobster Scoping Meeting Document.

Council

Thursday, June 5, 2008–The Council meeting will begin at 8:30 am with a review of the agenda and minutes. From 8:45 am–9:45 am on Proposed Rule Integrating Magnuson-Stevens Act and NEPA; From 9:45 am–10:45 am public testimony on exempted fishing permits (EFPs), if any; An Open Public Comment Period regarding any fishery issue of concern will be immediately following completion of public testimony for one hour. People wishing to speak before the Council should complete a public comment card prior to the comment period. The Council will review and discuss reports from the previous two days' committee meetings as follows: 1 pm–3 pm–Reef Fish Management; 3 pm–3:15 pm–Joint Reef Fish/Mackerel/Red Drum; 3:15 pm –3:45 pm–Administrative Policy; 3:45 pm–4 pm–Outreach & Education; 4 pm–4:30 pm–Ad Hoc Allocation; 4:30 pm–4:45 pm–Stone Crab/Spiny Lobster. The Council will discuss Other Business items from 4:45 pm–5:45 pm. The Council will conclude its meeting at 5:45 pm.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the M-SFCMA, those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: May 9, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–10748 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH93

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee in June, 2008 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, June 2, 2008 at 9 a.m.

ADDRESSES: *Meeting address*: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; fax: (207) 772–4017.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will meet to review Draft Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP) and its accompanying Draft Environmental Impact Statement (DEIS). This amendment is being developed to continue groundfish rebuilding plans. The Committee will also receive reports from the Groundfish Advisory Panel and the Recreational Advisory Panel. After considering the advice of the Advisory Panels and reviewing the draft amendment and DEIS, the Committee may identify preferred management measure alternatives from the options in the document. The Committee may also suggest modifications to the measures text or the analyses of impacts. The Committee decisions will be reported to the full Council at a meeting on June 4, 2008.

There is a possibility that this meeting may be cancelled. The Committee is also scheduled to meet May 13, 2008 to discuss Amendment 16. If the Committee decides that it has completed its work on the amendment at that meeting, the meeting on June 2, 2008 may be cancelled. Notice to the public will be provided via the **Federal Register** and on the Council's web page (*www.nefmc.org*) if this occurs.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 9, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–10750 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH86

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Management Team (HMSMT) and Highly Migratory Species Advisory Subpanel (HMSAS) will hold work sessions, which are open to the public.

DATES: The HMSMT work session will begin at 8:30 a.m. on Tuesday, June 3, 2008; the HMSMT and HMSAS will begin meeting jointly at 1:30 p.m. on the same day and continue until 5:30 p.m. The joint meeting of the HMSMT and HMSAS will resume on Wednesday, June 4, 2008, at 8:30 a.m. and continue until the two committees finish their joint discussions. The committees will

then meet separately until business is completed.

ADDRESSES: The work sessions will be held at the U.S. Fish and Wildlife Offices, Conference Rooms 1 & 2, 6010 Hidden Valley Rd., Carlsbad, CA 92011; telephone: (760) 431–9440.

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

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The HMSMT/HMSAS work sessions will discuss preparation of the HMS stock assessment and fishery evaluation (SAFE) report, 2009–10 HMS biennial harvest specifications, Magnuson-Stevens Act re-authorization implementation, international fisheries issues, management concepts for the high seas shallow-set longline fishery, and research and data related issues.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 9, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–10716 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH87

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee (SSC), Standard Operating, Policy and Procedure (SOPPs) Committee, Advisory Panel Selection Committee (Closed Session), Ecosystem-based Management Committee, Shrimp Committee, Spiny Lobster Committee, Limited Access Privilege (LAP) Program Committee, Allocation Committee, SSC Selection Committee (Closed Session), Southeast Data, Assessment, and Review (SEDAR) Committee, Snapper Grouper Committee, Snapper Grouper Advisory Panel, and a meeting of the full Council. The Council will also hold a public comment session regarding Amendment 15B to the Snapper Grouper Fishery Management Plan (FMP) addressing the sale of bag limit snapper grouper species, methods to reduce the effects of incidental hooking on sea turtles and smalltooth sawfish, commercial permit renewal periods and transferability requirements, implementation of a plan to monitor and access bycatch, establishment of reference points, such as Maximum Sustainable Yield (MSY) and Optimum Yield (OY) for golden tilefish, and establishment of allocations for snowy grouper and red porgy. In addition, the Council will hold a public comment session regarding Amendment 16 to the Snapper Grouper FMP addressing measures to end overfishing for gag grouper and vermilion snapper and interim allocations of these two species for commercial and recreational fisheries. The Council will also hold a public comment for emergency or interim measures to address overfishing of red snapper if the Council proposes such. A presentation on the Lenfest Ocean Report regarding Annual Catch Limits will be given as part of the Council meeting. See **SUPPLEMENTARY INFORMATION** for additional details.

DATES: The meetings will be held in June 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Renaissance Orlando Airport Hotel, 5445 Forbes Place, Orlando, FL, 32812; telephone: (1–800) 228–9290 or (407) 240–1000. Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free at (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Scientific and Statistical Committee Meeting: June 8, 2008, 3 p.m. until 6 p.m.; June 9, 2008 from 8 a.m. until 6 p.m., and June 10, 2008 from 8 a.m. until 5 p.m (Concurrent Sessions)

The Scientific and Statistical Committee will review and provide recommendations for the Council's Fishery Ecosystem Plan (FEP) and the Comprehensive Ecosystem Amendment (CEA). The FEP will act as a source document for subsequent CEAs to various species-based management plans. The first CEA updates existing Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC) information to address the EFH Final Rule and to meet the 5-year review required by the Magnuson-Stevens Act, and addresses the designation of deepwater coral HAPCs.

The SSC will also review and provide recommendations for Amendment 7 to the Shrimp FMP addressing rock shrimp endorsement requirements for the South Atlantic, the Shrimp Review Panel Report addressing the status of pink shrimp, and the multi-council Spiny Lobster Import Amendment. In addition, the SSC will review and provide recommendations regarding Snapper Grouper Amendment 15B (bag limit sales and other measures), Snapper Grouper Amendment 16 (measures to end overfishing for gag grouper and vermilion snapper), Snapper Grouper Amendment 17 (addressing overfishing levels and Allowable Biological Catch recommendations), SEDAR assessments on red snapper, greater amberjack, and mutton snapper, and Snapper Grouper Amendment 18 addressing overfishing for red snapper.

2. SOPPs Committee Meeting: June 9, 2008, 1 p.m. until 2 p.m.

The SOPPs Committee will receive an update on the review of the Council's SOPPs by the Secretary of Commerce and develop changes if necessary.

3. Advisory Panel Selection Committee Meeting (Closed Session): June 9, 2008, 2 p.m. until 3 p.m.

The Advisory Panel Selection Committee will meet in Closed Session to review applications and develop recommendations for appointment.

4. Ecosystem-based Management Committee Meeting: June 9, 2008, 3 p.m. until 6 p.m. and June 10, 2008 from 8 a.m. until 10:30 a.m.

The Ecosystem-based Management Committee will review comments received during public hearings and from the SSC regarding the Fishery Ecosystem Plan and the Comprehensive Ecosystem Amendment, and modify as necessary.

Note: From 6 p.m. until 7 p.m. on June 9, 2008, a presentation will be given on the Lenfest Ocean Program Report regarding Annual Catch Limits.

5. Shrimp Committee Meeting: June 10, 2008, 10:30 a.m. until 12 noon

The Shrimp Committee will review the Shrimp Review Panel report regarding pink shrimp overfishing and take action as appropriate. The Committee will also receive a report regarding the economic impacts associated with Amendment 7 to the Shrimp FMP.

6. Spiny Lobster Committee Meeting: June 10, 2008, 1:30 p.m. until 3 p.m.

The Spiny Lobster Committee will review a three-Council amendment to address management issues regarding the import of spiny lobster. The Caribbean Fishery Management Council has administrative lead for this amendment. The Committee will review and approve the amendment for public hearings and develop a public hearing schedule. The Committee will also receive a report on the status of State of Florida actions on spiny lobster, and develop a timeline for the next amendment to the Spiny Lobster FMP.

7. LAP Program Committee: June 10, 2008, 3 p.m. until 4 p.m.

The LAP Program Committee will review the results of staff contacts with golden tilefish fishermen relative to the development of a LAP Program and provide guidance to staff. The Committee will also receive a presentation of a proposal for a Property Rights Based Management Program and discuss outreach activities for LAP Programs.

8. Allocation Committee Meeting: June 10, 2008, 4 p.m. until 6 p.m.

The Allocation Committee will receive a presentation on the Atlantic Coastal Cooperative Statistics Program (ACCSP), review a list of alternatives for allocations, and provide guidance to staff.

9. Snapper Grouper Advisory Panel Meeting: June 11, 2008, 8 a.m. until 6 p.m. (Concurrent Session)

The Council's Snapper Grouper Advisory Panel (AP) will receive a presentation of analysis of new data on economic impacts regarding the bag limit sales of snapper grouper species as outlined in Snapper Grouper Amendment 15B. The AP will then review and provide comment on Amendment 15B, Amendment 16 addressing overfishing for gag grouper and vermilion snapper, and Amendment 17 addressing Annual Catch Limits and other management issues. The AP will then join the Snapper Grouper Committee meeting to hear presentations on SEDAR and the report from the SSC. In addition, the AP will review and comment on Amendment 18 addressing overfishing for red snapper, receive a presentation on the results of the LAP Program consultation with golden tilefish fishermen and AP comments, and receive a presentation for a proposal for a Property Rights Based Management Program.

10. SSC Selection Committee Meeting (Closed Session): June 11, 2008, 8 a.m. until 10 a.m.

The SSC Selection Committee will meet in Closed Session to review the results of recent SSC appointments and modify as necessary. The Committee will also make appointments to Technical Committees.

11. SEDAR Committee Meeting: June 11, 2008, 10 a.m. until 12 noon

The SEDAR Committee will review recommendations from the SEDAR Steering Committee and take action as necessary. The Committee will also approve the Terms of Reference and schedule SEARs 18 and 19.

12. Snapper Grouper Committee Meeting: June 11, 2008, 1:30 p.m. until 6:00 p.m. and June 12, 2008, 8 a.m. until 3:30 p.m.

The Snapper Grouper Committee will receive presentations on SEDAR assessment results for red snapper, greater amberjack, and mutton snapper, and a presentation on a Snapper Grouper Catch Characterization Study. The Committee will receive an SSC report on SEDAR assessments, and Snapper Grouper Amendments 15B, 16 and 17. In addition, the Committee will receive presentations on Oculina monitoring updates, a Pre-Amendment 14 (marine protected areas) Survey, and review the Gray's Reef National Marine Sanctuary research area and spearfishing request. The Committee will receive a presentation on new data regarding the economic impacts of bag limit sales as addressed in Amendment 15B, review comments received on Amendment 15B, review the document, make modifications if necessary, and recommend approval for formal review by the Secretary of Commerce. For Amendment 16, the Committee will review comments, review the document, modify if necessary, and if no significant changes are made, recommend approval for formal review by the Secretary of Commerce.

The Committee will also receive an overview of the Amendment 17 options paper, review a summary of AP comments, and provide direction to staff for options to be developed. The Committee will review comments regarding Amendment 18 and consider emergency or interim measures from red snapper. The Committee will provide direction to staff for options to be developed for Amendment 18.

13. Council Session: June 12, 2008, 4 p.m. until 6:30 p.m. and June 13, 2008, 8 a.m. until 12 noon

Council Session: June 12, 2008, 4 p.m. until 6:30 p.m.

4 p.m. - 4:15 p.m., The Council will call the meeting to order, adopt the agenda, and approve the March 2008 meeting minutes.

4:15 p.m., Public Comment Session: the Council will take public comment on Amendment 15B to the Snapper Grouper FMP. Immediately following, the Council will take public comment on Amendment 16 to the Snapper Grouper FMP. Immediately following, the Council will take public comment on any proposed emergency actions or interim rule measures for red snapper to end overfishing.

4:15 p.m. - 5:30 p.m., The Council will hear a report from the Snapper Grouper Committee. The Council will consider recommendations and approve Amendment 15B and Amendment 16 for submission to the Secretary of Commerce, and consider other Committee recommendations and take action as appropriate.

5:30 p.m. - 6:30 p.m., The Council will receive a Highly Migratory Species (HMS) briefing on the proposed rule for authorizing the use of green-stick gear, update on the HMS FMP Amendment 2 regarding sharks, and the status of the Florida east coast experimental longling fishery.

Council Session: June 13, 2008, 8 a.m. until 12 noon

8 a.m. - 8:15 a.m., The Council will receive a report from the SOPPs

Committee, consider recommendations, and take action as appropriate.

8:15 a.m. - 8:30 a.m., The Council will receive a report from the AP Selection Committee, consider recommendations, and appoint new AP members as necessary.

8:30 a.m. - 8:45 a.m., The Council will receive a report from the Ecosystem-Based Management Committee, consider recommendations, and take action as appropriate.

8:45 a.m. - 9 a.m., The Council will receive a report from the Shrimp Committee, consider recommendations, and take action as appropriate.

9 a.m. - 9:15 a.m., The Council will receive a report from the Spiny Lobster Committee, consider recommendations, and take action as appropriate.

9:15 a.m. - 9:30 a.m., The Council will receive a report from the LAP Program Committee, consider recommendations, and take action as appropriate.

9:30 a.m. - 9:45 a.m., The Council will receive a report from the Allocation Committee, consider recommendations, and take action as appropriate.

9:45 a.m. - 10 a.m., The Council will receive a report from the SSC Selection Committee, consider recommendations, and take action as appropriate.

10 a.m. - 10:15 a.m., The Council will receive a report from the SEDAR Committee, consider recommendations, and take action as appropriate.

10:15 a.m. - 10:30 a.m., The Council will review and develop recommendations on Experimental Fishing Permits as necessary.

10:30 a.m. - 12 noon, The Council will receive status reports from NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, agency and liaison reports, and discuss other business including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal final Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 6, 2008.

Dated: May 9, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–10717 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH92

Fisheries of the South Atlantic and Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR) 16 King Mackerel Assessment Panel Meeting

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

ACTION: Notice of SEDAR 16–South Atlantic and Gulf of Mexico King Mackerel Post-Assessment Workshop Conference Call.

SUMMARY: The SEDAR 16 Assessment Panel will be holding a conference call to review preliminary assessment model results, select a preferred assessment model, and discuss future analysis needs. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 16 Assessment Workshop Panel will meet on Friday, May 30, 2008, from 12 p.m. to 3 p.m. (EST).

ADDRESSES: The meeting will be held via conference call. Listening stations are available at the following locations: South Atlantic Fishery Management Council, 4055 Faber Place Drive #201, North Charleston, SC 29405; and the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, SAFMC, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone (843) 571–4366 or toll free (866) SAFMC–10; FAX (843) 769–4520.

SUPPLEMENTARY INFORMATION: The South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils; in conjunction with NOAA Fisheries, the Atlantic States Marine Fisheries Commission, and the Gulf States Marine Fisheries Commission; implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks.

During this conference call the SEDAR 16 King Mackerel Assessment Panel will follow-up on activities from its May 5–9, 2008 meeting to review preliminary assessment model results, select a preferred assessment model, and discuss future analysis needs.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the South Atlantic Fishery Management Council office at the address listed above at least 10 business days prior to the meeting.

Dated: May 9, 2008,

Tracey L. Thompson,

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

[FR Doc. E8–10749 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH43

Western Pacific Fishery Management Council; Public Meetings; Correction

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

ACTION: Notice of cancellation of a public meeting.

SUMMARY: This notice advises the public that the Western Pacific Fishery Management Council (Council) will postpone a meeting of the Hawaii Archipelago Regional Ecosystem Advisory Committee in Honolulu, HI scheduled for Friday, May 16, 2008.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on April 24, 2008 (73 FR 22137).

The Hawaii Archipelago Regional Ecosystem Advisory Committee meeting that was scheduled for Friday, May 16, 2008 has been postponed until further notice. The Council will publish a **Federal Register** notice when dates for this meeting are set.

All other previously-published information remains unchanged.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 9, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–10715 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH88

Western Pacific Regional Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The 98th meeting of the Western Pacific Regional Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will convene Tuesday, June 10, 2008, through Thursday June 12, 2008. See **SUPPLEMENTARY INFORMATION** for agenda items.

DATES: The SSC meeting will be held will be held between 9 a.m. and 5 p.m. on Tuesday, June 10, 2008, and between 8:30 a.m. and 5 p.m. on Wednesday and Thursday, June 11–12, 2008.

ADDRESSES: The SSC meeting will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION:

Tuesday, June 10, 2008, 9 a.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 97th SSC Meeting Recommendations
4. Report from the Pacific Fisheries Science Center Director
5. Program Planning
   A. Annual Catch Limits (Action Item)
   B. Barter, Trade, Subsistence Management Options (Action Item)
   C. Background on Barter, Trade and Subsistence in Pacific Fisheries
   D. Hawaii Archipelago Advisory Panel Report
   E. Public Comment
   F. Discussion and Action
6. Insular Fisheries
   A. Bottomfish Risk Assessment Model (Action Item)
   B. Hawaii Archipelago Advisory Panel Report
   C. Hawaii Archipelago Plan Team Report
   D. Public Comment
   E. Discussion and Action

Wednesday, June 11, 2008, 8:30 a.m.

7. Pelagic Fisheries
   A. Longline Management
   1. Hawaii Swordfish Fishery Effort (Action Item)
   2. Susceptibility Quasi-Extinction Analysis
   B. Non-Longline Management
   1. Non-Longline Pelagic Fishery Management (Action Item)
   2. FAD Management Options (Action Item)
   C. American Samoa and Hawaii Longline Quarterly Reports
   D. International Fisheries/Meetings
   1. Tuna Round Table
   2. North Pacific Regional Fishery Management Organization Science Committee meeting
   3. Inter-American Tropical Tuna Commission meeting
   E. Hawaii Archipelago Advisory Panel Report
   F. Pacific Pelagic Plan Team Report
   G. Public Comment
   H. Discussion and Action
8. Protected Species
   A. Council's Turtle Advisory Committee meeting
   B. Public Comment
   C. Discussion and Action

Thursday, June 12, 2008, 8:30 a.m.

9. Other Business
   A. Marine Protected Area update
   B. 99th SSC Meeting
10. Summary of SSC Recommendations to the Council

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 9, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–10718 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition under the North American Free Trade Agreement (NAFTA)

May 9, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for certain woven jacquard acetate rayon fabric for use in certain men's apparel.

SUMMARY: On May 2, 2008, the Chairman of CITA received a request from Oxford Industries, Inc., alleging that certain woven jacquard acetate rayon fabrics, of the specifications listed below, classified under subheading 5408.23.2930 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for certain men's apparel, classified under certain HTSUS Chapter 62 subheadings (6203.11, 6203.12, 6203.19, 6203.22, 6203.23, 6203.29, 6203.31, 6203.32, 6203.33, and 6203.39), should be modified to allow the use of non-North American woven jacquard acetate rayon fabric. The President may proclaim a modification to the NAFTA rules of origin only after reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether certain woven jacquard acetate rayon fabrics, of the specifications listed below, classified under subheading 5408.23.2930, can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by **June 13, 2008** to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Martin Walsh or Maria Dybczak,

International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the NAFTA, NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. See Section 202(q) of the NAFTA Implementation Act. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. NAFTA Implementation Act, SAA, H. Doc. 103-159, Vol. 1, at 491 (1993). The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. SAA at 491. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification. See section 202(q) of the NAFTA Implementation Act.

On May 2, 2008, the Chairman of CITA received a request from Oxford Industries, Inc., alleging that certain woven jacquard acetate rayon fabrics, of the specifications listed below, classified under subheading 5408.23.2930 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for certain men's apparel, classified under certain HTSUS Chapter 62 subheadings, should be modified to allow the use of non-North American woven jacquard acetate rayon fabric.

CITA is soliciting public comments regarding this request, particularly with respect to whether the woven jacquard acetate rayon fabrics described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than **June 13, 2008**. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these woven jacquard acetate rayon fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer stating that it produces fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3001 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

Specifications:

HTS Classification:	5408.23.2930
Overall fiber content:	55% Acetate (warp), 45% Rayon (filling)
Yarn size:	
Warp:	75 denier;
Filling:	120 denier
Yarn number:	
Warp:	146 single threads/inch (57.5 single threads/cm)
Filling:	80 single threads/inch (31.5 single threads/cm)
Weight:	2.59 ounces/square yard (88 grams/square meter)
Width:	55 inches (including selvedge)
Weave type:	Jacquard of 2 or more color yarns
Finish:	Yarn dyed and not coated

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–10807 Filed 5–13–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning ''Article of Footwear with Temperature Regulation Means''

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,344,751 entitled ''Article of Footwear with Temperature Regulation Means'' issued April 29, 2008. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233–4184 or E-mail: *Jeffrey.Ditullio@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–10784 Filed 5–13–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Expansion of an Existing Sand and Aggregate Mining Operation Proposed by Aggregate Industries in a Backwater Area of the Mississippi River in Cottage Grove, MN

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Aggregate Industries is proposing a project that will require a St. Paul District, Corps of Engineers (Corps) permit for excavation within a navigable water and to discharge dredged material into waters and wetlands during an aggregate mining operation.

Specifically, Aggregate Industries is proposing to dredge and excavate sand

and gravel in approximately 230 acres of backwater area adjacent to the main channel of the Mississippi River. A berm would be constructed in the river upstream of the mine area to minimize current velocity in the mining area and to reduce turbidity. Sand and gravel would be excavated using a clamshell-type dredge to a maximum depth of approximately 200 feet. Dredged material would be transported via a conveyor system from the dredge to an existing sand and gravel processing plant located on Grey Cloud Island. Excess sand not used for berm construction would be returned to the mined area. A specific compensatory mitigation plan has not yet been developed for the project. Aggregate Industries intends to work with interested federal and state agencies to develop an acceptable plan that would meet federal and state compensatory mitigation requirements. The project requires Corps of Engineers approval under Section 10 of the Rivers and Harbors Act of 1899 and under Section 404 of the Clean Water Act. The final environmental impact statement will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA).

DATES: A public meeting will be held on May 15, 2008 from 4:30 p.m. to 6:30 p.m.

ADDRESSES: The meeting will be held in the Cottage Grove City Hall, 7516 80th Street South, Cottage Grove, MN.

FOR FURTHER INFORMATION CONTACT: Questions concerning the Draft Environmental Impact Statement (DEIS) can be addressed to Mr. Tom Hingsberger, Corps Regulatory Branch, by letter at U.S. Army Corps of Engineers, 190 Fifth Street East, St. Paul, MN 55101–1638, by telephone at (651) 290–5367, or by e-mail at *thomas.j.hingsberger@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Corps and the City of Cottage Grove, Minnesota will jointly prepare the DEIS. The Corps is the lead federal agency and the City of Cottage Grove (City) is the lead state agency under the State of Minnesota's Environmental Policy Act. A Scoping Environmental Assessment Worksheet (EAW) and Draft Scoping Decision Document will be available for review on or after April 21, 2008 on the Internet at *http://www.eqb.state.mn.us.* The Corps and the City will conduct a public meeting (see **DATES** and **ADDRESSES**). Additional meetings will be conducted as needed. We anticipate that the DEIS will be available to the public in summer 2008.

The DEIS will assess impacts of the proposed action and reasonable alternatives, identify and evaluate mitigation alternatives, and discuss potential environmental monitoring. Significant issues and resources to be identified in the DEIS will be determined through coordination with responsible federal, state, and local agencies; the general public; interested private organizations and parties; and affected Native American Tribes. Anyone who has an interest in participating in the development of the DEIS is invited to contact the St. Paul District, Corps of Engineers. Significant issues that will be addressed in the DEIS include:

1. Natural resources, including: Fisheries, mussels, waterfowl, riparian areas, and waters of the U.S.

2. Water quality, groundwater, erosion, and sedimentation.

3. Navigation, flood impacts, hydrology.

4. Historic and Cultural Preservation.

5. Air Quality.

6. Traffic.

7. Noise.

8. Social and economic resources.

9. Downstream resources.

Additional issues of interest may be identified through the public scoping meeting and agency meetings.

Issuing a permit for the excavation and dredging of a 230-acre area of the Mississippi River, and discharging material into the river and adjacent wetlands to construct berms and to dispose of excess dredged material, is considered to be a major Federal action with the potential to have a significant impact on the quality of the human environment. The project: (1) Has the potential to significantly affect habitat for fish and threatened or endangered species of mussels, (2) has the potential to affect navigation and flood impacts, (3) would be conducted in an area with potential cultural and historic significance. Our environmental review will be conducted to meet the requirements of the National Environmental Policy Act of 1969, National Historic Preservation Act of 1966, Council of Environmental Quality Regulations, Endangered Species Act of 1973, section 404 of the Clean Water Act, and other applicable laws and regulations.

Dated: April 29, 2008.

Jon L. Christensen,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. E8–10782 Filed 5–13–08; 8:45 am]

BILLING CODE 3710–CY–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for 2005 Base Realignment and Closure Actions at National Naval Medical Center, Bethesda, MD

AGENCY: Department of the Navy, DoD.

ACTION: Notice of record of decision.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Section 4332(2)(c), the regulations of the Council on Environmental Quality (CEQ) for Implementing the Procedural Provisions of (40 CFR parts 1500–1508) and the Department of the Navy (DON) NEPA regulation (32 CFR part 775), the DON announces its decision to implement 2005 Base Realignment and Closure (BRAC) Actions at the National Naval Medical Center (NNMC) in Bethesda, MD. The implementation of BRAC 2005 at NNMC will be accomplished as set out in the Preferred Alternative and described in the Final Environmental Impact Statement (Final EIS).

FOR FURTHER INFORMATION CONTACT: Officer in Charge—BRAC, NNMC, 8901 Wisconsin Avenue, Bethesda, MD 20889. Telephone 301–319–4561.

SUPPLEMENTARY INFORMATION: The Defense Base Closure and Realignment Act of 1990, Public Law 101–510 directs the implementation of the BRAC Commission recommendations. The BRAC Commission recommendations affect NNMC in Bethesda, MD by relocating certain Walter Reed Army Medical Center (WRAMC) activities from Washington, DC to NNMC, establishing it as the Walter Reed National Military Medical Center (WRNMMC). The specific BRAC 2005 recommendation is to realign WRAMC, Washington, DC, as follows: Relocate all tertiary (sub-specialty and complex care) medical services to NNMC, Bethesda, MD, establishing it as the WRNMMC Bethesda, MD; relocate Legal Medicine to the new WRNMMC Bethesda, MD; relocate sufficient personnel to the new WRNMMC Bethesda, MD, to establish a Program Management Office that will coordinate pathology results, contract administration, and quality assurance and control of Department of Defense (DoD) second opinion consults worldwide; relocate all non-tertiary (primary and specialty) patient care functions to a new community hospital at Fort Belvoir, VA. The BRAC law requires the completion of the

realignment actions by 15 September 2011.

The purpose for the Proposed Action is to establish a single premier military medical center at the NNMC Bethesda site in accordance with the BRAC legislation. The need for the Proposed Action is to implement the BRAC law, which requires development of both new and improved facilities to accommodate the projected additional patients and staff on account of the known shortfall of facility space and associated infrastructure to support them at the existing NNMC. The BRAC-directed relocations from WRAMC will result in movement of medical and medical support services to NNMC and implementation of BRAC Commission recommendations would result in an increase of approximately 2,200 personnel or staff. Similarly, additional visitors and patients entering NNMC could average approximately 1,862 on a typical weekday. These facilities would support the following military medical tertiary care functions: Additional inpatient and outpatient care; traumatic brain injury and psychological health care; additional medical administration space; transitional health care spaces for patients requiring aftercare following successful inpatient treatment, to include appropriate lodging accommodations on campus for these patients and their supporting aftercare staff; a fitness center for patients and staff; and additional parking for patients, staff, and visitors.

The Proposed Action is to provide necessary facilities to implement the BRAC 2005 realignment actions. To implement the actions directed by the 2005 BRAC law, the Navy proposes to provide: (a) Additional space for inpatient and outpatient medical care as well as necessary renovation of existing medical care space to accommodate the increase in patients; (b) a National Intrepid Center of Excellence for Traumatic Brain Injury and Psychological Health diagnosis, treatment, clinical training, and related services to meet an urgent need for traumatic brain injury and psychological health care; (c) medical administration space; (d) clinical and administrative space for the Warrior Transition Unit to deliver transitional aftercare and associated patient education programs; (e) Bachelor Enlisted Quarters to accommodate the projected increase in permanent party enlisted medical and support staff as well as provide transitional lodging required to support aftercare patients receiving treatment on an extended basis; (f) a fitness center for the rehabilitation of patients and for staff; (g) parking for the additional patients, staff, and visitors; and (h) two Fisher Houses™ to provide patients with transitional homelike lodging.

Public Involvement: From the initial stages of the NEPA process, the Navy has actively engaged and encouraged public participation. The Navy published a Notice of Intent (NOI) to prepare an EIS in the **Federal Register** (Vol. 71, No. 224, Page 67343) on November 21, 2006, which initiated a 45-day scoping period ending on January 4, 2007. The Navy held four public scoping meetings in Bethesda, MD between December 12, 2006 and December 20, 2006. The Navy notified key federal, state, and local officials and the public of the scoping meetings via various avenues, including: Direct contact, leading local newspapers, notification flyers, and an announcement on publicly accessible NNMC and Montgomery County Web sites. In response to requests for additional time for public participation, the Navy continued to accept comments until February 3, 2007, and held two additional public information meetings in Bethesda, MD on January 30, 2007 and on February 1, 2007. All comments received were considered in the preparation of the Draft EIS.

The U.S. Environmental Protection Agency (USEPA) published a Notice of Availability (NOA) for the Draft EIS in the **Federal Register** (Vol. 72, No. 240, Page 71138) on December 14, 2007. The publication of the NOA initiated the 45-day public review period, which ended on January 28, 2008. The Navy published the NOA and Notice of Public Hearing (NOPH) in the **Federal Register** (Vol. 72, No. 240, Page 71126) on December 14, 2007. To notify key federal, state, and local officials and the public, the Navy used similar channels for the Draft EIS NOA/NOPH as for the public scoping period.

The Navy held two public hearing meetings in Bethesda, MD on January 9 and 10, 2008. Attendees included representatives of federal, state, and local agencies, and the general public. The Navy received approximately 1,200 comments with the majority of the comments focusing on transportation, external coordination issues, compatibility with other community planning efforts, and other environmental issues and factors. The Navy reviewed and addressed all comments received in the Final EIS. The Navy published the NOA for the Final EIS in the **Federal Register** (Vol. 73, No. 65, Page 18262) on April 3, 2008. The USEPA published the NOA for the Final EIS in the **Federal Register** (Vol. 73, No. 66, Page 18527) on April 4, 2008, which initiated a 30-day Wait Period (no action period).

Alternatives Considered: The Navy evaluated alternatives that would meet the purpose and need of the action and applied screening criteria to identify alternatives that were ''reasonable''. The screening process and selection criteria were set out in the EIS (Section 2.10). The result of the screening process was the evaluation of two BRAC action alternatives, referred to in the Final EIS as the Preferred Alternative and Alternative Two, and the evaluation of the No Action Alternative. Both BRAC action alternatives would provide the new WRNMMC with approximately 1,652,000 square feet (SF) of new building construction and renovation, as well as a net gain of approximately 1,800 parking spaces. The Final EIS alternatives assume that there would be 1,862 additional patients and visitors each weekday and a conservative estimate of 2,500 additional personnel. The two BRAC action alternatives have a common concept for the major medical care facilities, siting them in proximity to the existing medical care facilities on the western side of the installation. The alternatives differ in their siting of the required facilities within the installation and in their use of new construction versus renovation of existing buildings to obtain some of the needed administrative space. Both alternatives would implement state of the art features in medical design and environmental best management practices (BMPs) such as Leadership in Energy and Environmental Design (LEED) Silver certifications for new construction.

Preferred Alternative. The Preferred Alternative would implement the Proposed Action with the facilities described above by adding to NNMC approximately 1,144,000 SF of new building construction; approximately 508,000 SF of renovation to existing building space; and approximately 824,000 SF of new parking facilities. The Navy selected the Preferred Alternative because of superior functional efficiency with regard to the placement of the National Intrepid Center of Excellence and two Fisher Houses™, lower costs associated with employing more renovation to provide needed facilities, and lower environmental impacts.

Alternative Two. Alternative Two would implement the Proposed Action by providing the same facilities for the same requirements as for the Preferred Alternative. However, the location and the choice of new construction versus renovation of some facilities would differ from the Preferred Alternative.

Alternative Two would add to NNMC approximately 1,230,000 SF of new building construction; approximately 423,000 SF of building renovation to existing building space; and approximately 824,000 SF of new parking facilities.

No Action Alternative. The No Action Alternative was required by statute and evaluated the impacts at NNMC in the event that additional growth from BRAC actions would not occur. Under the No Action Alternative, NNMC would continue to maintain and repair facilities in response to requirements from Congressional action or revisions to building codes. The No Action Alternative would not implement the Proposed Action and would not achieve legal compliance with the BRAC law. The No Action Alternative serves as a baseline alternative against which environmental impacts of the two action alternatives are measured.

Environmentally Preferred Alternative. The No Action Alternative maintains the status quo and therefore does not impact the existing environment. It is the environmentally preferred alternative. However, it does not meet the purpose and need of the action, however, and does not comply with BRAC law. Therefore, a further environmental comparison of the two action alternatives, which meet purpose and need, is provided below.

The Preferred Alternative and Alternative Two provide an equal amount of new space for the BRAC requirements; however, the Preferred Alternative provides this space with 85,000 SF more renovation than Alternative Two and 85,000 SF less new construction than Alternative Two with resultant reduced use of resources. The Preferred Alternative uses more area already developed for its facilities, converting 28 percent less area into impervious surface (3.4 acres versus 4.7 acres), a potentially lesser impact to water resources. However, appropriate stormwater management BMPs would reduce impacts for either alternative. The renovation of Building 17 and potential renovation of Buildings 18 and 21 under the Preferred Alternative could have positive impacts on unused historic resources, while the demolition of historic Building 12, which is an option under the Preferred Alternative, would have an adverse effect. Appropriate mitigation determined under Section 106 consultation would compensate for demolition of Building 12, should it occur. The location of the Fisher Houses™ under Alternative Two are potentially within 150 feet of Woodlands 6, which could provide habitat for the federally-endangered Delmarva Fox Squirrel, necessitating further Section 7 investigations and consultation under the Threatened and Endangered Species Act. No facilities under the Preferred Alternative are within 150 feet of potential habitat for this species and Section 7 consultation is not required. Impacts for other resource areas, including transportation, are essentially the same for the two action alternatives. On balance, the Preferred Alternative is considered environmentally preferred among the two action alternatives.

Decision: After considering the potential environmental consequences of the action alternatives (Preferred Alternative and Alternative Two), and the No Action Alternative, the Navy has decided to implement the Preferred Alternative.

Environmental Impacts: In the EIS, the Navy analyzed the environmental impacts that could occur as a result of implementing each of the alternatives, as well as the No-Action Alternative. Chapters 2 and 4 of the Final EIS provide a detailed discussion of impacts and mitigation measures. This ROD, however, focuses on the impacts associated with the Preferred Alternative.

Geology, Topography and Soils. Approximately 12.2 acres would be disturbed by the construction of new facilities at NNMC, with 8.8 acres of construction on existing impermeable surfaces requiring demolition and 3.4 acres of new construction on open space. This would increase the current 98 acres of impermeable surface area at NNMC by approximately 3.5 percent. Prior to construction at NNMC, a General Permit for Construction Activity would be obtained which would include an approved sediment and erosion control plan. Application of soil erosion and sediment control measures would likely result in minor adverse impacts to soils from construction occurring on open areas and no impacts to soils from construction occurring on sites covered by existing manmade structures such as pavement.

Water Resources. Approximately 3.4 acres of existing pervious soil surfaces at NNMC would be converted to impervious development. Implementation of a sediment and erosion control plan and a state-required stormwater management plan would control any increases in sediment and surface stormwater runoff during construction and operation. The construction would be designed to avoid all floodplains. Wetland habitats would not be affected as a result of implementing the Preferred Alternative. The only proposed structure in the vicinity of the unnamed tributary to Stoney Creek is the Southern Parking facility which would be located at least 75 feet from the tributary. An investigation of this site was conducted and found that there are no wetlands present (Appendix E).

Biological Resources. The proposed projects would convert existing developed land or landscaped areas into developed facilities with landscaped vegetation. Impacts to vegetation could be adverse but not significant because areas considered for the projects are located in areas with existing structures or pavement, or in areas of grassy meadow and lawn with thinly scattered trees and shrubs commonly found within the region. Although no rare, threatened, and endangered species have been identified at NNMC, the U.S. Fish and Wildlife Service has indicated that the federally endangered Delmarva Fox Squirrel could be present in mature pine and hardwood forests in Maryland. No effect to this federally endangered species would be expected because none of the proposed projects require development of mature forest habitat and no activities are proposed within 150 feet of mature forest habitat.

Air Quality. NNMC is in an air quality control region that is in moderate nonattainment for ozone and in nonattainment for particulate matter with diameter less than or equal to 2.5 micrometers ($PM_{2.5}$), and is in maintenance for carbon monoxide (CO). It is also in an ozone transport region. Federal actions located in nonattainment and maintenance areas are required to demonstrate compliance with the general conformity guidelines. The Final EIS has completed a General Conformity Rule applicability analysis for the ozone precursor pollutants nitrogen oxides and volatile organic compounds, for $PM_{2.5}$, and the $PM_{2.5}$ precursor pollutant sulfur dioxide, and for CO to analyze impacts to air quality. It determined that annual project emissions do not exceed the *de minimis* levels for moderate ozone nonattainment, $PM_{2.5}$ nonattainment, or CO maintenance levels established in 40 CFR 93.153 (b) for NO_X, $PM_{2.5}$, CO, and SO_2 of 100 tons per year or for VOCs of 50 tons per year and are not regionally significant. Therefore, full conformity determination is not required and impacts from these pollutants are not significant. A Record of Non-Applicability was included in the Final EIS. A hot spot evaluation of vehicle CO emissions was also performed both in the parking garages and at the five intersections adjacent to NNMC. The analysis determined that CO

concentrations remain below allowable ambient standards.

Noise. Demolition, construction, and renovation noise would occur at NNMC under the Preferred Alternative. The noise would be short-term, typical of construction activities, and would be managed to meet State and Montgomery County criteria. Construction noise near sensitive receptors within and outside NNMC would require careful planning and potential implementation of noise reduction measures. Noise caused by additional traffic would be primarily from passenger cars and would not be expected to change existing noise levels noticeably to receptors along roadways. The potential increase in helicopter activities, primarily for medical emergencies, is expected to increase flights into NNMC by one to two flights per month and is not considered a significant increase from existing conditions.

Infrastructure. Based on initial estimates of utility demands and provider capacity, no major issues are anticipated. The new BRAC projects that add to utility demands at NNMC reduce demands at WRAMC as functions move from older, less efficient buildings at WRAMC to LEED Silver certified buildings at NNMC. As designs are finalized, additional utility studies will be conducted to identify whether improvements to any utility lines or pipes within or outside NNMC are appropriate and these improvements would be implemented as part of the construction. The NNMC systems have adequate redundancy to assure an ability to provide continued service while any line is shut down.

Transportation. The BRAC movement of added staff and patient workload to the existing NNMC campus to create the directed WRNMMC will occur in an already congested urban environment. Results from the Traffic Study analysis show that the additional traffic expected during operation of the BRAC facilities would increase overall traffic in the vicinity of the future WRNMMC during peak hours. The analysis of peak hours provides the worst condition to be expected and includes both new employees and the projected daily patients and visitors in its estimates of peak traffic.

The Traffic Study of 27 intersections near NNMC indicated that 5 intersections near the NNMC campus are projected to operate in excess of the Montgomery County standards during peak hours under the Preferred Alternative. One of these intersections exceeds standards specifically because of the additional traffic under the Preferred Alternative; the remaining four would already operate in excess of County standards under background conditions in 2011, independent of the BRAC Action's added traffic. As noted, the BRAC Alternative traffic adds to volumes at all intersections, including those above standards.

Construction traffic volumes are significantly lower than the commuter and patient or visitor volumes expected during operations; therefore, construction traffic would be expected to have less of an impact on area roadways. The construction crew commuting will be constrained by limiting parking spaces (currently 200 spaces); contractors are committed contractually to (and gain LEED points by) subsidizing mass transit and bussing from designated parking lots for other construction workers. With the area in front of Building 1 being provided for contractor use, contractors will be able to conduct their material staging on the NNMC campus and the entrance to NNMC for this site would be managed to minimize potential effects to Rockville Pike from queuing.

Cultural Resources. Under Section 106 of the National Historic Preservation Act, the Navy is pursuing formal Section 106 consultation to resolve all adverse effects to historic properties. The Navy letter of intent and Maryland Historical Trust concurrence with the Navy approach is included in the FEIS, Appendix A, Part I. In accordance with this agreement, Section 106 consultation for all projects which impact cultural resources will be completed before construction begins on those projects.

The construction of new buildings in the NNMC Bethesda Historic District, particularly the two Medical Additions, impacts the setting of the historic Central Tower Block, its Front Lawn, and protected view shed. The Maryland Historic Trust State Historical Preservation Office (MD SHPO) has concurred with the Navy's determination that Buildings A and B will have no adverse effects to Building 1, under the conditions: (1) The state agency will be provided samples of proposed exterior materials for review and approval and (2) the Navy will ensure that no significant historic landscape features will be permanently damaged by the temporary use of lawns and courtyards for construction staging and management.

The Navy is continuing to consult with Maryland Historical Trust to complete a Memorandum of Agreement (MOA) for the adverse impact to Building 12. This MOA will be signed before Building 12 is demolished.

Land Use. Land use is consistent with plans and precedence. The proposed facilities within NNMC are compatible with adjacent facilities. No direct effects outside the NNMC boundaries to land use are expected. BRAC actions would increase traffic in the area adjacent to NNMC and community planners believe that traffic congestion in the region could cause land development plans to be altered.

Socioeconomics. Major beneficial economic effects to the surrounding economy would be expected resulting from the large investment in construction and renovation of facilities. No relocation of off-base personnel is expected as a result of the proposed action, as staff would be coming from WRAMC, located 6 miles away, within the Region of Influence. Therefore, no significant effects on demographics are expected. The increase in patients and visitors will increase the need for services within NNMC; however, WRNMMC will be designed to have adequate services and adequate lodging for the additional staff and visitors. Therefore, the increase in patients and visitors is unlikely to adversely affect the immediate local area off installation economically, except indirectly as additional traffic. The additional patients and visitors have been incorporated into the analysis of peak hour traffic, which provides the most severe impact on area intersections and roadways.

Human Health and Safety. Although there would be an increase in hazardous material storage, generation of hazardous waste and regulated medical waste, and a potential need for asbestos abatement in older buildings to be demolished or renovated, adherence to standard operating procedures and applicable regulations would insure impacts are avoided. There will be adequate capacity to process the increase in regulated medical waste. Several buildings or areas proposed for construction, demolition, or renovation activities are designated as Solid Waste Management Units and Areas of Concern under the Resource Conservation and Recovery Act (RCRA) Corrective Action Program. The RCRA Facility Assessment for NNMC must be completed in Calendar Year 2010 and all sites will be administratively closed before the end of Calendar Year 2010.

Cumulative Impacts. The conservative use of an estimated 2,500 new employees versus the actual new employee estimate of 2,200 is expected to address potential cumulative impacts for additional employees (currently estimated as 136) for other ongoing and foreseeable future on installation

projects not associated with BRAC. Future projects off installation add traffic; the analysis of transportation for the Preferred Alternative was assessed with projected growth and approved roadway improvements off installation for 2011 included in the baseline. The actions of the Preferred Alternative are not expected to result in significantly greater incremental impacts when added to the actions of other projects, except as has been already discussed for each environmental resource area above.

Mitigation: The Final EIS determined that implementing the Preferred Alternative will result in adverse impacts on some environmental resources, as described in the previous section. The EIS identified mitigation to minimize, avoid, or compensate for such effects. All practicable means to avoid or minimize adverse environmental impacts from the preferred alternative will be adopted. The Navy has identified potential mitigation measures to reduce impacts to surface waters from potential soil erosion and runoff, for control of fugitive emissions to air, for construction noise, for traffic impacts that will be generated by the action alternatives, and for potential impacts to cultural resources.

Each of the measures listed for sediment and erosion control, stormwater management, air quality during construction, and noise reduction during construction, will be considered at the appropriate time during design and construction of the BRAC facilities and implementation will be monitored by the Navy's BRAC construction management team. The traffic mitigation measures constitute a broad commitment by the Navy to cooperate with the state and local transportation agencies in their efforts to improve local conditions and to pursue funding and program those improvements under the purview of the Navy. The cultural resources mitigation will be implemented in accordance with agreements reached in Section 106 consultation with the State of Maryland. Section 106 consultation for all projects which impact cultural resources will be completed before construction begins on those projects.

Sediment and Erosion Control Measures. Mitigation will be implemented through a Maryland construction permit. Recommended measures to be considered include, but are not limited to: (1) Using erosion containment controls such as silt fencing and sediment traps to contain sediment onsite where necessary; (2) covering disturbed soil or soil stockpiles with plastic sheeting, jute matting, erosion netting, straw, or other suitable cover material, where applicable; (3) inspecting erosion and sediment control BMPs on a regular basis and after each measurable rainfall to ensure that they are functioning properly, and maintain BMPs (repair, clean, etc.) as necessary to ensure that they continue to function properly; (4) sequencing BMP installation and removal in relation to the scheduling of earth disturbance activities, prior to, during and after earth disturbance activities; and (5) phasing clearing to coincide with construction at a given location to minimize the amount of area exposed to erosion at a given time.

Stormwater Management Measures. A stormwater management plan approved by the State with BMPs will be prepared and implemented. Nonstructural stormwater management practices would be considered and applied to minimize increases in new development runoff. Low Impact Development (LID) measures would be among those considered and implemented when practical. Structural stormwater management practices would be considered and designed to satisfy applicable minimum control requirements. To decrease the overall erosion potential of the site and improve soil productivity, areas disturbed outside of the footprints of the new construction would be aerated and reseeded, replanted, and/or re-sodded following construction activities.

Air Quality Construction Measures. NNMC operates under a Title V permit that requires the installation to take reasonable precautions to prevent particulate matter due to construction and demolition activities from becoming airborne. During construction and demolition, fugitive dust would be kept to a minimum by using control methods. These precautions could include, but are not limited to: (1) Using, where possible, water for dust control; (2) installing and using hoods, fans, and fabric filters to enclose and vent the handling of dusty materials; (3) covering open equipment for conveying materials; (4) promptly removing spilled or tracked dirt or other materials from paved streets and removing dried sediments resulting from soil erosion; and (5) employing a vehicle wash rack to wet loads and wash tires prior to leaving the site.

Noise Reduction During Construction. Construction and demolition contractors will adhere to State of Maryland and Montgomery County noise criteria requirements. Potential measures to control airborne noise impacts that would be considered and implemented as appropriate include: (1) Source limits and performance standards to meet noise level thresholds at sensitive land uses (Montgomery County Standards); (2) designated truck routes; (3) establishment of noise monitoring stations for measuring noise prior to and during construction; (4) design considerations and project layout approaches including measures such as construction of temporary noise barriers, placing construction equipment farther from noise-sensitive receptors, and constructing walled enclosures/sheds around especially noisy activities such as pavement breaking; (5) sequencing operations to combine especially noisy operations to occur in the same time period; (6) alternative construction methods, using special low noise emission level equipment, and selecting and specifying quieter demolition or deconstruction methods; and (7) a construction phasing plan coordinated with patient moves to avoid impacts to patients. Compliance with the Occupational Safety and Health Administration (OSHA) standards for occupational noise exposure associated with construction (29 CFR 1926.52) would address the construction workers' hearing protection.

Potential Measures to Address Traffic Impacts from NNMC Actions. The Navy has identified potential traffic improvements for the 2011 implementation of the alternatives. These measures are both external and internal to NNMC. As discussed below, potential funding sources for these improvements measures vary.

Potential External Roadway and Intersection Improvements. Potential improvement measures were identified and evaluated for those intersections external to NNMC that would operate above the intersection capacity. These improvement measures would remedy impacts from additional traffic caused by the BRAC alternatives. Each of these potential improvements is under the jurisdiction of the State of Maryland and would require funding and implementation through the appropriate State of Maryland Transportation Organizations. The Navy has coordinated the traffic analysis and these potential improvements with the State and local transportation agencies. The Navy remains committed to cooperate to the maximum extent allowed by law with these agencies in the implementation of any or all of the proposed improvement measures.

Recommended Internal Improvements for NNMC. The EIS also identifies potential internal traffic improvement measures for the 2011 implementation of the alternatives. These improvements

are within the purview of the Navy for implementation. The Navy has programmed funding for recommended improvements at all gates that would be expected to speed vehicle access and egress, improve circulation, and reduce queuing at the gate. A safety and security analysis is being conducted by DOD at the NNMC gates to improve security and safety and reduce queuing on and off installation. This analysis includes potential improvements or queuing mitigation measures at all of the access gates, to include: North Wood Road Gate, South Wood Road Gate, Gunnell Road Gate, Grier Road Gate, and University Road Gate (USUHS' Gate).

Other projects include: (1) Widen and improve Perimeter Road on NNMC; (2) conduct a study at the NIH Commercial Vehicle Inspection Station on Rockville Pike to determine if a traffic signal is warranted and suitable for submission of a request to state and local transportation authorities for funding and implementation; and (3) improve the intersection of Brown Road/Palmer Road North.

Potential External Improvements For NNMC Access. Several potential improvements external to NNMC that could directly enhance access to NNMC are also being evaluated and the Navy is submitting a request for Defense Access Road (DAR) certification for those that are recommended for implementation. These are further discussed below.

The Navy is evaluating potential improvements at each NNMC gate, to include potential improvements to reduce queuing off installation. The evaluation off installation includes potential improvements at the gate access intersection of Rockville Pike and North Wood Road. The Navy has submitted a request for DAR certification for the following projects:

1. Install new left turn lane along northbound Rockville Pike at North Wood Road Gate and add storage in the left turn lane along southbound Rockville Pike at North Wood Road Gate, and provide a signal at this intersection. This improvement measure would be intended to move turning traffic out of the travel through lanes on Rockville Pike, minimize base traffic from backing up onto local roadways and blocking through traffic, and address incoming employees resulting from the BRAC action without degrading the quality of nearby intersections;

2. Install a bank of elevators on the east side of Rockville Pike to provide direct pedestrian access from NNMC to the Medical Center Metro Station. This project would enhance public safety, by reducing the pedestrian-vehicle conflicts that result from crossing Rockville Pike and would also improve the South Wood Road and Rockville Pike intersection. This project would require close cooperation with the Washington Metropolitan Area Transportation Agency (WMATA).

For each project that is certified by the DAR program, the Navy commits to seek funding from DoD. Execution will be subject to availability of funding through the DoD budget process.

Additional Potential Measures. In addition to the measures listed above, other measures within the Navy's purview include the Navy's decision to update the existing NNMC Transportation Management Plan (TMP) in conjunction with a master plan update. The goals of the existing 1997 TMP are to reduce traffic congestion, conserve energy, and improve air quality by seeking to reduce the number of employee Single Occupant Vehicle (SOV) trips in the workday commute, to better utilize existing parking spaces, and to maximize the use of alternative transportation options. The existing TMP is currently implemented at NNMC and the Navy remains committed to promoting the use of mass transit for its employees and will continue to promote alternatives to single occupant vehicle commuting. Current TMP strategies in use at NNMC include: (1) Shuttle services, (2) Mass Transportation Fringe Benefit (MTFB) Program, (3) parking measures, and (4) TRANSHARE—a NNMC clean-air program that sets goals to increase the percentage of employees using commuting options other than single-occupant vehicles.

It is the Navy's intent that the update to the TMP will reflect the changes that have taken place in the intervening years. It will include recommendations for such physical or operational changes as telecommuting, transit subsidies, shuttle bus services, pedestrian improvements, and bicyclist improvements. A transportation coordinator has been added to the NNMC staff to facilitate implementation of TMP strategies.

Cultural Resources Measures. The Navy is pursuing formal Section 106 consultation to resolve all adverse effects to historic properties. As stipulated in MD SHPO concurrence on the Navy's determination of no adverse effects on Building 1 from Buildings A and B, the Navy will provide the state agency samples of proposed exterior materials for its review and approval and will ensure that no significant historic landscape features will be permanently damaged by the temporary use of lawns and courtyards for construction staging and management.

The Navy is continuing to consult with Maryland Historical Trust to complete a Memorandum of Agreement (MOA) for the adverse impact to Building 12. The mitigation measures proposed in this MOA will include proper documentation of Building 12 including photographs, drawings and a written history; rehabilitation of Building 17; retention of Buildings 18 and 21; and treatment of the landscape in front of Building 1. This MOA will be signed before demolition begins on Building 12.

The other BRAC projects which pose potential adverse affects to cultural resources will have individual Section 106 consultation completed before construction commences on those projects. For each of these consultations, the Navy agrees to implement mitigation as required by the Section 106 consultation process.

Responses to Comments Received on the Final EIS: Public comments on transportation questioned the use of the Maryland National Capital Park and Planning Commission (M–NCPPC) Local Area Transportation Review (LATR) Guidelines for the EIS traffic study, the accuracy of the traffic analyses for the intersection of Cedar Lane and Rockville Pike, and the inclusion of an additional westbound left-turn lane at that intersection as a potential improvement for further study. The application of the Guidelines was stipulated by the BRAC Transportation Technical Advisory Committee, including representatives from the M–NCPPC, Montgomery County, and the Maryland State Highway Administration, which have jurisdiction over the intersections analyzed. The accuracy of the traffic analyses in question has been verified. Implementation of the additional westbound left-turn lane is acknowledged to be very difficult given existing constraints at this location and is therefore not recommended for further study.

Conclusions: In implementing this proposed action at NNMC, Bethesda, MD, I considered the potentially differing impacts to water resources, biological resources, and cultural resources between the Preferred Alternative and Alternative Two, as well as the impacts to the other resource areas such as traffic and transportation. I also considered important differences in mission effectiveness and costs between the Preferred Alternative and Alternative Two.

The Preferred Alternative emphasizes renovation, the use of developed areas,

reduced environmental impacts, and estimated cost. The Preferred Alternative includes the renovation of Building 17 and the potential renovation of Buildings 18 and 21, which would result in positive impacts on unused historic resources. The Preferred Alternative would demolish Building 12, which would constitute an adverse effect to be mitigated under historic preservation law, but would optimize the medical care services associated with the National Intrepid Center of Excellence. The Preferred Alternative sites the two Fisher Houses™ in a more spacious and functionally superior site that does not represent any potential impact to the federally endangered Delmarva Fox Squirrel.

On behalf of the Department of the Navy, and based on all relevant factors addressed in the Final EIS, I have selected the Preferred Alternative for the implementation of BRAC 2005 at NNMC, Bethesda, MD. In reaching this determination, I have considered the superior functional efficiency, lower costs, and lower environmental impacts associated with the Preferred Alternative. I have taken into account the consultation process with the Maryland Historic Trust and the National Capital and Planning Commission regarding cultural resources. I have taken into account that Section 106 consultations will be complete for each project before construction commences on that project. I have taken into account the consultation with the U.S. Fish and Wildlife Service regarding endangered species. I have taken into account input from the local and state transportation agencies regarding improvements to traffic conditions. I have considered recommendations and comments provided by federal, state, and local agencies and committees, and the general public throughout the NEPA process, including during formal comment and review periods. I have considered the mitigation and improvement measures identified in the Final EIS. I also took into account the fact that the Proposed Action is required by law and that the No Action Alternative would result in non-compliance with the law. The Preferred Alternative reflects a balance between the protection of the environment, appropriate mitigation, and improvements, and the actions necessary and required to implement the Proposed Action. Consistent with this record of decision, and the Final EIS, the action proponent will implement the Preferred Alternative and address all mitigation measures.

Dated: May 6, 2008.

B.J. Penn,

Assistant Secretary of the Navy (Installations and Environment).

[FR Doc. E8–10752 Filed 5–13–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 14, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 8, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: New.

Title: Strengthening Adult Reading Instructional Practices (SARIP).

Frequency: Learner respondents will report twice; instructor respondents will report once for two instruments and weekly for 15 weeks.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 4,734.

Burden Hours: 1,431.

Abstract: The SARIP Study is an initial investigation of whether the Study Achievement in Reading (STAR) training and materials are effective in developing adult basic education (ABE) instructors' capability to deliver evidence-based reading instruction and consequently, in improving intermediate-level (4th–8.9th grade equivalence) adult learners' reading skills. The study will employ a quasi-experimental design to examine whether learners who are taught by ABE instructors that have been trained in the STAR methods and materials and have become proficient in these methods make greater gains in developing their reading skills compared to learners who have been taught by ABE instructors that have not participated in STAR. The treatment learners will be compared to data from a matched sample of adult learners that have not participated in STAR. The comparison group will be drawn from extant data from two previous studies on adult learners' development of reading skills. The learner data collected in the SARIP study will be used by the U.S. Department of Education to assess the preliminary learner reading outcomes from the STAR intervention and to determine whether a more rigorous evaluation of STAR should be undertaken at this point in the implementation of STAR. The data collected in the SARIP study about the delivery of instruction by teachers trained in STAR will be used by the U.S. Department of Education to review the STAR training and to determine whether modifications may be needed in the STAR training. The information

about ABE programs collected in the study will be used by the U.S. Department of Education and state adult education offices to provide guidance to local ABE providers about the types of ABE program practices that may support the delivery of effective reading instruction.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3681. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–10756 Filed 5–13–08; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Training and Advisory Services Program—Equity Assistance Centers (EACs) (Formerly Desegregation Assistance Centers (DACs))

Notice inviting applications for new awards for fiscal year (FY) 2008.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.004D.

DATES: Applications Available: May 14, 2008.

Deadline for Transmittal of Applications: June 30, 2008.

Deadline for Intergovernmental Review: August 27, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Training and Advisory Services Program is authorized under Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c–2000c–2, 2000c–5, and the implementing regulations at 34 CFR parts 270 and 272. This program awards grants through cooperative agreements to operate 10 regional EACs that provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools—which in this context means plans for equity (including desegregation based on race, sex, and national origin)—and in the development of effective methods of coping with special educational problems occasioned by desegregation.

Priorities: Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2008, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority One

The Secretary is interested in projects that will assist school boards and other responsible governmental agencies in addressing the over-representation of minorities in special education, the under-representation of minorities in gifted and talented programs, or both, through technical assistance products, services, training, and other informational resources.

Invitational Priority Two

The Secretary is interested in projects that will provide, to school boards and other responsible governmental agencies, resource materials, services, and training on successful strategies for providing limited English proficient students with equitable access to a high-quality education.

Invitational Priority Three

The Secretary is interested in projects that will ensure equal access to highly qualified teachers for students, including students who are economically disadvantaged or are racial and ethnic minorities, by providing information on effective strategies, training, and other resources in that area to school boards and other responsible governmental agencies.

Invitational Priority Four

The Secretary is interested in projects that will provide (to school boards and other responsible governmental agencies) information, training, and other technical assistance on effective approaches to school dropout prevention and reentry, that promote equity by addressing the special needs of high-risk students, including students from racial and ethnic minority backgrounds.

Program Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99, except that 34 CFR 75.232 does not apply to grants under 34 CFR part 272. (b) The regulations for this program in 34 CFR parts 270 and 272.

Note: The regulations in 34 CFR parts 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Available Funds: $6,970,736.

Estimated Range of Awards: $500,000–$800,000.

Estimated Average Size of Awards: $697,000.

Maximum Award: We will not fund any application that requests more than $800,000. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) A public agency (other than a State educational agency or a school board) or a private, non-profit organization.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* (Definitions): The definitions applicable to this program are found in the authorizing statute at 42 U.S.C. 2000c and in the regulations at 34 CFR parts 77, 270, and 272, and will be included in the application package.

4. *Geographical Regions:* Ten EACs will be funded under this grant program in ten different geographical regions in accordance with 34 CFR 272.12. Our reviewers will read the proposals according to the region from which the proposal originates. One award will be made in each region to the highest ranking proposal from that region.

The geographic regions served by the EACs are:

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Region II: New York, New Jersey, Puerto Rico, Virgin Islands.

Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Region VII: Iowa, Kansas, Missouri, Nebraska.

Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Region IX: Arizona, California, Nevada.

Region X: Alaska, American Samoa, Guam, Hawaii, Idaho, Northern Mariana Islands, Oregon, The Federated States of Micronesia, The Republic of the Marshall Islands, and The Republic of Palau (the three proceeding entities were formerly known as the Trust Territory of the Pacific Islands), Washington.

IV. Application and Submission Information

1. *Address to Request Application Package:*

Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.004D.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under Alternative Format in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to the equivalent of no more than 50 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

Our reviewers will not read any pages of your application that exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 14, 2008.

Deadline for Transmittal of Applications: June 30, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 27, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Training and Advisory Services Program, CFDA Number 84.004D, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Training and Advisory Services Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.004, not 84.004D).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington,

DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sandra H. Brown, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E116, Washington, DC 20202–6400. FAX: (202) 205–5870.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.004D),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education,
Application Control Center, Stop 4260, Attention: (CFDA Number 84.004D), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.004D), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria

The following selection criteria for this program are from the program regulations in 34 CFR 272.30. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. Non-Federal peer reviewers will review each application. They will be asked to evaluate and score each program narrative against the selection criteria. The Secretary uses the following criteria to evaluate applications for EAC grants:

(a) *Mission and Strategy.* (30 points) The Secretary reviews each application to determine the extent to which the applicant understands effective practices for addressing problems in each of the desegregation assistance areas, including the extent to which the applicant—

(1) Understands the mission of the proposed EAC;

(2) Is familiar with relevant research, theory, materials, and training models;

(3) Is familiar with the types of problems that arise in each of the desegregation assistance areas;

(4) Is familiar with relevant strategies for technical assistance and training; and

(5) Is familiar with the desegregation needs of responsible governmental agencies in its designated region.

(b) *Organizational Capability.* (15 points) The Secretary reviews each application to determine the ability of the applicant to sustain a long-term, high-quality, and coherent program of technical assistance and training, including the extent to which the applicant—

(1) Demonstrates the commitment to provide the services of appropriate faculty or staff members from its organization;

(2) Selects project staff with an appropriate mixture of scholarly and practitioner backgrounds; and

(3) Has had past successes in rendering technical assistance and training in the desegregation assistance areas, including collaborating with other individuals and organizations.

(c) *Plan of Operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The design of the project is of high quality;

(2) The plan of management ensures proper and efficient administration of the project;

(3) The applicant plans to use its resources and personnel effectively to achieve each objective; and

(4) The applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, sex, age, or handicapping condition.

(d) *Quality of Key Personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and Cost Effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation Plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation

plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of Resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. Performance Measures:

The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for the Training and Advisory Services Program (Equity Assistance Centers), adapted from a set of common measures developed to help assess performance across the Department's technical assistance programs:

Program Goal: To support access and equity in public schools and help school districts solve equity problems in education related to race, gender, and national origin.

Objective 1 of 2: Provide high-quality technical assistance and training to public school districts in addressing equity in education.

Measure 1.1 of 4: The percentage of customers of EACs that develop, implement, or improve their policies or practices, or both, in eliminating, reducing, or preventing harassment, conflict, and school violence.

Measure 1.2 of 4: The percentage of customers of EACs that develop, implement, or improve their policies or practices, or both, ensuring that students of different race, sex, and national origin have equitable opportunity for high-quality instruction.

Measure 1.3 of 4: The percentage of customers of EACS that report the products and services they received from the EACs are of high quality.

Measure 1.4 of 4: The percentage of customers who report that the products and services they received from the EACs are of high usefulness to their policies and practices.

All grantees will be expected to submit, as part of their annual and final performance reports, quantitative data documenting their progress with regard to these performance measures.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and outcome measures to assess the impact on teaching, learning, or other important outcomes for project participants. More specifically, the plan should identify the individual, organization, or both that have agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating—(1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information about both success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

Furthermore, the Department will provide information to grantees about the client satisfaction survey, which will be used to evaluate progress on these performance measures. The grantees will be expected to cooperate with the administration of the survey.

VII. Agency Contact

For Further Information Contact: Sandra H. Brown, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E116, Washington, DC 20202–6400. Telephone: (202) 260–2638 or by e-mail: *sandra.brown@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 9, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–10777 Filed 5–13–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education (NACIE); Notice of an Open Teleconference Meeting

AGENCY: U.S. Department of Education, National Advisory Council on Indian Education (NACIE).

ACTION: Notice of an open teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming teleconference meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of the meeting. This notice also describes the functions of the Council. Notice of the Council's meetings is required under

Section 10(a)(2) of the Federal Advisory Committee Act and by the Council's charter.

Agenda: The purpose of the meeting will be for the Council to review and discuss the draft annual NACIE report and make recommendations for finalization and submission.

Date and Time: May 28, 2008; 1 p.m. to 3 p.m. Eastern Standard Time.

Location: The Department of Education will provide a 1–800–call in number for all NACIE members.

Public Comment: Time is scheduled on the agenda to receive public comment at approximately 2:45 p.m. Eastern Standard Time. The public may attend and listen to the proceedings at 400 Maryland Avenue, SW., Room 1W105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cathie Carothers, Director, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: 202–260–1683. Fax: 202–260–7779.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is authorized by Section 7141 of the Elementary and Secondary Education Act. The Committee is established within the Department of Education to advise the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

The purpose of this meeting is to discuss the Council's recommendations for and final development of the Council's Annual Report to Congress.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Cathie Carothers at (202) 260–7485 no later than May 23, 2008. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, United States Department of Education, Room 5C140, 400 Maryland Avenue, SW., Washington, DC 20202.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–10763 Filed 5–13–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 9, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP95–408–070.

Applicants: Columbia Gas Transmission Corporation.

Description: Report of Columbia Gas Transmission Corporation.

Filed Date: 05/07/2008.

Accession Number: 20080507–5061.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Docket Numbers: RP96–320–089.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits capacity release agreements containing negotiated rate provisions executed by Gulf South and the following replacement shippers, Total Gas & Power North America Inc *et al.*

Filed Date: 05/07/2008.

Accession Number: 20080508–0207.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Docket Numbers: RP08–309–001.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Company submits Substitute Fifth Revised Sheet 271 to become effective May 5, 2008 in compliance with the Letter Order dated May 2, 2008.

Filed Date: 05/07/2008.

Accession Number: 20080508–0208.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Docket Numbers: RP99–106–014.

Applicants: TransColorado Gas Transmission Company LLC.

Description: TransColorado Gas Transmission Company LLC submits its Annual Revenue Sharing Report in compliance with the April 24, 2002 Commission Order.

Filed Date: 05/07/2008.

Accession Number: 20080508–0206.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Docket Numbers: RP08–368–000.

Applicants: MarkWest New Mexico, L.L.C.

Description: MarkWest New Mexico, LLC submits Original Sheet 160 *et al.* to its FERC Gas Tariff, First Revised Volume 1, to be effective 6/1/08.

Filed Date: 05/02/2008.

Accession Number: 20080508–0217.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 14, 2008.

Docket Numbers: RP08–369–000.

Applicants: Chandeleur Pipe Line Company.

Description: Request for Waiver of Chandeleur Pipe Line Company.

Filed Date: 05/08/2008.

Accession Number: 20080508–5089.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Docket Numbers: RP08–370–000.

Applicants: Sabine Pipe Line LLC.

Description: Request for Waiver of Sabine Pipe Line LLC.

Filed Date: 05/08/2008.

Accession Number: 20080508–5090.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 20, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–10767 Filed 5–13–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2004–0023; FRL–8565–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Health Effects of Microbial Pathogens in Recreational Waters: National Epidemiological and Environmental Assessment of Recreational (NEEAR) Water Study (Renewal); EPA ICR No. 2081.04, OMB Control No. 2080–0068

AGENCY: Environmental Protection Agency (EPA).

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 September 30, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 14, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2004–0023, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: *ord.docket@epa.gov.*
- *Fax*: 202–566–9744.
- *Mail*: EPA Docket Center, ORD Docket, Environmental Protection Agency, *Mailcode*: 2822 iT, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery*: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2004–0023. 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.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Sams, Environmental Protection Agency, Office of Research and Development, National Health and Environmental Effects Research Laboratory, Human Studies Division, Epidemiology and Biomarkers Branch, MD 58 C, 109 T.W. Alexander Dr., Research Triangle Park, North Carolina 27711; telephone number: 919–843–3161; fax number: 919–966–0655; e-mail address: *sams.elizabeth@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-ORD 2004–0023, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Research and Development Docket in the EPA Docket Center (EPAIDC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 ORD Docket is 202–566–1752.

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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

Affected entities: Entities potentially affected by this action are families frequenting fresh and marine water beaches in the United States and territories.

Title: Health Effects of Microbial Pathogens in Recreational Waters: National Epidemiological and Environmental Assessment of Recreational (NEEAR) Water Study.

ICR Numbers: EPA ICR No. 2081.04, OMB Control No. 2080–0068.

ICR Status: This ICR is currently scheduled to expire on September 30, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and 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: The purpose of this study is to examine the health effects associated with swimming exposure at beach sites designated as recreational areas. This study will be conducted, and the information collected, by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development (ORD), U.S. Environmental Protection Agency (EPA). Participation of adults and children in this collection of information is strictly voluntary. The identity of all participants is considered strictly confidential, thus; all data collected are stored without identifiers. This information is being collected as part of a research program consistent with the section 3(a)(v)(1) of the Beaches Environmental Assessment and Coastal Health Act of 2000 and the strategic plan for EPA's Office of Research and Development and the Office of Water entitled ''Action Plan for Beaches and Recreational Water'' available at *http://www.epa.gov/ord/htmldocuments/600r98079.pdf.* The Beaches Act and ORD's strategic plan has identified research on effects of microbial pathogens in recreational waters as a high-priority research area with particular emphasis on developing new water quality indicator guidelines for recreational waters. The EPA has broad legislative authority to establish water quality criteria and to conduct research to support these criteria. This data collection is for a series of epidemiological studies to evaluate exposure to and effects of microbial pathogens in marine and fresh recreational waters as part of the EPA's research program on exposure and health effects of microbial pathogens in recreational waters. Health effects data collection was previously conducted in a pilot study, four freshwater coastal sites, and three marine sites under OMB number 2080–0068. The results will be used to help inform the development of develop of new national water quality and monitoring guidelines. The questionnaire health data will be compared with routinely collected water quality measurements. The analysis will focus on determining whether any water quality parameters are associated with increased prevalence of swimming-related health effects.

The EPA would like to solicit comments 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 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.25 hours 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 annual public reporting and recordkeeping burden for this collection of information is estimated to average about fifteen minutes per response. If a single household participant completes all three interviews of the data collection, a total of 45 minutes is used.

The interview process consists of three interviews; Two Beach Interviews and one Telephone Follow-up: Based on consultation with the individuals listed in Section 3(c) of the ICR, and our experience with similar types of information collection, we estimate that each family will spend an average of 30 minutes completing the beach interview and will require no recordkeeping. This includes the time for reviewing the information pamphlet and answering the questions. We estimate that each family spends an average of 15 minutes completing the home telephone interview. The telephone interviews will require no recordkeeping.

All human health data collection will be recorded utilizing computer-assisted personal interviews (CAPI). The telephone interview incorporates the same concept of direct data collection in a desk personal computer (PC) setting. The tablet notebooks and desk PCs are used by interviewers to collect human health data. Screens on these tablets and PCs only display current activated questions. All human health data is stored in secured locations to maintain confidentiality.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 21,000.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 3.

Estimated total annual burden hours: 15,750.

Estimated total annual costs: $236,250. This includes an estimated burden cost of $0 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is an increase of 10,500 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase is required to provide the science necessary to help inform the development of new public health standards for recreational water.

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: May 1, 2008.

Harold Zenick,

Director, National Health and Environmental Effects Research Laboratory.

[FR Doc. E8–10735 Filed 5–13–08; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0058; FRL–8566–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Information Collection Effort for Facilities With Combustion Units, EPA ICR Number 2286.01, OMB Control No. 2060–New

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 13, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2002–0058, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to a-and-r-*docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jim Eddinger, Energy Strategies Group, Sector Policies and Program Division, (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5426; fax number: (919) 541–5450; e-mail address: *eddinger.jim@epa.gov*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 7, 2007 (72 FR 69213), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 11 comments during the comment period, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2002–0058, which is available for online viewing at *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 EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Information Collection Effort for Facilities with Combustion Units.

ICR numbers: EPA ICR No. 2286.01, OMB Control No. 2060–New.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for 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: This information collection will be conducted by EPA's Office of Air and Radiation (OAR) to assist the Administrator of EPA, as required by sections 112(d) and 129 of the Clean Air Act (CAA), in determining the current population of affected combustion units and to develop emission standards for these source categories.

There will be two components to the information collection. To obtain the information necessary to identify and categorize all boilers and process heaters potentially affected by the revised standards, the first component of this ICR will solicit information from all potentially affected units in the format of an electronic survey under authority of section 114 of the CAA. The survey will be submitted to all facilities that either submitted an initial notification for the vacated standard (40 CFR Part 63, subpart DDDDD, which was vacated by the Courts on June 8, 2007), or if initial notification data is not available, it will be sent to all facilities identified by States as being subject to the vacated standard, or facilities that are classified as a major source in their Title V permit that have a boiler or process heater listed in their permit. The survey will also be sent to units covered by the 2000 emissions standards for commercial and industrial solid waste incineration units (40 CFR Part 60 Subpart CCCC) (2000 CISWI standard) and to facilities that have incineration units that were listed as exempt under the 2000 CISWI standard. A facility will complete the survey for all combustion units located at the facility. If a facility receiving the survey also has an incinerator at the same source, they will be required to complete a separate survey section to classify their incinerator design, operations, air pollution control, emissions, and fuel.

The second component will consist of requiring, if deemed necessary, again under the authority of section 114 of the CAA, the owners/operators of up to a total of 350 combustion units to conduct emission testing for hazardous air pollutants (HAP) and HAP surrogates. The Agency will analyze the results of the survey to determine if sufficient data exist to develop emission standards under sections 112(d) and 129 of the CAA for all subcategories of fuel and combustor types. If data are not sufficient, then the Agency will design a statistical sample to select pools of candidates to conduct emission testing. The Agency will submit a list of candidates within each category to stakeholders for their review and comment. The Agency will make a random selection of test sites, within each category, after taking into account stakeholders comments. The testing results will be required to be submitted to the Agency.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 24 hours per response for the survey and 85 hours per response for the stack testing. 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.

Respondents/Affected Entities: Respondents affected by this action may be owners/operators of industrial, commercial, and institutional boilers and process heaters as defined under the vacated boiler and process heater NESHAP.

Estimated Number of Respondents: 3,396.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 37,328.

Estimated Total Annual Cost: $13,118,852. This includes estimated O&M costs of $1,133 for the electronic survey component and $10,507,117 for the stack testing component. There are no capital or start-up costs.

Changes in the Estimates: Because this is a new ICR, there is no burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: May 8, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–10827 Filed 5–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R04-OW–2008–0179; FRL–8565–8]

Extension of the Period for Preparation of Regional Clean Water Act Section 404(c) Recommendation Concerning the Use of Wetlands and Other Waters in the Yazoo River Basin as Disposal Sites, Issaquena County, MS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On March 19, 2008, EPA published in the **Federal Register** (73 FR 14806) a Notice of a Proposed Determination, under Section 404(c) of the Clean Water Act, to prohibit or restrict the use of certain waters in the Yazoo River Basin in Issaquena County, Mississippi as disposal sites for dredged or fill material in connection with the construction of the proposed Yazoo Backwater Area Project. The notice established a public comment period, which ended on May 5, 2008. On April 17, 2008, a public hearing concerning the Proposed Determination was held in Vicksburg, Mississippi. Over 500 interested stakeholders participated in the five-hour hearing including approximately 65 stakeholders who provided oral statements. EPA has also received over 45,000 written comments, including substantial additional information, which needs to be evaluated. In order to allow full consideration of the extensive administrative record, the time period provided in 40 CFR 231.5(a) for the preparation of the Regional Recommendation, the next step in the 404(c) process, is being extended until no later than, July 11, 2008. This time extension is made under authority of 40 CFR 231.8.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Mikulak, Wetlands Regulatory Section, Wetlands, Coastal and Nonpoint Source Branch, Water Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is 404–562–9233. Mr. Mikulak can also be reached via electronic mail at

mikulak.ronald@epa.gov or Mr. William Ainslie, Wetlands Regulatory Section, at the same address above. The telephone number is (404) 562–9400. Mr. Ainslie can also be reached via electronic mail at *ainslie.william@epa.gov.*

Dated: May 7, 2008.

Lawrence E. Starfield,

Regional Decision Officer.

[FR Doc. E8–10832 Filed 5–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0343; FRL–8363–3]

Naphthalene Risk Assessments; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the pesticide naphthalene, and opens a public comment period on these documents (Phase 3 of 4–Phase Process). The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for naphthalene through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before July 14, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0343, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0343. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Molly Clayton, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0522; fax number: (703) 308–7070; e-mail address: *clayton.molly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for naphthalene and soliciting public comment on risk management ideas or proposals. Naphthalene is an insecticide used primarily as a moth repellant. EPA developed the risk assessments and risk characterizations for naphthalene through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Naphthalene is an insecticide used as a moth repellant for the protection of wool clothing and as an animal repellant against nuisance vertebrate pests. Naphthalene products are formulated as moth balls, flakes, dusts, and granules. All pesticidal uses of naphthalene are residential; no food or occupational uses are registered.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for naphthalene. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as ambient exposure data related to the pesticidal uses of naphthalene, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for naphthalene, specifically, measures for mitigating risk from episodic ingestion (i.e. toddlers eating a mothball product). The Agency is soliciting information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to naphthalene, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For naphthalene, a modified, 4–Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its limited risk concern. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for naphthalene. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 7, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–10830 Filed 5–13–08; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0002; FRL–8364–4]

Battelle Memorial Institute and Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2) Battelle Memorial Institute and its subcontractor, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., have been awarded a contract to perform work for OPP, and access to this information will enable Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., to fulfill the obligations of the contract.

DATES: Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., will be given access to this information on or before May 19, 2008.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0786; e-mail address: *croom.felicia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0002. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Contractor Requirements

Under Contract No. EP-C-04-027, Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc. will perform the task to review and analyze published and unpublished studies of six conazoles: Fenbuconazole, Diniconazole, Cyproconazole, Uniconazole, Hexaconazole, and Propiconazole. Under this task the contractor shall:

1. Search the scientific literature from 1950 forward for dermal absorption studies of Fenbuconazole, Diniconazole, Cyproconazole, Uniconazole, Hexaconazole, and Propiconazole.

2. Obtain the dermal absorption studies for Fenbuconazole, Diniconazole, Cyproconazole, Uniconazole, Hexaconazole, and Propiconazole submitted to OPP from the OPP Registration Division.

3. Critically evaluate the studies obtained in IIA and IIB to determine the physical and chemical factors that govern dermal absorption and the influence of measurement methods on the reported dermal absorption values.

The OPP has determined that access by Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., until the requirements in this document have been fully satisfied. Records of information provided to Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., will be maintained by EPA Project Officers for this contract. All information supplied to Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., by EPA for use in connection with this contract will be returned to EPA when Battelle Memorial Institute and its subcontractor, Toxicology Excellence for Risk Assessment, Quality Environmental Professional Associate, and Horn Engineering Services, Inc., have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: May 1, 2008.

Kathryn S. Bouve,

Acting Director, Office of Pesticide Programs.

[FR Doc. E8–10289 Filed 5–13–08; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: BLOUNT COUNTY BROADCASTING SERVICE INC., Station WKLD, Facility ID 5885, BPH–20080409ACP, From ONEONTA, AL, To UNION GROVE, AL; CARTIER COMMUNICATIONS INC., Station WICY, Facility ID 36122, BP–20080321ABX, From MALONE, NY, To MOOERS, NY; CITICASTERS LICENSES, L.P., Station KATZ–FM, Facility ID 48958, BPH–20080313ABN, From ALTON, IL, To BRIDGETON, MO; COCHISE BROADCASTING, LLC, Station NEW, Facility ID 171027, BMPH–20080319ADW, From SINCLAIR, WY, To RED BUTTE, WY; COLLEGE CREEK MEDIA, LLC, Station KRFD, Facility ID 164154, BMPH–20080404AEE, From THAYNE, WY, To SOUTH PARK, WY; EDUCATIONAL MEDIA FOUNDATION, Station KCAI, Facility ID 90917, BMPED–20080411ABL, From KINGMAN, AZ, To DOLAN SPRINGS, AZ; GAP BROADCASTING BILLINGS LICENSE, LLC, Station KMHK, Facility ID 1315, BPH–20080327AFQ, From HARDIN, MT, To WORDEN, MT; GEORGIA-CAROLINA RADIOCASTING COMPANY, LLC, Station WLVX, Facility ID 84470, BPH–20070413AGU, From ELBERTON, GA, To TIGNALL,

GA; GREELEY BROADCASTING CORPORATION, Station KFVR–FM, Facility ID 81305, BPH–20080311ACG, From LA JUNTA, CO, To BEULAH, CO; HUNT BROADCASTING, INC., Station KJKB, Facility ID 855, BPH–20080402ACC, From JACKSBORO, TX, To SCOTLAND, TX; JER LICENSES, LLC, Station NEW, Facility ID 170963, BNPH–20070502AEZ, From FLAGLER, CO, To LOG LANE VILLAGE, CO; LARAMIE MOUNTAIN BROADCASTING, LLC, Station KRGQ, Facility ID 164299, BPH–20080317AFC, From YUMA, CO, To MERINO, CO; LKCM RADIO LICENSES, L.P., Station KKAJ–FM, Facility ID 11181, BPH–20080402ABY, From ARDMORE, OK, To DAVIS, OK; LKCM RADIO LICENSES, L.P., Station KFWR, Facility ID 31062, BPH–20080402ABZ, From MINERAL WELLS, TX, To JACKSBORO, TX; MICHAEL RADIO GROUP, Station KRKI, Facility ID 89114, BPH–20080408AEH, From NEWCASTLE, WY, To BLACK HAWK, SD; MILLER COMMUNICATIONS, INC., Station WWHM, Facility ID 43833, BP–20080404ACC, From SUMTER, SC, To WEDGEFIELD, SC; MILLER COMMUNICATIONS, INC., Station WIBZ, Facility ID 55268, BPH–20080404ACE, From WEDGEFIELD, SC, To QUINBY, SC; MILLER COMMUNICATIONS, INC., Station WIGL, Facility ID 54576, BPH–20080411AAS, From ST. MATTHEWS, SC, To WINNSBORO, SC; PACIFIC WEST BROADCASTING, INC., Station KNCU, Facility ID 81725, BPH–20080331ACV, From NEWPORT, OR, To GLENEDEN, OR; PATHFINDER COMMUNICATIONS CORPORATION, Station WBYR, Facility ID 55659, BPH–20080324AAW, From VAN WERT, OH, To WOODBURN, IN; SCOTT POWELL, Station KHNY, Facility ID 161192, BMP–20080401AQR, From BIG HORN, WY, To HUNTLEY, MT; STEPHANIE LINN, Station KSHL, Facility ID 63205, BPH–20080331ACW, From GLENEDEN BEACH, OR, To COBURG, OR; YOUNGERS COLORADO BROADCASTING LLC, Station KEZZ, Facility ID 165959, BMPH–20080312ADS, From WALDEN, CO, To BERTHOUD, CO.

DATES: Comments may be filed through July 14, 2008.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, D.C. 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E8–10761 Filed 5–13–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2008–08]

Notification and Federal Employees Antidiscrimination and Retaliation Act (No FEAR Act) Notice

AGENCY: Federal Election Commission.

ACTION: Notice.

SUMMARY: The Federal Election Commission (FEC) is providing notice to its employees, former employees and applicants for Federal employment about the rights and remedies available to them under the applicable Federal antidiscrimination laws and whistleblower protection laws. This notice fulfills the FEC's notification obligations under the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (No FEAR Act or the Act), as implemented by the Office of Personnel Management regulations at 5 CFR part 724. The FEC's No FEAR Act notice is available on the FEC's Web site at *http://www.fec.gov/eeo/nofear/nofear.html.*

EFFECTIVE DATE: May 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carolyn S. Mackey-Bryant, Director, Office of Equal Employment Opportunity, Federal Election Commission, 999 E Street, NW., Suite 507, Washington, DC 20463, (202) 694–1229.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, which is now known as the No FEAR Act. *See* Public Law 107–174, codified at 5 U.S.C. 2301 note. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, sec. 101(1).

The Act also requires the FEC to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

The FEC cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Generally, discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination against the FEC. *See* 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below).

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public

health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site at *http://www.osc.gov*.

Retaliation for Engaging in Protected Activity

The FEC cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections, or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, the FEC retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal antidiscrimination and whistleblower protection laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits the FEC to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, or contact the EEOC, 999 E Street, NW., Suite 507, Washington, DC 20463, (202) 694–1229. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found on the EEOC Web site at *http://www.eeoc.gov* and on the OSC Web site at *http://www.osc.gov*.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: May 8, 2008.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. E8–10691 Filed 5–13–08; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements (202)–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011579–012.

Title: Inland Shipping Service Association Agreement.

Parties: Crowley Liner Services, Inc.; and Seaboard Marine, Ltd. and Seaboard Marine of Florida, Inc.

Filing Party: Gerald A. Malia, Esq.; 1660 L Street, NW., Suite 506; Washington, DC 20036.

Synopsis: The amendment would add five countries in Central America to the scope, add APL Co. PTE Ltd. as a party to the agreement, provide for coastal ranges within the Inland Transportation section of the agreement, and make miscellaneous changes in the agreement.

Dated: May 9, 2008.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–10789 Filed 5–13–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Meeting

Agency Holding the Meeting: Federal Maritime Commission.

Time and Date: May 14, 2008—10 a.m.

Place: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

Status: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

Matters To Be Considered

Open Session

1. FMC Agreement No. 201180: SSA Terminals (Seattle) Cooperative Working Agreement.

Closed Session

1. Direction to Staff Regarding Budget Hearing Committee Requests.

2. FMC FY 2008 Budget Status.

Contact Person for More Information: Karen V. Gregory, Assistant Secretary, (202) 523–5725.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–10560 Filed 5–13–08; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant

EZ Logistics LLC, 120 Sylvan Avenue, Ste. 3, Englewood Cliffs, NJ 07632. *Officer:* Yong Zhao, Member (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

A&A Contract Customs Brokers USA, Inc., 2–12th Street, Blaine, WA 98230. *Officer:* Carlos Verduzoo, Vice President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Allcargo International Shipping, Inc., 12808 Panhandle Road, Hampton, GA 30228. *Officer:* Ella J. Davis, President (Qualifying Individual).

Dated: May 9, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–10787 Filed 5–13–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 019152F.
Name: Accel Product Company dba Accel International.
Address: 8888 Keystone Crossing, Ste. 1300, Indianapolis, IN 46240.
Date Revoked: April 4, 2008.
Reason: Failed to maintain a valid bond.

License Number: 019764N.
Name: Altorky Group Inc. dba In & Out Cargo.
Address: 2323 S. Voss, #203-C1, Houston, TX 77057.
Date Revoked: April 28, 2008.
Reason: Failed to maintain a valid bond.

License Number: 020379F.
Name: AMR Investments Inc. dba AMR.
Address: 547 Boulevard, Kenilworth, NJ 07033.
Date Revoked: April 30, 2008.
Reason: Surrendered license voluntarily.

License Number: 017061F.
Name: COR Logistics, Inc.
Address: 17950 Dix Toledo Rd., Brownstown, MI 48192.
Date Revoked: April 30, 2008.
Reason: Failed to maintain a valid bond.

License Number: 003213F.
Name: Fracht FWO Inc.
Address: 633 West Century Blvd., Ste. 670, 6th Fl., Los Angeles, CA 90045.
Date Revoked: April 30, 2008.
Reason: Failed to maintain a valid bond.

License Number: 017275NF.
Name: Hoosier Forwarding, LLC.
Address: 3580 Blackthorn Court, South Bend, IN 46628.
Date Revoked: April 17, 2008.
Reason: Surrendered license voluntarily.

License Number: 020534N.
Name: Quisqueyana Express, Inc.
Address: 4468 Broadway, New York, NY 10040.
Date Revoked: April 8 2008.
Reason: Surrendered license voluntarily.

License Number: 016784N.
Name: 7M Transport, Inc.
Address: 18602 Spring Heather Ct., Spring, TX 33739–2778.
Date Revoked: April 17, 2008.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E8–10788 Filed 5–13–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 29, 2008.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Linda Louise Yanke, Meridian, Idaho, and Brian Scott Norby, Daniel Ronald Yanke, Nathan Daniel Yanke, and Carl Ron Yanke, all of Boise, Idaho, to retain voting shares of Silver State Bancorp, and thereby indirectly control its subsidiary, Silver State Bank, both of Henderson, Nevada.

Board of Governors of the Federal Reserve System, May 9, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–10738 Filed 5–13–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 2008.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. Hyde Park Bancorp, MHC, Hyde Park, Massachusetts, to become a bank holding company in connection with the reorganization of Hyde Park Savings Bank, Hyde Park, Massachusetts into a mutual bank holding company structure.

B. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Hometown Banking Company, Inc., Ft. Pierce, Florida, to retain control of 31.26 percent of the voting shares of all classes of common stock of Hometown of Homestead Banking Company, and its subsidiary, 1st National Bank of South Florida, both of Homestead, Florida.

C. Federal Reserve Bank of San Francisco (Kenneth Binning, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Carpenter Fund Manager GP, LLC, Carpenter Fund Management, LLC, Carpenter Community Bancfund–A, L.P., Carpenter Community Bancfund, L.P., and Carpenter Community Bancfund CA, L.P., all of Irvine, California, to become bank holding companies by acquiring 24.3 percent of the voting shares of Mission Community Bancorp, and thereby acquire its subsidiary, Mission Community Bank, both of San Luis Obispo, California.

Board of Governors of the Federal Reserve System, May 9, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–10737 Filed 5–13–08; 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.

TIME AND DATE: 11:30 a.m., Monday, May 19, 2008.

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, May 9, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 08–1262 Filed 5–9–08; 4:10 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: SF–424D (Assurances—Construction Programs) Form—Extension—OMB No. 4040–0009—Grants.Gov.

Abstract: The SF–424D (Assurances—Construction Programs) form is utilized by up to 26 Federal grant making agencies. The SF–424D is used to provide information on required assurances when applying for construction projects under Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. The only information collected on the form is the applicant signature, title and date submitted. A 2-year clearance is requested. Frequency of data collection varies by Federal agency.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
USDA	916	1	15/60	229
DOI	318	1.227	30/60	195
VA	141	1	15/60	35
DOC	505	1	15/60	126
Total	1,880			586

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–10793 Filed 5–13–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: SF–424C (Budget Information—Construction Programs) Form—Extension—OMB No. 4040–0008—Grants.Gov.

Abstract: The SF–424C (Budget Information—Construction Programs) form is utilized by up to 26 Federal grant making agencies. The SF–424C is used to provide budget information when applying for construction projects under Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. A 2-year clearance is requested. Frequency of data collection varies by Federal agency.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
VA	179	1	15/60	45
DOI	258	1.28	30/60	165
USDA	934	1	3	2,802
DOC	505	1	15/60	126
DOT	1,650	1	3	4,950
Total	3,526			8,088

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–10794 Filed 5–13–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: SF–424B (Assurances—Non-Construction Programs) Form—Extension-OMB No. 4040–0007—Grants.Gov.

Abstract: The SF–424B (Assurances—Non-Construction Programs) form is utilized by up to 26 Federal grant making agencies. The SF–424B is used to provide information on required assurances when applying for non-construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. The only information collected on the form is the applicant signature, title, and date submitted. A 2-year clearance is requested. Frequency of data collection varies by Federal agency.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
USDA	6,172	1	15/60	1,543
NARA	145	1	15/60	36
CNCS	10	1	30/60	5
Treas	191	1	15/60	48
DOI	1,053	2.764	11/60	529
VA	184	1	15/60	46
DOC	1,880	1	15/60	1,220
EPA	3,816	1	4	15,264
Total	16,451			18,691

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–10795 Filed 5–13–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov* , or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: SF–424 Mandatory—Revision-OMB No. 4040–0002–Grants.gov.

Abstract: This collection is the government-wide form used for mandatory grant programs.

Proposed revision to the form includes the addition of a data block that will collect the

• I11''Descriptive Title of Applicant's Project.'' The data field labeled ''County'' will be revised to read ''County/Parish.'' The instructions are also being revised to incorporate the new descriptive title block and also, revisions to the instructions for areas affected by funding and the congressional district. Changes to the instructions will increase data quality and clarity for the collection.

Adding an additional data block is necessary to comply with the requirements of the Federal Funding Accountability and Transparency Act (FFATA). FFATA was signed into law on September 26, 2006 (Pub. L. 109–282). The legislation requires the Office of Management and Budget (OMB) to establish a publicly available, online database containing information about entities that are awarded federal grants, loans, and contracts. The revised form will assist agencies in collecting the required data elements for the database through the SF–424 applications. This form will be utilized on occasion by up to 26 Federal grant making agencies with mandatory grant programs. We are requesting a 2-year clearance of this form. The affected public includes, Federal, State, Local or Tribal governments, business or other for profit, and not for profit institutions.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
DOL	110	2.6	1	286
DOT	50	1.1	1	55
DoED	114	1	1	114
NEA	65	1	32/60	35
USDA	317	1	1	317
Total				807

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–10796 Filed 5–13–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer. All comments must be faxed to OMB at 202–395–6974.

Proposed Project: SF–424 Research & Related (R&R) Form—Revision—OMB No. 4040–0001—Grants.Gov.

Abstract: The SF–424 (R&R) is the government-wide data set for research grant applications. The data set provides information to assist Federal program staff and grants officials in assessing the adequacy of applicant's proposals to accomplish project objectives and determine whether grant applications reflect program needs.

Agencies will not be required to collect all of the information in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package. The proposed data set incorporates proposed revisions adopted by the cross-agency R&R working group. This working group established the original proposed data set (4040–0001) in 2004. The form instructions will also be revised.

We propose two major changes in our revision request. The first major change is to remove the Project/Performance Site Location(s) form from the collection. This form will be revised and included in a separate OMB-approved collection. The Project/Performance Site Locations(s) forms will be required with all SF–424 form families with the exception of the SF–424 Individual form. The second major change is to incorporate into this collection the Small Business Innovation Research (SBIR) / Small Business Technology Transfer (STTR) Information form (OMB Number 0925–0001). The existing SBIR/STTR Information form (OMB No. 0925–0001) will be discontinued once this R&R collection is renewed. We are requesting a 3-year extension of the revised form. The affected public may include Federal, State, Local, or Tribal.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
DOC	2,300	1	25/60	958
DOE	8,000	1	1.5	12,000
ED	1,200	1	40	48,000
HHS	60,000	1	60	3,600,000
DOD	2,500	5	1.0676	13,345
NASA	10,000	1	1.5	15,000
USDA	6,000	1	1.25	7,500
NSF	40,000	1	120	4,800,000
DHS	350	1	120	42,000
Total				8,538,803

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–10797 Filed 5–13–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to

Sherette.funncoleman@hhs.gov, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer. All comments must be faxed to OMB at 202–395–6974.

Proposed Project: SF–424A (Budget Information—Non-Construction Programs) Form—Extension—OMB No. 4040–0006—Grants.Gov.

Abstract: The SF–424A (Budget Information—Non-Construction Programs) form is utilized by up to 26 Federal grant making agencies. The SF–424A provides budget information when applying for non-construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. A 2-year clearance is requested. Frequency of the data collection varies by Federal agency.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
CNCS	10	1	4	40
DOI	258	1.28	30/60	165
DOS	150	1	5/60	13
EPA	3,816	1	4	15,264
SSA	700	2	30/60	700
Treas	191	1.445	1	276
VA	184	1	15/60	46
USDA	6,951	1	3	20,853
DOC	4,880	1	20/60	1,627
DOT	50	1	1.6	80
Total	17,190	.....	.....	39,063

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–10798 Filed 5–13–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Meeting announcement.

SUMMARY: This notice announces the meeting date for the 22nd meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

Meeting Date: June 3, 2008, from 8:30 a.m. to 2 p.m. (Eastern).

ADDRESSES: Hubert H. Humphrey building (200 Independence Avenue, SW., Washington, DC 20201), Conference Room 800.

SUPPLEMENTARY INFORMATION: The meeting will include Workgroup presentations on Recommendations to the Community; a discussion on Priorities and Use Case Options; updates on the Healthcare Information Technology Standards Panel and the Certification Commission for Healthcare Information Technology; and a discussion with the State Alliance for eHealth.

FOR FURTHER INFORMATION CONTACT: Visit *http://www.hhs.gov/healthit/ahic.html.* A Web cast of the Community meeting will be available on the NIH Web site at: *http://www.videocast.nih.gov/.*

If you have special needs for the meeting, please contact (202) 690–7151.

Dated: May 1, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E8–10660 Filed 5–13–08; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings 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 are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: June 17–18, 2008 (Open from 8:30 a.m. to 8:45 a.m. on June 17 and closed for remainder of the meeting).

Place: Crowne Plaza, Conference Room TBD 3, Research Blvd., Rockville, Maryland 20850.

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: June 18, 2008 (Open from 8:00 a.m. to 8:15 a.m. on June 18 and closed for remainder of the meeting).

Place: Crowne Plaza, Conference Room TBD, 3 Research Blvd., Rockville, Maryland 20850.

3. *Name of Subcommittee:* Health Systems Research.

Date: June 26, 2008 (Open from 8 a.m. to 8:15 a.m. on June 26 and closed for remainder of the meeting).

Place: Marriott RIO, Conference Room TBD, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

4. *Name of Subcommittee:* Health Care Research Training.

Date: June 26–27, 2008 (Open from 9:00 a.m. to 9:15 a.m. on June 26 and closed for remainder of the meeting).

Place: Marriott RIO, Conference Room TBD, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: May 5, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–10564 Filed 5–13–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–8AZ]

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

Health Marketing—New—National Center for Health Marketing (NCHM), Coordinating Center for Health Information and Service (CCHIS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is globally recognized for conducting research and investigations and for its action oriented approach. CDC applies research and findings to improve people's daily lives and responds to health emergencies—something that distinguishes CDC from its peer agencies.

CDC is committed to achieving true improvements in people's health. To do this, the agency is defining specific health protection goals to prioritize and focus its work and investments and measure progress.

It is imperative that CDC provide high-quality timely information and programs in the most effective ways to help people, families, and communities protect their health and safety. Through continuous consumer feedback, prevention research, and public health information technology, we identify and evaluate health needs and interests, translate science into actions to meet those needs, and engage the public in the excitement of discovery and the progress being made to improve the health of the Nation. In our outreach to partners, we build relationships that model shared learning, mutual trust, and diversity in points of view and sectors of society.

The National Center for Health Marketing (NCHM) of the Coordinating Center for Health Information and Service (CCHIS) was established to help ensure that health information, interventions, and programs at CDC are based on sound science, objectivity, and continuous customer input.

NCHM is requesting a 3-year approval for the generic concept of health marketing to provide feedback on the development, implementation and satisfaction regarding public health services, products, communication campaigns and information. The information will be collected using standard qualitative and quantitative methods such as interviews, focus groups, and panels, as well as questionnaires administered in person, by telephone, by mail, by e-mail, and online. More specific types of studies may include: user experience and user-testing; concept/product/package development testing; brand positioning/identity research; customer satisfaction surveying; ethnography/observational studies; and mystery shopping. The data will be used to provide input to the development, delivery and communication of public health services and information at CDC and to address emerging programmatic needs.

Every National Center and Office at CDC will have the opportunity to utilize this generic clearance. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
CDC Partners	1,000	4	45/60	3,000
Public Health Professionals	5,000	2	30/60	5,000
Health Care Professionals	5,000	2	30/60	5,000
General Public	75,000	1	20/60	25,000
Total	86,000			38,000

Dated: April 30, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–10791 Filed 5–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–07BL]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Personal Flotation Devices (PFDs) and Commercial Fishermen: Preconceptions and Evaluation in Actual Use—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH has the responsibility under Public Law 91–596 section 20 (Occupational Safety and Health Act of 1970) to conduct research relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

Commercial fishing is one of the most dangerous occupations in the United States, with a fatality rate 30 times higher than the national average. Most fishermen who die on the job drown subsequent to a vessel sinking (51%) or fall overboard (29%). Because drowning is the leading cause of death for commercial fishermen, its prevention is one of the highest priorities for those who work to make the industry safer.

The risk of drowning for commercial fisherman is high, yet most fishermen do not wear Personal Flotation Devices (PFDs) while on deck. From 1990 to 2005, 71 commercial fishermen drowned subsequent to a fall overboard in Alaska. None of the victims were wearing a PFD, and many were within minutes of being rescued when they lost their strength and disappeared under the surface of the water.

Although there are many new styles of PFDs on the market, it is unknown how many commercial fishermen are aware of them, or if they are more comfortable and wearable than the older styles. There have not been any published studies testing PFDs on commercial fisherman to measure product attributes and satisfaction.

The purpose of this study is to first, identify fishermen's perceptions of risk, safety attitudes, and beliefs about PFDs; and second, to evaluate a variety of modern PFDs with commercial fishermen to discover the features and qualities that they like and dislike. This study addresses the repeated recommendation by NIOSH that all commercial fishermen wear PFDs while on deck.

NIOSH is requesting OMB approval for 24 months to administer a survey to collect data on fishermen's perceptions, attitudes, and beliefs. Additionally, NIOSH is requesting approval to involve fishermen directly with an evaluation of the wearability of several different styles of PFDs during fishing operations.

This study has the potential to greatly benefit the fishing industry. One of the first steps to increasing PFD use among commercial fishermen is gaining an understanding of fishermen's reasons for not wearing PFDs. With the empirical data at hand, safety professionals may be better equipped to address fishermen's concerns and remove the barriers that are currently in place.

Findings from the PFD evaluations will provide manufacturers valuable information about commercial fishermen's needs and expectations of PFDs. Because the PFD wearability ratings will be completed by fishermen during fishing operations, the results may have more credibility when they are disseminated to the industry. The PFD evaluation will also supply information to fishermen about which types of PFDs worked best for different types of fishing operations.

There are no costs to respondents other than their time. The total estimated annualized burden hours are 200.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Fishermen (Survey)	400	1	20/60	133
Fishermen (Evaluation)	200	2	10/60	67
Total				200

Dated: May 8, 2008.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–10792 Filed 5–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned review group:

Name: National Center for Injury Prevention and Control Initial Review Group (NCIPC/IRG).

Time and Date: 1 p.m.—3 p.m., May 16, 2008 (closed).

Place: Teleconference.

Status: Portions of the meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and

(6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of cooperative agreement applications submitted in response to Fiscal Year 2008 Requests for Applications related to the following individual research announcement: CE08–004, Translation Research to Prevent Motor Vehicle-Related Crashes and Injuries to Teen Drivers and Their Passengers (R01).

Agenda items are subject to change as priorities dictate.

National Center for Injury Prevention and Control determines that agency business requires its consideration of this matter on less than 15 days notice to the public and that no earlier notice of this meeting was possible.

Contact Person for More Information: J. Felix Rogers, PhD, M.P.H., Telephone (770) 488–4334, NCIPC/ERPO, CDC, 4770 Buford Highway, NE., M/S F62, Atlanta, Georgia 30341–3724.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 8, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–10747 Filed 5–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control/ Initial Review Group, (NCIPC/IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned review group:

Time and Date: 1 p.m.–3 p.m., May 19, 2008 (Closed).

Place: Teleconference.

Status: The meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct research on exposures to volcanic emissions and environmental air pollutants.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of cooperative agreement applications submitted in response to Fiscal Year 2008 Requests for Applications related to the following individual research announcement: E08–001, Program to assess health effects associated with exposures to volcanic emissions and environmental air pollutants.

Agenda items are subject to change as priorities dictate.

NCIPC determines that agency business requires its consideration of this matter on less than 15 days notice to the public and that no earlier notice of this meeting was possible.

Contact Person for More Information: J. Felix Rogers, Ph.D., M.P.H., Telephone (770)488–4334, NCIPC/ERPO, CDC, 4770 Buford Highway, NE., M/S F62, Atlanta, GA 30341–3724.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 8, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–10751 Filed 5–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meeting

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Public Meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting: ''Partnerships to Advance the National Occupational Research Agenda (NORA)''.

Public Meeting Time and Date: 9 a.m.–3 p.m. EDT, June 19, 2008.

Place: Patriots Plaza, 395 E Street, SW., Conference Room 9000, Washington, DC 20201.

Purpose of Meeting: The National Occupational Research Agenda (NORA) has been structured to engage partners with each other and/or with NIOSH to advance NORA priorities. The NORA Liaison Committee continues to be an opportunity for representatives from organizations with national scope to learn about NORA progress and to suggest possible partnerships based on their organization's mission and contacts. This opportunity is now structured as a public meeting via the Internet to attract participation by a larger number of organizations and to further enhance the success of NORA. Some of the types of organizations of national scope that are especially encouraged to participate are employers, unions, trade associations, labor associations, professional associations, and foundations. Others are welcome.

This meeting will include updates from NIOSH leadership on NORA as well as updates from approximately half of the Sector Councils on their progress, priorities, and implementation plans to date, including the Construction Sector, Manufacturing Sector, Services Sector, Public Safety Sub-Sector, and Wholesale and Retail Trade Sector. After each update, there will be time to discuss partnership opportunities.

Status: The meeting is open to the public, limited only by the capacities of the conference call and conference room facilities. There is limited space available in the meeting room (capacity 34). Therefore, information to allow participation in the meeting through the Internet (to see the slides) and a teleconference call (capacity 50) will be provided to registered participants. Participants are encouraged to consider attending by this method. Each participant is requested to register for the free meeting by sending an e-mail to *noracoordinator@cdc.gov* containing the participant's name, organization name, contact phone number on the day of the meeting, and preference for participation by Web meeting (requirements include: computer, Internet connection, and phone, preferably with ''mute'' capability) or in person. An e-mail confirming

registration will include the details needed to participate in the web meeting. Non-US citizens are encouraged to participate in the web meeting. Non-US citizens registering to attend in person after June 2 will not have time to comply with security procedures.

Background: NORA is a partnership program to stimulate innovative research in occupational safety and health leading to improved workplace practices. Unveiled in 1996, NORA has become a research framework for the nation. Diverse parties collaborate to identify the most critical issues in workplace safety and health. Partners then work together to develop goals and objectives for addressing those needs and to move the research results into practice. The NIOSH role is facilitator of the process. For more information about NORA, see *http://www.cdc.gov/niosh/nora/about.html*.

Since 2006, NORA has been structured by industrial sectors. Eight sector groups have been defined using the North American Industrial Classification System (NAICS). After receiving public input through the web and town hall meetings, NORA Sector Councils have been working to define sector-specific strategic plans for conducting research and moving the results into widespread practice. During 2008, most of these Councils will post draft strategic plans for public comment. For more information, see the link above and choose ''Sector-based Approach,'' ''NORA Sector Councils'' and ''Comment on Draft Sector Agendas'' from the right-side menu.

Contact Person for Technical Information: Sidney C. Soderholm, PhD, NORA Coordinator, e-mail *noracoordinator@cdc.gov*, telephone (202) 245–0665.

Dated: May 5, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–10753 Filed 5–13–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Delegation of Authority

Notice is hereby given that I have redelegated to Charles N.W. Keckler, Esq., Senior Advisor, Immediate Office of the Assistant Secretary, Administration for Children and Families (ACF), the following authority vested in the Assistant Secretary for Children and Families.

(a) Authority Delegated.

Authority to review and make decisions to approve or disapprove requests for testimony by ACF employees or former ACF employees concerning information acquired in the course of performing official duties or because of such persons' official capacity with the Department of Health and Human Services in proceedings where the United States is not a party.

(b) Limitations and Conditions.

This redelegation may not be further redelegated.

(c) Effect on Existing Delegations.

None.

(d) Effective date.

This redelegation is effective on the date of signature. I hereby affirm and ratify any actions taken by Mr. Charles Keckler which, in effect, involved the exercise of this authority prior to the effective date of this redelegation.

Dated: May 2, 2008.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

[FR Doc. E8–10766 Filed 5–13–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–E–0102] (formerly Docket No. 2007E–0184)

Determination of Regulatory Review Period for Purposes of Patent Extension; AVASTIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for AVASTIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written or electronic comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human biologic product AVASTIN (bevacizumab). AVASTIN, used in combination with intravenous 5-fluorouracil-based chemotherapy, is indicated for first-line treatment of patients with metastatic carcinoma of the colon or rectum. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for AVASTIN (U.S. Patent No. 6,639,055) from Genentech, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 24, 2007, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of AVASTIN represented the

first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for AVASTIN is 2,551 days. Of this time, 2,401 days occurred during the testing phase of the regulatory review period, while 150 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: March 5, 1997. The applicant claims February 3, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 5, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: September 30, 2003. The applicant claims August 29, 2003, as the date the biologics license application (BLA) for AVASTIN (BLA 125085/0) was initially submitted. The applicant claims this is the date it submitted the first unit of BLA 125085/0, which was submitted in several units as part of a rolling application procedure. It is FDA's position that the approval phase begins when the marketing application is complete. A review of FDA records reveals that the final module of the BLA 125085/0 was submitted on September 30, 2003, which is considered to be the date the complete marketing application was initially submitted.

3. *The date the application was approved*: February 26, 2004. FDA has verified the applicant's claim that BLA 125085/0 was approved on February 26, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 121 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 14, 2008. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 10, 2008. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30. Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

Dated: April 28, 2008.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E8–10726 Filed 5–13–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–E–0399] (formerly Docket No. 2007E–0145)

Determination of Regulatory Review Period for Purposes of Patent Extension; INVEGA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for INVEGA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product INVEGA (paliperidone). INVEGA is indicated for the treatment of schizophrenia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for INVEGA (U.S. Patent No. 5,158,952) from Janssen, L.P., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 23, 2007, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of INVEGA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and

Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for INVEGA is 1,406 days. Of this time, 1,021 days occurred during the testing phase of the regulatory review period, while 385 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: February 14, 2003. The applicant claims February 13, 2003, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the original IND was withdrawn within 30 days of the submission date. The IND effective date was February 14, 2003, which was 30 days after FDA receipt of the request to reinstate the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: November 30, 2005. FDA has verified the applicant's claim that the new drug application (NDA) for INVEGA (NDA 21–999) was initially submitted on November 30, 2005.

3. *The date the application was approved*: December 19, 2006. FDA has verified the applicant's claim that NDA 21–999 was approved on December 19, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 896 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 14, 2008. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 10, 2008. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

Dated: April 28, 2008.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E8–10685 Filed 5–13–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–E–0278] (formerly Docket No. 2007E–0143)

Determination of Regulatory Review Period for Purposes of Patent Extension; ZOLINZA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZOLINZA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZOLINZA (vorinostat). ZOLINZA is indicated for the treatment of cutaneous manifestations in patients with cutaneous T-cell lymphoma who have progressive, persistent or recurrent disease on or following two systemic therapies. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZOLINZA (U.S. Patent No. RE38506 E) from Sloan-Kettering Institute for Cancer Research, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 16, 2007, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZOLINZA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZOLINZA is 2,449 days. Of this time, 2,266 days occurred during the testing

phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: January 24, 2000. The applicant claims October 2, 1999, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 24, 2000, which was the date the IND was removed from clinical hold.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: April 7, 2006. The applicant claims December 6, 2005, as the date the new drug application (NDA) for ZOLINZA (NDA 21–991) was initially submitted. However, FDA records indicate that NDA 21–991 was submitted in several modules under the fast track drug development program. It is FDA's position that the approval phase begins when the marketing application is complete for review. The final module of the NDA making it complete for review was submitted on April 7, 2006.

3. *The date the application was approved*: October 6, 2006. FDA has verified the applicant's claim that NDA 21–991 was approved on October 6, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,433 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 14, 2008. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 10, 2008. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

Dated: April 28, 2008.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E8–10689 Filed 5–13–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Preference for Healthy Start Grantees

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Conference Report (H.R. Rep. No. 110–107) accompanying the Consolidated Appropriations Act 2008 (Pub. L. 110–161), Division G—Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, indicates concurrence with the Senate report language regarding the recompetition of Healthy Start programs. Following the Senate Committee's recommendation, the Health Resources and Services Administration (HRSA) will give funding preference during the FY 2008 competition to current Healthy Start grantees.

BACKGROUND: This notice supplements the 2007 HRSA announcement (HRSA 08–023/08–031) of the availability of fiscal year (FY) 2008 funding for new and competing continuation applications for Healthy Start. Healthy Start strengthens communities to effectively address the causes of infant mortality, low birth weight and other poor perinatal outcomes for women and infants. Recently, new guidance became available with regards to funding FY 2008 Healthy Start programs.

Senate Report 110–107 urges ''HRSA to give preference to current and former grantees with expiring or recently expired project periods.''

FOR FURTHER INFORMATION CONTACT: Maribeth Badura, Director, Division of Healthy Start and Perinatal Services, Maternal and Child Health Bureau, HRSA, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–0543; e-mail *MBadura@hrsa.gov.*

Dated: May 2, 2008.

Dennis Williams,

Acting Administrator.

[FR Doc. E8–10684 Filed 5–13–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; 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 Fogarty International Center Advisory Board.

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 section 552b(c)(9)(B), 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: Fogarty International Center Advisory Board.

Date: May 19–20, 2008.

Closed: May 19, 2008, 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Closed: May 20, 2008, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Open: May 20, 2008, 10:30 a.m.to 12:30 p.m.

Agenda: A report of the FIC Director on updates and overviews of new FIC initiatives. Topics to be discussed include the Global Programs and Strategies of the NCI and NHLBI.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Closed: May 20, 2008, 1:30 p.m. to 3:15 p.m.

Agenda: To review and evaluate a report and discussion on the Global Health Leaders Consultation.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Robert Eiss, Public Health Advisor, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, (301) 496–1415, *eissr@mail.nih.gov.*

This meeting is being published less than 15 days prior to the meeting due to timing limitations imposed by administrative matters.

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/Centers home page: *http://www.nih.gov/fic/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: May 6, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10550 Filed 5–13–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of 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: June 12, 2008.

Open: 8 a.m. to 1:30 p.m.

Agenda: (1) A report by the Director, NICHD; (2) A report of the Subcommittee on Planning and Policy; (3) A Contraception and Reproductive Health 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 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 shuffles 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: May 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10469 Filed 5–13–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources, Special Emphasis Panel R24 Applications Review.

Date: June 17, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/NCRR/OR, Democracy 1, 6701 Democracy Blvd., Room 1064, Bethesda, MD. (Telephone Conference Call).

Contact Person: Guo Zhang, PhD., Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1064, Bethesda, MD 20814–9692, (301) 435–0812, *zhanggumail.nih.gov.*

Name of Committee: National Center for Research Resources, Special Emphasis Panel BIRN SEP (Teleconference).

Date: July 22, 2008.

Time: 12 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: Bonnie Dunn, PhD, Scientific Review Officer, Office Of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Room 1074, MSC 4874, Bethesda, MD 20892–4874, (301) 435–0824, *dunnbo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: May 6, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10549 Filed 5–13–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.

Date: May 16, 2008.

Time: 9 p.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Sooyoun (Sonia) Kim, MS, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NIDCR/NIH, 6701 Democracy Blvd, Rm. 675, Bethesda, MD 20892–4878, (301) 594–4827, *kims@email.nidr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 6, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10548 Filed 5–13–08; 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, Natural Disaster-Related Exposures.

Date: May 22, 2008.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone Conference Call)

Contact Person: Sally Eckert-Tilotta, PhD., Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, 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: May 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10551 Filed 5–13–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical 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 General Medical Sciences Special Emphasis Panel; 2008 NIH Director's New Innovator Awards.

Date: June 2, 2008.

Time: 7 a.m. to 11:59 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Judith H. Greenberg, PhD, Director, Division of Genetics and Developmental Biology, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN–12B, Bethesda, MD 20892 301–594–2755, *greenbej@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 6, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10552 Filed 5–13–08; 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 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 Environmental Health Sciences Special Emphasis Panel; Literature Search and Summary Report for the National Toxicology Program.

Date: June 5, 2008.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov*.

(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: May 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10553 Filed 5–13–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Guam Visa Waiver Agreement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0126.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Guam Visa Waiver Agreement (Form I–760). This request for comment is being made pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 14, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Guam Visa Waiver Agreement.

OMB Number: 1651–0126.

Form Number: I–760.

Abstract: This Agreement is intended to ensure that every alien transported to Guam pursuant to Public Law 99–396 meets all of the stipulated eligibility criteria prior to departure to Guam. It also outlines the requirements to be satisfied by the carrier.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 5.

Estimated Number of Responses: 5.

Estimated Time per Response: 12 minutes.

Estimated Total Annual Burden Hours: 1.

Dated: May 8, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–10805 Filed 5–13–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

Innoko National Wildlife Refuge, McGrath, AK

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of the Draft Revised Comprehensive Conservation Plan and Environmental Assessment for Innoko National Wildlife Refuge; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, we), announce that the Draft Revised Comprehensive Conservation Plan (Draft CCP) and Environmental Assessment (EA) for the southern unit of the Innoko National Wildlife Refuge is

available for public comment. The Draft CCP/EA was prepared pursuant to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), the National Wildlife Refuge System Administration Act of 1966 (Refuge Administration Act) as amended by the National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act), and the National Environmental Policy Act of 1969 (NEPA). It describes two alternatives for managing the southern unit of the Innoko Refuge for the next 15 years, including continuing current management. We will use special mailings to inform the public of opportunities to provide input on the CCP/EA and will hold public meetings in communities near the Refuge (Grayling, Anvik, Shageluk, Holly Cross, Kaltag, McGrath, and Takotna).

DATES: Comments on the Draft CCP/EA must be received on or before July 22, 2008.

ADDRESSES: To provide written comments or to request a paper copy or a compact disk of the Draft CCP/EA, contact Rob Campellone, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, Alaska 99503; telephone: (907) 786–3982; fax: (907) 786–3965; e-mail: *fw7_innoko_planning@fws.gov*. You may also view or download a copy of the Draft CCP/EA at the following Web site: *http://alaska.fws.gov/nwr/planning/innpol.htm*. Copies of the Draft CCP/EA may be viewed at the Innoko Refuge Office in McGrath, Alaska, and the U.S. Fish and Wildlife Service Regional Office in Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Rob Campellone at the address or phone number provided above.

SUPPLEMENTARY INFORMATION: The ANILCA (16 U.S.C. 410hh *et seq.*, 43 U.S.C. 1602 *et seq.*) requires development of a CCP for all national wildlife refuges in Alaska. The Draft CCP/EA for the southern unit of the Innoko Refuge was developed consistent with Section 304(g) of ANILCA and the Refuge Administration Act as amended by the Refuge Improvement Act (16 U.S.C. 668dd *et seq.*). The purpose of developing CCPs is to provide refuge managers with a 15-year management strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish, wildlife, and habitat management and conservation; legal mandates; and Service policies. Plans define long-term goals and objectives toward which refuge management activities are directed and identify which uses may be compatible with the purposes of the refuge. They identify wildlife-dependent recreation opportunities available to the public, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Comprehensive conservation plans are updated in accordance with planning direction in Section 304(g) of ANILCA and with NEPA (42 U.S.C. 4321 *et seq.*).

Background: In 1980, ANILCA designated the Innoko National Wildlife Refuge. Refuge boundaries encompass approximately 3.8 million acres of which approximately 3.5 million acres (92 percent) are under Service jurisdiction. Section 302(3)(B) of ANILCA states that the purposes for which Innoko Refuge was established include: (i) To conserve fish and wildlife populations and habitats in their natural diversity; (ii) to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide the opportunity for continued subsistence use by local residents; and (iv) to ensure water quality and necessary water quantity within the refuge. A CCP and Environmental Impact Statement were completed for the Innoko Refuge in 1987 following direction in Section 304(g) of ANILCA.

The ANILCA requires us to designate areas according to their respective resources and values and to specify programs and uses within the areas designated. To meet this requirement, the Alaska Region established management categories (wilderness, minimal, moderate, intensive, and wild river). Appropriate activities, public uses, commercial uses, and facilities are identified for each management category. Two management categories (wilderness and minimal) apply to the southern unit of the Innoko Refuge.

The 1997 Refuge Improvement Act includes additional direction for conservation planning throughout the National Wildlife Refuge System. This direction has been incorporated into national planning policy for the National Wildlife Refuge System, including refuges in Alaska. This draft revision of the Innoko CCP/EA meets the requirements of both ANILCA and the Refuge Administration Act as amended by the Refuge Improvement Act.

Issues raised during scoping and addressed in the Draft CCP/EA are (1) Competition for moose harvesting; (2) management of air taxis to balance demand for visitor access with user experience and resource protection; (3) threats to water quality from off-refuge mining; (4) refuge enhancement of its relationship with local communities; (5) monitoring and addressing the effects of climate change; (6) the proposed reintroduction of wood bison by the Alaska Department of Fish and Game; and (7) ensuring resource protection while providing for subsistence and other public uses.

The Draft CCP/EA describes and evaluates two alternatives for managing the southern unit of the Innoko Refuge for the next 15 years. These alternatives follow much of the same general management direction. Alternative A (the No-Action Alternative) is required under NEPA and describes continuation of current management activities. Alternative A serves as a baseline against which to compare the other alternative. Under Alternative A, management of the southern unit of the Innoko Refuge would continue to follow direction described in the 1987 CCP and record of decision as modified by subsequent program-specific plans (e.g., fisheries, cultural resources, fire management plans). Currently 61 percent of the refuge is in minimal management, 34.5 percent is designated as Wilderness, and 4.5 percent is in private ownership. Alternative A would continue to protect and maintain the existing wildlife values, natural diversity, and ecological integrity of the refuge. Human disturbances to fish and wildlife habitats and populations would be minimal. Private and commercial uses of the refuge would not change, and public uses employing existing access methods would continue to be allowed. Opportunities to pursue traditional subsistence activities, and recreational hunting, fishing, and other wildlife dependent activities, would be maintained. Opportunities to pursue research would be maintained. Alternative B (the Proposed Action) would generally continue to follow management direction described in the 1987 CCP and record of decision as modified by subsequent program-specific plans, but some of that management direction has been updated by changes in policy since the 1987 Innoko Refuge CCP was approved. Alternative B identifies these specific changes in management direction as well as goals and objectives for refuge management.

Public Availability of Comments: Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all comments from individual persons part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA, and Departmental policies and procedures.

Dated: May 8, 2008.

Thomas O. Melius,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. E8–10810 Filed 5–13–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–200–07–5320–PH–1000–241A]

Notice of Temporary Route Closure, Sonoran Desert National Monument, AZ

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) intends to temporarily close 88 miles of un-maintained, dirt-surfaced vehicle routes in the Sonoran Desert National Monument (SDNM), and one mile on the adjacent public lands managed by the Lower Sonoran Field Office to all travel by motor vehicles. A map of this closure area, documentation of categorical exclusion of this action from further review under provisions of the National Environmental Policy Act (NEPA), and the administrative decision can be viewed online at *http://www.blm.gov/az/sonoran/sondes_main.htm*.

DATES: The closure will be in effect beginning thirty (30) calendar days from publication of this notice and will remain in effect until off-highway-vehicle (OHV) damage to the natural and cultural resources of SDNM has been restored to the extent possible and when adequate measures have been implemented to prevent recurrence of such damage. A staged re-opening of the vehicle routes is expected to begin with in two to three years from the time that the temporary route closure goes into effect, depending on the availability of resources to complete the restoration and management actions.

FOR FURTHER INFORMATION CONTACT: Manager, Sonoran Desert National Monument, Bureau of Land Management, Phoenix District, 21065 North 7th Avenue, Phoenix, Arizona 85027; 623–580–5500.

SUPPLEMENTARY INFORMATION: Since its establishment, certain parts of SDNM have experienced increased visitation from growing adjacent communities, which in turn has increased the public awareness and popularity of these areas for OHV use. Motorized vehicle use off-road has led to visible and persistent damage to the soils and vegetation of lands adjacent to primary access routes, to degradation of the natural and cultural resource objects for which the monument was designated—including a portion of the Juan Bautista de Anza National Historic Trail—and to degradation of the scenic values of the monument. The temporary route closure will prevent further damage to the natural resources of SDNM by unauthorized and illegal OHV use. The BLM is currently in the process of developing a management plan for restoring damaged areas and managing future use of this area. Development of the plan will include public involvement and will be completed in summer 2008. The restoration and management plan could identify specific actions to include visitor entry/information points, site, road, and information signing, camping and staging site delineation, and road repair. During the period of closure, primary access routes will be restored and adjacent areas of OHV damage—including vehicle tracks, barren cores areas, and other areas of human disturbance—will be reclaimed to the extent possible by hand raking, vertical mulching, harrowing, and seeding (native plants only). Further, the temporary closure of these routes will assure that the reclamation work will not be damaged or outpaced by ongoing improper OHV use and will provide for the health and safety of BLM staff and volunteers engaged in this work by reducing exposure to the high volumes of dust generated by the passage of vehicles. In evaluating when to re-open areas or routes within the temporary closure area, we will consider the following factors: (a) Physical rehabilitation of the damaged areas is substantially completed (rehabilitation is the physical obliteration of vehicle damage, and includes vertical mulching, such that vehicle tracks are not visible to be driven on and the area is prepared for natural re-vegetation. Physical rehabilitation does not include vegetation restoration and recovery, which will occur over a much longer time period); (b) The major components of the management plan for that area or route have been implemented to effect a change in user behavior and ensure the resource damage does not re-occur; (c) The practicality of re-opening an area or route(s) while maintaining the temporary closure where the rehabilitation and management actions are not yet completed. Prior to and during the closure, primary vehicle access points will be blocked to use by vehicles with wire fencing and will be posted with signs and public information displays advising of the purpose of the closure and of the reclamation project. All other vehicle access points will be prominently posted with a closure order and map.

The closure will restrict public access to portions of T. 3 S., R. 1 W., section 30; T. 3 S., R. 2 W., sections 9–11, 13–15, 24–26, 35, and 36; T. 4 S., R. 1 W., sections 2, 3, 10–12, 13–15, 19–24, 26–28, 34, and 35; T. 4 S., R. 2 W., sections 2, 10, 11, 15, 16, 22–24, 25–29, 31–33, and 35; T. 4 S., R. 3 W., section 34; T. 5 S., R. 2 W., sections 2, 3, 6, 7, 11, and 12; and T. 5 S., R. 3 W., sections 1–4, 9–15, and 23 (Gila and Salt River Meridian). A map of this closure area, documentation of categorical exclusion of this action from further review under provisions of the National Environmental Policy Act (NEPA), and the administrative decision can be viewed online at *http://www.blm.gov/az/sonoran/sondes_main.htm*. These materials are also available at the BLM Phoenix District Office. The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure: employees of BLM, Arizona Game and Fish Department, and local and Federal law enforcement and fire protection personnel. Access by additional parties may be allowed, but must be approved in advance in writing by the authorized manager.

This closure is in accordance with the provisions of Presidential Proclamation 7397, 66 FR 7354 (Jan. 22, 2001); 43 CFR 8341.2(a); and 43 CFR 8364.1. On all public lands, under section 303(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1733(a), 43 CFR 8360.0–7, any person who violates any closures or restrictions on public lands as announced in this order may be tried before a United States Magistrate and fined no more than $1000.00 or imprisoned for not more than 12 months, or both. Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571 (not to exceed $100,000.00 and/or imprisonment not to exceed 12 months).

Authority: 43 CFR 8364.1.

Karen Kelleher,

Lower Sonoran Field Office Manager.

[FR Doc. E8–10814 Filed 5–13–08; 8:45 am]

BILLING CODE 4310–32–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 May 3, 2008. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 29, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

CALIFORNIA

Sacramento County

Southern Pacific Railroad Section Superintendent House, 815 Oakdale St., Folsom, 08000501

FLORIDA

Gadsden County

Gretna School, 722 Church St., Gretna, 08000502

ILLINOIS

Cook County

Epworth Methodist Episcopal Church, 5253 N. Kenmore Ave., Chicago, 08000503

Ogle County

Village of Davis Junction Town Hall, 202 Pacific Ave., Davis Junction, 08000504

MASSACHUSETTS

Hampden County

Westfield Center Commercial Historic District, 91–115, 100–174 Elm St., Westfield, 08000506

Middlesex County

St. George Antiochian Orthodox Church, 61 Bowers St., Lowell, 08000507

MISSOURI

St. Louis Independent City

Oakview Place Apartments, 1014–1038 Oakview Pl., St. Louis (Independent City), 08000508

NEVADA

Churchill County

Cottage Schools, The, 255 E. Stillwater Ave., Fallon, 08000509

Lincoln County

Smith Hotel—Cornelius Hotel, 100 Spring St., Caliente, 08000510

Washoe County

Veterans of Foreign Wars Building, 301 Burris Ln., Reno, 08000511

NEW HAMPSHIRE

Merrimack County

Hersey Farms Historic District, 1057 & 1088 Franklin Hwy., Andover, 08000512

NEW YORK

Dutchess County

St. Luke's Episcopal Church Complex, Wolcott Ave. & Rector St., Beacon, 08000517

Orange County

St. Andrew's Episcopal Church & Rectory, 13 & 15 Walnut St., Walden, 08000513

Suffolk County

Hawkins, Jedediah, House, 400 S. Jamesport Ave., Jamesport, 08000514

Woodhull, Benjamin King, House, 126 Sound Rd., Wading River, 08000515

Washington County

Town—Hollister Farm, NY 22, North Granville, 08000516

PENNSYLVANIA

Bucks County

Langhorne Manor School, (Educational Resources of Pennsylvania MPS) 618 Hulmeville Rd., Langhorne Manor, 08000518

Elk County

Lake City School, 27586 Lake City Rd., Lake City, 08000519

Lancaster County

Mylin, Martin and Barbara, House and Barns, (Historic Farming Resources of Lancaster County MPS) 211 Willow Valley Sq. (West Lampeter Township), Willow Street, 08000520

Lehigh County

Knauss, Heinrich, House, 152 E. Main St., Emmaus, 08000521

Philadelphia County

Gomery—Schwartz Autocar Building, 130–140 N. Broad St., Philadelphia, 08000522

York County

York Casket Company, 700–710 Linden Ave., York, 08000523

VIRGINIA

Suffolk Independent City

Knotts Creek—Belleville Archeological Site, Address Restricted, Suffolk (Independent City), 08000524

Surry County

Mount Pleasant Architectural and Archeological Complex, Address Restricted, Spring Grove, 08000525

In the interest of preservation the comment period for the following resource has been shortened to Three (3) days.

IOWA

Montgomery County

Murphy, Thos. D. Co. Factory And Power Plant, 110 S. 2nd St., Red Oak, 08000505

A request for REMOVAL has been made for the following resources:

MINNESOTA

Blue Earth County

Kennedy Bridge, Twp. Rd. 167 over Le Sueur R. Mankato, 89001832

VIRGINIA

Charles City County

Rowe, The, 3 mi. SW. of Rustic, Rustic, 800004442

Virginia Beach Independent City

Bayville Farm, VA 650, Virginia Beach (Independent City), 80004317

[FR Doc. E8–10712 Filed 5–13–08; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of the Final Programmatic Environmental Impact Statement, Improvements to the USIBWC Tijuana River Flood Control Project

AGENCY: United States Section, International Boundary and Water Commission (USIBWC).

ACTION: Notice of availability of Final Programmatic Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) has prepared a Final Programmatic Environmental Impact Statement (Final PEIS) for future improvements to the Tijuana River Flood Control Project in southern San Diego County. The Draft PEIS, prepared in cooperation with the Los Angeles District, United States Army Corps of Engineers, analyzes potential effects of the No Action Alternative and a Multi-

purpose Project Management Alternative.

Because improvement measures under consideration are at a conceptual level of development, the USIBWC has taken a broad programmatic look at the environmental implications of their implementation. The USIBWC will apply the programmatic evaluation as an overall guidance for environmental evaluations of future individual improvement projects developed for implementation. Once any given project is identified for implementation, site-specific environmental documentation will be developed based on project specifications and PEIS findings.

DATES: The Final PEIS will be available to agencies, organizations and the general public on May 14, 2008. A copy of the Final PEIS will also be posted in the USIBWC Web site at *http://www.ibwc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–100, El Paso, Texas 79902 or e-mail: *danielborunda@ibwc.gov*.

SUPPLEMENTARY INFORMATION: The Final PEIS analyzes potential effects of the No Action Alternative and a Multi-purpose Project Management (MPM) Alternative for potential environmental improvements to the Tijuana River FCP. Potential improvements incorporated into the MPM Alternative took into consideration measures for modified management of the floodway, and environmental measures supporting initiatives by federal agencies, local governments, and other organizations conducted, largely, under cooperative agreements. The No Action and MPM alternatives were evaluated in terms of their potential effects on water, biological, cultural and socioeconomic resources, land use, and environmental health issues.

Based on the impact analysis, the USIBWC selected the MPM Alternative as the preferred option for improvements to Tijuana River FCP. The MPM Alternative incorporates measures for habitat development and water quality, and is consistent with the core project mission of flood control. Public participation in the PEIS development included a 45-day review period of the Draft PEIS, and a Public Hearing held in the City of Imperial Beach, California on August 30, 2007. Copies of the Final PEIS have been filed with USEPA in accordance with 40 CFR parts 1500–1508 and USIBWC procedures. A Record of Decision on the PEIS alternative selection is anticipated 30 days following the Final PEIS publication date.

Dated: May 7, 2008.

Susan E. Daniel,

Legal Counsel.

[FR Doc. E8–10686 Filed 5–13–08; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–647]

In the Matter of: Certain Hand-Held Meat Tenderizers; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 14, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Jaccard Corporation of Orchard Park, New York. A supplement to the complaint was filed on May 6, 2008. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hand-held meat tenderizers by reason of infringement of U.S. Trademark Registration No. 1,172,879 and also by reason of infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint further alleges that there exists an industry in the United States with respect to the asserted intellectual property rights.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint and the supplement, except for any confidential information contained therein, are 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. 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. 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*.

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 8, 2008, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain hand-held meat tenderizers by reason of infringement of U.S. Trademark Registration No. 1,172,879, and whether an industry in the United States exists as required by subsection (a)(2) of section 337, or

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain hand-held meat tenderizers by reason of infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Jaccard Corporation, 3421 North Benzing Road, Orchard Park, New York 14127.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Keystone Manufacturing Co., Inc., 20 Norris Street, Buffalo, New York 14207.

Chefmaster/Mr. Bar-B-Q Inc., 445 Winding Road, Old Bethpage, New York 11804.

(c) The Commission investigative attorney, party to this investigation, is Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401B, Washington, DC 20436; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 8, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–10687 Filed 5–13–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–745 (Second Review)]

Steel Concrete Reinforcing Bar From Turkey

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on steel concrete reinforcing bar from Turkey.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on steel concrete reinforcing bar from Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: May 6, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On May 6, 2008, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (73 FR 6206, February 1, 2008) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 9, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–10765 Filed 5–13–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Federal Register Notice; Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *Multiple Listing Service of Hilton Head Island*, Inc., No. 9:07–CV–0343 5–SB, which was filed in the United States District Court for the District of South Carolina on March 4, 2008, together with the response of the United States to the comment.

Copies of the comments and the response are available for inspection at the Department of Justice, Antitrust Division; 450 Fifth Street, NW.; Suite 1010; Washington, DC 20530 (telephone (202) 514–2481); and at the Office of the Clerk of the United States District Court for the District of South Carolina, Matthew J. Perry Jr. Courthouse, 901 Richland Street, Columbia, South Carolina 29201 (telephone (803) 765–5816). Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the District of South Carolina, Beaufort Division

United States of America, Plaintiff v. Multiple Listing Service of Hilton Head Island, Inc., Defendant

Civil Action No. 9:07–C V–3435–Sb

Response of the United States to Public Comment on the Proposed Final Judgment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the one public comment received during the public comment period regarding the proposed Final Judgment in this case. After careful consideration of the comment, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

I. Procedural History

On October 18, 2007, the United States filed the Complaint in this matter alleging that the defendant, the Multiple Listing Service of Hilton Head, Inc. (''HHMLS''), enforced certain rules that restrained competition among real estate brokers in Hilton Head, South Carolina. The United States filed a proposed Final Judgment and a Stipulation signed by the United States and the defendant consenting to the entry of the proposed Final Judgement after compliance with the requirements of the APPA. Pursuant to those requirements, a Competitive Impact Statement (''CIS'') was filed in this Court on October 16, 2007; the Proposed Final Judgment and CIS were published in the **Federal Register** on November 27, 2007; and a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, were published for seven days on November 28, 2007 through December 4, 2007. HHMLS filed the statement required by 15 U.S.C. 16(g) on February 22, 2008.

One comment, described below, was received during the 60-day period for public comments, which ended on February 2, 2008.

II. Summary of the Complaint's Allegations

HHMLS is a joint venture of over one hundred competing licensed residential real estate brokerages and other licensed real estate professionals in the Hilton Head, South Carolina area. HHMLS provides a variety of services to its members, including maintaining a database of current and past listings of properties for sale in the Hilton Head area. Brokers who seek to provide brokerage services in the Hilton Head area regard membership in the MLS as critical to their ability to compete.

The Complaint alleges that HHMLS, through a variety of rules and practices: (1) Denied membership to brokers who would likely compete aggressively on price or through innovative business models; (2) stabilized prices and restricted consumer choice by prohibiting member brokers from allowing their customers to choose which brokerage services they wish to purchase; and (3) authorized its Board of Trustees to adopt rules that would regulate commissions and impose discriminatory requirements on Internet-based brokers. By adopting and enforcing these rules and practices, the Complaint alleges that HHMLS restrained competition, reduced consumer choice and stabilized prices for real estate brokerage.

III. Summary of Relief To Be Obtained Under the Proposed Final Judgment

The proposed Final Judgment is designed to restore competition in the Hilton Head real estate brokerage market by eliminating rules that make it difficult for new brokers to enter the market and by eliminating rules that restrict competition among incumbent brokers. More specifically, the proposed Final Judgment will prevent HHMLS from adopting rules or engaging in practices that: (1) Exclude active, licensed real estate professionals from participation in the MLS; (2) deprive some members of services it furnishes to other members; (3) discriminate against members based on factors such as office location or scope/method of service (such as a fee-for service model or an Internet-based brokerage model); (4) require members to perform brokerage services in excess of those required by state law; (5) prescribe the terms of agreements between members and their customers or clients; (6) bar qualified listings from the MLS; (7) set compensation standards or guidelines; (8) charge fees for member changes in ownership; (9) require members to maintain an office or reside in any particular location; and (10) alter any of its three membership classes without prior approval of the United States.

IV. Standard of Review

Upon the publication of the public comment and this Response, the United States will have fully complied with the Tunney Act and will move the Court for entry of the proposed Final Judgment as being ''in the public interest.'' 15 U.S.C. 16(e), as amended. In making the ''public interest'' determination, the Court should apply a deferential standard and should withhold its approval only in very limited conditions. See, e.g., *Mass. Sch. of Law at Andover, Inc.* v. *United States*, 118 F.3d 776, 783 (D.C. Cir. 1997). Specifically, the Court should review the proposed Final Judgment in light of the violations charged in the complaint. Id. (quoting *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995)).

In making the public interest determination, the Tunney act states that the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

The United States described the court's application of the Tunney Act's public interests standard in the Competitive Impact statement filed with the Court on October 16, 2007.

V. Summary of Public Comment and the Response of the United States

During the sixty-day comment period, the United States received one comment from Richard B. Saunders. Mr. Saunders is the broker/owner of RE/MAX Island Realty of Hilton Head Island, South Carolina and a member of HHMLS. His comment is attached in the accompanying Appendix. After reviewing the comment, the United States continues to believe that the proposed Final Judgment is in the public interest.

Mr. Saunders expresses support for the intent of the proposed Final Judgment, but he has a concern about an HHMLS practice relating to the electronic data feed of MLS listings that HHMLS provides its members to enable them to advertise listings on an Internet Web site. Brokers use an electronic data feed to provide information over the Internet in two ways: (1) To advertise listings on a publically accessible Web site in order to attract prospective clients and (2) to provide brokerage services over the Internet to clients who have already entered into a ''consumer-broker'' relationship. As an example of the latter, a broker whose business model includes an Internet brokerage component may create a Web site, often referred to as a Virtual Office Web site or VOW, that is accessible only to customers who have registered on the Web site and agreed to terms of use. Such a broker uses the electronic data feed to provide customers with the same type and quality of listings information that a traditional broker would provide to a client in his office.

According to Mr. Saunders, HHMLS provides its members with a lesser data feed for advertising purposes than it provides to non-member, non-brokers, such as Realtor.com (an advertising Web site sponsored by the National Association of Realtors), or to itself for

populating its own Web site. In a follow-up conversation with Department of Justice staff, Mr. Saunders explained that HHMLS has excluded certain data fields—including property address—from the electronic feed it provides to members for advertising. He claims this exclusion reduces the functionality of HHMLS members' public advertising Web sites. For example, without electronic access to the address field, a member cannot efficiently provide a mapping function on its publicly-accessible marketing Web site.

Under the Tunney Act, a Court's public interest determination is limited to whether the government's proposed Final Judgment remedies the violations alleged in its Complaint. The Government alleged, among other things, that HHMLS's rules deterred the emergence of Internet-based brokerage. As a consequence, the Proposed Final Judgment requires that HHMLS not discriminate against brokers based on the method by which they would provide listings data to their customers. Thus, HHMLS would have to provide to a broker whose business model contains an Internet brokerage component the same electronic data feed it provides to other brokers who service clients through traditional means. Mr. Saunders, however, is concerned about the availability of listings data for use in Internet advertising, not about restrictions on data used to provide brokerage services via a password-protected Internet site. Internet advertising was not a subject of the Government's investigation leading to the complaint in this matter and the Complaint contains no allegation that encompasses the practice about which Mr. Saunders complains. Accordingly, factoring Mr. Saunders' concern into the public interest assessment here would inappropriately construct a ''hypothetical case and then evaluate the decree against that case,'' something the Tunney Act does not authorize. *United States* v. *Microsoft Corp.*, 56 F.3d at I 459. In any event, the Proposed Final Judgment does not insulate the practice about which Mr. Saunders complains from antitrust scrutiny. The antitrust laws will continue to apply to HHMLS and would proscribe conduct by the Defendant that runs afoul of applicable legal standards.

VI. Conclusion

After careful consideration of the public comment, the United States concludes that the entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint and is therefore in the public interest. Accordingly, after publication in the **Federal Register** pursuant to 15 U.S.C. 16(b) and (d), the United States will move this Court to enter the Final Judgment.

Respectfully Submitted,

KEVIN F. McDONALD,
Acting United States Attorney.
BY: /s/ Barbara M. Bowens.
Barbara M. Bowens (I.D. 4004),
Assistant United States Attorney, 1441 Main Street, Suite 500, Columbia, South Carolina 29201, (803) 929–3052.

Lisa Scanlon,
Attorney, Antitrust Division, 325 7th St., NW., Suite 300, Washington, DC 20530, (202) 616–5054.

April 9, 2008.

Certificate of Service

I hereby certify that on April 9, 2008, 1 caused a copy of the foregoing Response to Public Comments to be served on counsel for Defendant via ECF in this matter in the manner set forth below:

By: /s/ Barbara M. Bowens,
BARBARA M. BOWENS.

Jane W. Trinkley,
McNair Law Firm, P.A., P.O. Box 11390, Columbia, SC 29211, (via e-mail and first-class mail from Owen Kendler, Esq.).

Counsel for Defendant.

United States District Court for the District of South Carolina, Beaufort Division

United States of America, Plaintiff v. Multiple Listing Service of Hilton Head Island, Inc., Defendant

Civil Action No. 9:07–C V–3435–SB

Appendix: Public Comment on the Proposed Final Judgment

Comment Submitted by Richard B. Saunders

December 31, 2007.

John Reed,
Litigation III Section, Antitrust Division, US Department of Justice, Washington, DC 20530.

Subject: United States Department of Justice vs Hilton Head Island Multiple Listing Service

Dear Mr. Reed, Assuming that comments are stilt welcome by the Department of Justice regarding the Proposed Final Judgment with the Multiple Listing Service of Hilton Head Island, SC, it is apparent to me that the intent of the document is an attempt to treat all parties relative to our MLS in an equal and unbiased manner, an effort we at RE/MAX Island Realty fully support.

In our opinion what the document does not address is that in our opinion every MLS Member should be treated equal regarding information on real properties ultimately supplied to the consumer regardless of whom is supplying the information. Specifically, we believe that our MLS should supply the identical data feeds to all members of the Hilton Head MLS as are currently submitted to third party providers such as realtor.com and even used by the MLS itself on their own Web site that is being marketed in and outside the state of South Carolina. That is not the case today and that glaring deficiency should be addressed and corrected. Our member firms are being discriminated against by their own MLS! This situation should be corrected for that would benefit all members as well as the ultimate consumer.

Should you have any questions or comments, please do not hesitate to contact me at your convenience. Thank you very much.

Sincerely,

Richard B. Saunders, CRB, GRI, SRES
Broker/Owner, RE/MAX Island Realty.

Dick Saunders,
Broker/Owner, RE/MAX Island Realty, 99 Main Street, Hilton Head Island, South Carolina 29926, Office (843) 785–5252 3044, Fax: (843) 785–7188, Toll Free: (800) 343–6821 x3044, *richardbsaunders@earthlink.net, http://www.remaxhiltonhead.com.*

[FR Doc. E8–10417 Filed 5–13–08; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Identifying Characteristics of High Performing Correctional Organizations

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups or individuals to enter into a cooperative agreement for a 12-month, developmental phase of a new initiative, ''Identifying the Characteristics of High Performing Correctional Organizations.'' This project will focus on developing a methodology to allow organizations to build from their strengths to identify and bridge gaps between current

performance and optimal performance in terms of efficiency, effectiveness and accountability.

Project Goal: The products from this cooperative agreement will be to establish a model, accompanying assessment methodology, and appropriate performance measures that define a high performance correctional agency or system. The model will synthesize the literature about building high-performance organizations into diagnostic tools that can be put to practical use by organizations to understand their business practices and overall performance. The intended user of the tools are local and state operated jails, prisons and community corrections agencies or systems.

The intended outcome for this project is to establish a model, assessment methodology, performance indicators, and practical strategies to (1) Develop ways to address agency inefficiencies that result from the lack of a ''holistic'' and integrated perspective; (2) establish a core set of values or guiding principles that agencies can apply to correctional disciplines to enhance business practices; (3) improve organizational performance by assessing strengths, weaknesses, opportunities, resources and threats; (4) prioritize goals and objectives; and (5) contain costs associated with operating correctional agencies and systems. This project will:

Define the ''hard side'' of correctional organizations i.e. strategic plan, mission statement, capacity building, policy/procedure etc; their leadership and management philosophy; organizational structure; and other operational characteristics.

Identify methods to improve the infrastructure, activities, and outputs of correctional organizations to be better aligned with operational practices, community partnerships, offender reentry and the best use of resources.

Identify evidence based and/or best practices.

Develop and test tools that can be put to practical use.

Develop methods to measure the degree to which correctional organizations are functioning that comprises the actual output or result measured against its intended outputs or goals and objectives in determining performance.

DATES: Applications must be received by 4 p.m. EST on Thursday, June 19, 2008. Selection of the successful applicant and notification of review results to all applicants no later than July 31, 2008 for projects to begin by September 1, 2008.

ADDRESSES: Mailed applications must be sent to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date. Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, call (202) 307–3106, extension 0 for pickup. Faxed applications will not be accepted. The only electronic applications (preferred) that will be accepted must be submitted through *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov.*

All technical or programmatic questions concerning this announcement should be directed to Sherry Carroll, Correctional Program Specialist, National Institute of Corrections. Ms. Carroll can be reached by calling 1–800–995–6423 ext 0378 or by e-mail at *scarroll@bop.gov.*

SUPPLEMENTARY INFORMATION:

Background: Correctional leaders receive a constant stream of advice on the essential elements and functions that constitute professional correctional management and practices. A large literature, much of it based on studies of private sector practices, exists on the best leadership, management, and organizational strategies to produce high performance organizations. At the same time, there are a number of recommended ''best practices'' being offered through training and technical assistance by NIC, other government agencies, and professional organizations or from researchers and academicians on how to best operate correctional agencies and systems. To date, however, there has been little progress in identifying which of these many recommendations are related to higher performance and, if related, how they can be measured.

Progress to date: During 2006, NIC sponsored a workgroup of subject matter experts. The group identified nine categories or core guiding principles considered as important factors in determining criminal justice system performance on the State or local governance level for community corrections. Those principles are: (1) Leadership and Management Development, (2) Information and Knowledge Management; (3) Comprehensive Criminal Justice Planning, (4) Offender Management (5) Collaborative Partnerships, (6) Organizational Development, (7) Accurate, Fair and Timely Processes, (8) Stewardship of Public Resources, and (9) Public Safety.

The applicant awarded this cooperative agreement will continue to draw from the literature to further define or shape those principles at a macro level to span across, and determine their applicability to, jails, prisons, and community corrections agencies at the State and local levels. There are several NIC products that can be found on the Internet (*http://www.nicic.gov*) that relate to core guiding principles such as collaborative problem solving for criminal justice, implementing evidence based principles in community corrections, gender responsivity principles and leadership/core competencies.

Goals of Identifying Characteristics of a High Performing Correctional Organizations Cooperative Agreement: The goal is to develop a model that will synthesize the literature about building high-performance organizations into diagnostic tools that can be put to practical use by practitioners and organizations to understand their business practices and overall performance. The project is multi-tiered to include a general set of core principles then tailored to organizational business practices/applications specific to correctional disciplines (jails, prisons and community corrections).

If an organization is under-utilizing resources then it may be performing at a level below its potential. The model and assessment tools developed under this award will allow agencies to develop and improve their operational infrastructure and build their capacity in a number of areas. In building capacity agency-wide, it may include, but is not limited to, operational management, organizational development principles, business practices, program and offender management, financial processes, accountability and quality assurance.

As this project continues, it will also incorporate the ''soft side'' or informal characteristics of an organization's culture often referred to as ''the way things are really done'' and test how and to what degree those cultural factors can, in conjunction with the ''hard side'' (or formal business practices) either enhance or obstruct efforts to improve performance. The practitioner will have the ability to understand the interaction between both the operational and cultural aspects of an organization. The practitioner can then understand how and why the system operates as it does,

employ intervention strategies and improve performance.

At selected points in the process, the NIC project manager will have sign off authority for the project to move forward and approval to release any information about the project. The selected sign-off points will be determined as the project plans are developed and approved by NIC.

There are three (3) tasks to be achieved under this cooperative agreement: (1) Conduct Research, to identify, develop, and test assessment instruments, tools, and resources, (2) Engage Stakeholders in High Performing Correctional Organization concepts, and (3) Produce Deliverable Products.

Under Task 1, Conduct Research, the project will develop an operational definition of a high performing correctional organization and what business practices/processes they should perform. The definition will be based on a review and synthesis of existing literature from both the public and private sectors on business practices and change strategies that can be tested in correctional agencies or systems. In addition, the project will synthesize previous work on performance measurements for jails, prisons, and community corrections agencies and identify new performance indicators that could be used for each.

Subtasks under Task 1 will include:

Subtask 1.1: Conduct site visits to organizations considered high performing.

Subtask 1.2: Conduct research to validate characteristics and needs of the correctional agencies or systems.

Subtask 1.3: Conduct research and analysis of correctional resources for building the framework.

Subtask 1.4: Conduct research on strength based, evidence based and best practices.

Subtask 1.5: Review current and relevant research on private and public sector business practices.

Subtask 1.6: Research literature review on organizational structures (hierarchy, matrix, etc).

Under Task 2, Engage stakeholders in High Performing Correctional Organization concepts, the project will engage the field to review and refine the results of Task 1. Subtasks under Task 2 will include:

Subtask 2.1: Convene experts and thought leaders (from the corrections field, academia, consultant firms, NIC, and criminal justice system related organizations) to hold meetings and focus groups in contributing to the building of the framework, methodology, and assessment tool.

Subtask 2.2: Assist NIC in creating partnership opportunities to inform and advance work.

Under Task 3, Produce Deliverable Products, a number of deliverables will be produced as a result of the project's activities. The format of the deliverable products (reports, presentations, and activities) will be defined through the course of the work, but their content is listed below.

Subtasks under Task 3 will include:

Subtask 3.1: A definition of high performing correctional organizations.

Subtask 3.2: A description of the principles, requirements, and measurements of a ''high performing'' organization for correctional systems (jails, prisons, and community corrections) and ''hard-side'' business practices.

Subtask 3.3: A methodology for engaging agencies in using the framework, assessment processes, tools and resources.

Subtask 3.4: A comparison of exiting tools and resources.

Subtask 3.5: A set of tools and resources that correctional agencies can use to assess performance, prepare for performance improvements, and implement change efforts.

Subtask 3.6: A methodology to test, analyze and modify tools.

Subtask 3.7: A basic set of performance indicators appropriate for use in prisons, jails, and community corrections agencies.

Subtask 3.8: A protocol for implementing a self-assessment tool.

Subtask 3.9: A report suitable for publication on the Initiative's intent, concepts, and application.

Subtask 3.10: A written strategy for marketing and increasing receptivity to high performing correctional organizations.

Proposal Preparation: The successful applicant must demonstrate a logic model for building initially and sustaining over time the capacity required at state and local governance levels. The proposal must include a strategic plan detailing how the work will be organized and completed, project goals and objectives, methodologies, a list of involved persons and their roles, a budget, and experience working with organizational performance and business practices. The proposal and experience should address previously stated goals and objectives in this solicitation.

Required Expertise: It is highly desirable for the successful applicant to demonstrate experience in:

Facilitation of meetings and planning sessions of advisory committee, work groups and other stakeholders.

Experience collecting documentation and communicating multi-level strategies, information pieces, progress, time lines, budgets, meetings records and surveys.

Management of overall project organization and business processes.

Assessing, interpreting and summarizing research in relevant fields.

Acting as liaison and manager with research experts connected to the project.

Conceptualization of content and process and the ability to translate concepts into appropriate documents and other forms of communication.

Experience in guiding multiple organizations/agencies through a significant change process and case studies must be identified in the application.

Knowledge of public administration concepts and correctional organization business practices.

Display technical writing skills and can provide professional editing services.

Application Requirements: The application should be concisely written, typed double spaced and reference the ''NIC Application Number'' and Title provided in this announcement. The application package must include: OMB Standard Form 424, Application for Federal Assistance, a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30), a program narrative responding to the requirements in this announcement, a description of the qualifications of the applicant(s), an outline of projected costs, and the following forms: OMB Standard Form 424A, Budget Information—Non-Construction Programs, OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available in *http://www.grants.gov*), DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf*.)

The program narrative text should be limited to 15 double spaced pages, exclusive of resumes and summaries of experience. Please do not submit full curriculum vitae. A telephone conference will be conducted for persons receiving this solicitation and having a serious intent to respond on Wednesday, June 5, 2008, at 2 p.m. EDST. Please notify Sherry Carroll electronically at *scarroll@bop.gov* by close of business on June 3, 2008,

regarding your interest in participating in the conference. You will be provided a call-in number and instructions. Any other questions regarding this solicitation should also be addressed to Sherry Carroll at *scarroll@bop.gov*.

Authority: Pub. L. 93–415.

Funds Available: NIC is seeking the applicants' best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. The final budget and award amount will be negotiated between NIC and the successful applicant. Funds may only be used for the activities that are linked to the desired outcome of the project. No funds are transferred to state or local governments.

This project will be a collaborative venture with the NIC Research and Evaluation Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subjected to a 3 to 7 person NIC Review Process.

Number of Awards: One.

NIC Application Number: 08PEI19. This number should appear as a reference line in the cover letter, and in box 4a of Standard Form 424 and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.602.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. E8–10728 Filed 5–13–08; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Mentoring, Educational, and Employment Strategies To Improve Academic, Social, and Career Pathway Outcomes

AGENCY: Employment and Training Administration, U.S. Department of Labor.

Announcement Type: Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY 07–09.

Catalog Federal Assistance Number: 17.261.

SUMMARY: The Employment and Training Administration announces the availability of $49.5 million for grants to serve high schools that have been designated as persistently dangerous by State Educational Agencies for the 2007–2008 school year under section 9532 of the Elementary and Secondary Education Act. The goal of these grants is to reduce violence within these schools through a combination of mentoring, educational, employment, case management, and violence prevention strategies. These grants will be awarded through a competitive process open both to school districts which include persistently dangerous high schools and to community-based organizations (CBOs) in partnership with these school districts. High schools which have been designated as persistently dangerous this school year are located in the school districts of Baltimore City, New York City, Berkshire Farms (New York), Salem-Keiser (Oregon), Philadelphia, and Puerto Rico. These schools are listed in Section VIIIA below. School districts and CBOs must submit a separate application for each high school that they propose serving, but may submit as many applications as they have eligible schools. Applications submitted by school districts must include plans to have one or more CBOs as sub-grantees/contractors to operate at a minimum the mentoring component. These proposed CBO sub-grantees/contractors do not need to be listed in the application, as the Department strongly encourages the use of competition in selecting sub-grantees and contractors either before or after grant award. Applications submitted by CBOs must have a school district identified as a partner, with a signed memorandum of understanding with the school district included in the application. To be eligible to apply for these grants as a CBO, organizations must be not-for-profit entities and can operate either nationally or locally.

This solicitation provides background information and describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and outlines the evaluation criteria used as a basis for selecting the grantees.

Key Dates: The closing date for receipt of applications under this announcement is June 11, 2008. Application and submission information is explained in detail in Part IV of this SGA.

ADDRESSES: Applications that do not meet the conditions set forth in this notice will not be considered. No exceptions to the submission requirements set forth in this notice will be granted. For detailed guidance, please refer to Section IV.C.

SUPPLEMENTARY INFORMATION: This solicitation consists of eight parts:

Part I provides a description of this funding opportunity.

Part II describes the size and nature of the anticipated awards.

Part III describes eligibility information.

Part IV provides information on the application and submission process.

Part V describes the criteria against which applications will be reviewed and explains the proposal review process.

Part VI provides award administration information.

Part VII contains DOL agency contact information.

Part VIII lists additional resources of interest to applicants and other information.

I. Funding Opportunity Description

The Employment and Training Administration announces the availability of $49.5 million for grants to serve high schools that have been designated as persistently dangerous by State Educational Agencies for the 2007–2008 school year under section 9532 of the Elementary and Secondary Education Act. The goal of these grants is to reduce violence within these schools through a combination of mentoring, educational, employment, case management, and violence prevention strategies.

The high schools that have identified this year as persistently dangerous have the following characteristics:

- These high schools are quite large—many of them have enrollments of over 1,200, and a couple have enrollments of over 2,000.
- In particular, these high schools tend to have very large numbers of ninth graders. Many have over 600 ninth graders, and some have over 700 ninth graders.
- The high schools lose great numbers of students between the 9th and 12th grades. Almost all of the schools lose over half of their 9th graders before they reach the 12th grade, and many lose over 60 percent of their 9th graders before they reach the 12th grade.
- These schools serve a predominantly poor population, with many of the schools having 70 percent or more of their students eligible for a free or reduced lunch.

• Several of the schools are located in census tracts with a poverty rate of 20 percent or more.

• The persistently dangerous special education schools that are ungraded but that serve primarily students ages 14 and above also have between 52 percent and 68 percent of their students eligible for a free lunch.

These statistics suggest that the problems of violence, crime, low educational achievement, poverty, and joblessness that characterize persistently dangerous schools and the neighborhoods they serve are all interrelated. These various problems can be overwhelming to both individual students and schools, making it very difficult to create a school climate that is safe and in which academic success is the norm. Research by the Center for Social Organization of Schools at Johns Hopkins University suggests that a fundamental problem of troubled high schools is that they have large numbers of incoming ninth graders not prepared academically for high school.[1] A study by the Consortium on Chicago School Research indicates that ninth graders who fail courses are a diverse group, with some who fail almost all of their courses and need sustained interventions, while others fail only one or two courses and could be helped by the school moving towards Ninth Grade Academies.[2] Finally, the Turnaround Challenge report by Mass Insight notes that schools in poor communities need to ''proactively address the challenges accompanying their students as they walk in the school house door: from something as basic as finding an impoverished child socks or a coat, to assisting where possible with transportation or health services, and attacking the significant cognitive, social, cultural, and psychological barriers to learning that many children of poverty tend to experience.'' [3]

The Department of Labor's intent is to provide sufficient funding through these grants to allow schools to reconfigure in ways that both significantly expand the level of services provided to students and enhance coordination of these services within the school and with the community. Consistent with the research described above, the Department expects that each grant will include three levels of interventions—(1) reforms that affect the whole school; (2) interventions aimed at particular target groups of at-risk youth, such as entering ninth graders and repeating ninth graders; and (3) intensive interventions for individual youth who present the greatest challenges relating to misconduct, truancy, and poor school performance. All three levels of interventions should be aimed at improving student attendance, behavior, effort, and course performance. Because persistently dangerous schools tend to have so many ninth graders, the Department sees that an emphasis of these grants will be improving services to entering and repeating ninth graders.

The required components for each grant are listed below. In discussing the components we provide various examples of program models, but applicants are free to include in their proposed design program models other than those provided here. To design and carry out these components, each grant must be led by a Turnaround Team that includes the school principal, the principal's immediate supervisor in the school district, and the CBO sub-grantees. The Turnaround Team can also include outside educational and youth development experts and representatives of other partners such as the juvenile justice system, police and school security, foundations, parents, the private sector, and the local Workforce Investment Board. The Turnaround Team is responsible for guiding both the planning and the implementation of the initiative and is to continue this role throughout the term of the grant.

The Department expects that in carrying out the various components listed below, grantees will foster connections with neighborhood leaders and institutions which serve youth as part of their missions, such as churches with youth programs, Settlement Houses, Boys and Girls Clubs, Girls Inc., YMCAs, and YWCAs. Representatives from such institutions serving the same neighborhood as the school should be included in the Turnaround Team. Ideally, churches and social service organizations in the neighborhoods served by the school could join together to form a community-wide net to serve at-risk youth and to prevent youth violence, as was done in Boston's 10 Point Coalition. See the description of this effort at *http://www.jsonline.com/story/index.aspx?id=212652*).

#1. *Mentoring.* Each grant must include a mentoring component that integrates the other violence prevention, educational, employment, and case management components provided through the grant. The Department requires that a CBO experienced in providing social services in schools with large numbers of high-risk students or in operating mentoring programs will have the lead in this component of the program. This does not need to be the same CBO that is operating the case management component described below. Mentoring can be provided through volunteers recruited through a variety of ways, and may include one-on-one mentoring, group mentoring, and service-based mentoring. The Department does not expect that every student in the school will have a volunteer mentor, but that a sufficient proportion of students have a mentor to make a difference in the school environment. Points to consider in designing this portion of the project include:

• Proposed mentoring projects should seek to address each of three types of mentoring strategies: Personal development mentoring educates and supports youth during times of personal or social stress and provides guidance for decision making; educational or academic mentoring helps a student improve their overall academic achievement; and career mentoring helps the youth develop the necessary skills to enter or continue on a career path.

• The proposed mentoring strategies should include a period of mentoring and follow-up that is no less than 18 months in duration.

• While starting a volunteer mentoring component may sound easy, it is actually quite difficult to implement. Volunteers need to be recruited, screened, cleared through background checks, trained, correctly matched with youth, and provided ongoing guidance.

• Conducting thorough background checks will be necessary before assigning a mentor to a youth. Established mentoring organizations such as the Big Brothers/Big Sisters Program and the National Mentoring Partnership may be helpful in sharing the procedures and data sets that are currently available for conducting background checks. Contact information for local Big Brother/Big Sister Programs can be obtained at *http://www.bbbs.org*.

• Information on starting mentorship programs is available at the MENTOR/National Mentoring Partnership Web site at *http://www.mentoring.org/*, including their guide *Elements of Effective Practice* at *http://www.mentoring.org/downloads/mentoring_411.pdf* and their tool kit

[1] Robert Balfanz and Nettie Legters, ''The Graduation Rate Crisis We Know and What Can Be Done About It'', *Education Week*, July 12, 2006, available at *http://web.jhu.edu/CSOS/graduation-gap/edweek/Crisis_Commentary.pdf*.

[2] Melissa Roderick, *Closing the Aspirations-Attainment Gap: Implications for High School Reform, MDRC*, April 2006, available at *http://www.mdrc.org/publications/427/full.pdf*.

[3] *The Turnarund Challenge*, Mass Insight Educational Research Institute, 2007, available at *http://www.massinsight.org/resourcefiles/TheTurnaroundChallenge_2007.pdf*.

How To Build a Successful Mentoring Program Using the Elements of Effective Practice at *http://www.mentoring.org/downloads/mentoring_413.pdf*.

• Faith and community-based organizations may be a good source for recruiting volunteer mentors for youth. For example, the Safer Foundation in Chicago has developed over the years partnerships with faith-based organizations to provide mentors for returning prisoners. See their Web site at *http://www.saferfoundation.org/viewpage.asp?id=349*.

• Service-centered mentoring allows adults and youth to get to know each other while working together on community service projects. These can be both small individual projects and large group projects. For larger service-centered mentoring projects, local AmeriCorps and City Year programs may be able to set up such projects with AmeriCorps and City Year volunteers serving as mentors for students.

• Local corporations may also be a source for recruiting mentors for students. Programs can be set up in which corporation employees spend part of their work day at the school.

• Information on mentoring youth with disabilities can be found at the Partners for Youth with Disabilities Web site at *http://www.pyd.org/national-center/council-goals.htm.*

• Applicants may also be able to learn lessons from the Amachi mentoring program, which has been developed by Public/Private Ventures to provide mentors for the children of prisoners. The program's infrastructure and expertise are provided by Big Brothers/Big Sisters of America, which oversees the screening, matching, and training of mentors, and provides mechanisms for monitoring and supporting the mentors. For more information on this program, see *http://www.ppv.org/ppv/publications/assets/167_publication.pdf.*

#2. *Educational Strategies.* This component can include school restructuring efforts and alternative learning strategies aimed at getting at the underlying causes of violence, high dropout rates, and low student achievement in the schools. School districts can choose from the options below or propose other strategies that are well thought-out and for which reasonable evidence exists to support their inclusion. There will be sufficient funds in each grant to allow implementing several educational strategies similar to those presented here:

• Breaking large schools into houses or career academies. Especially if used for upper level grades in conjunction with the Ninth Grade Academy and Twilight School options discussed below, breaking a large school into career academies can greatly decrease the chances that a student gets lost in the crowd.

• Ninth Grade Academies. Such an academy separates ninth graders into a section of their own in the school building, with their own assistant principal, teachers, and counselors.

• Twilight Schools. Twilight Schools operate as a school-within-a school in the building with a schedule that runs from early afternoon to early evening. Students feel part of both the Twilight School and the larger school. The Department sees Twilight Schools started under these grants as being targeted during the first year on repeating ninth graders who earned few if any credits the previous year. Research indicates that repeating the ninth grade strongly predicts dropping out of school and that repeating ninth graders need intensive interventions or they will simply fail the ninth grade again. Twilight Schools started under these grants could then be expanded in subsequent years to include both a new set of repeating ninth graders and students who choose to stay in the Twilight School rather than moving back to the regular school. Like Ninth Grade Academies, Twilight Schools started under this grant would have their own section of the building, and their own assistant principal, teachers, and counselors.

• Credit Retrieval. A reason that many youth drop out of school is that they become hopelessly behind in credits. Credit retrieval or recovery classes allow students to make up courses that they failed using educational software under the direction of a teacher instead of repeating entire semesters of work. Credit retrieval can be useful to a range of students—helping older youth who are far behind in credits, keeping younger youth from falling too far behind their age cohort in credits, and helping older students who need only a few more credits to graduate.

• Block Scheduling. Block scheduling allows students to take four courses for 75 minutes a day each semester instead of seven courses for 50 minutes each. This allows students to focus more on a smaller set of courses, and for teachers to work with a much smaller set of students each semester. Block scheduling gives teachers a chance to work collaboratively in serving each student, and provides additional time for joint planning by teachers.

• Double and Triple Doses of Reading and Math. Key predictors of a student dropping out of school are failing ninth grade English or Algebra and having high truancy in the ninth grade. Providing entering and repeating ninth graders with double or triple doses of reading and math during the day can address these causes of youth eventually dropping out of school.

• Reduced Class Sizes in Algebra and Selected Other Courses. Reducing class sizes across the high school from say 27 to 22 may have a minimal impact on student performance, but strategically reducing class sizes in difficult subjects such as Algebra from 27 students to 10 could result in a significant increase in performance.

• Summer Transition Programs for Entering Ninth Graders. These programs would include identifying and contacting in June the eighth graders who will be attending the high school in the fall, and then providing them with a summer transition program or summer camp to prepare them for high school. These summer programs could focus on anti-violent behavior, peer mediation, study skills, and reading and math remediation.

• Vouchers for outside tutoring and supportive services. Such vouchers would allow parents and students to choose among various local organizations to receive tutoring and supportive services aimed at helping the student succeed in school.

The Department expects that these various educational interventions will be accompanied by extensive staff development efforts, which will include professional development time devoted to the teacher's academic content area, training on instructional methods, training on teachers collaborating across subject areas, and having teams of expert teachers work on an ongoing basis observing teachers and providing them guidance for improvement.

Many of the educational interventions described here combined make up the *Talent Development High School* Model designed by the Center for Social Organization of Schools at Johns Hopkins University, and applicants may select to replicate this entire model. It is described in more detail at the Center's Web site at *http://web.jhu.edu/CSOS/tdhs/index.html.* The educational interventions described here are also consistent with the principles developed by Theodore Sizer in the *Coalition for Essential Schools* model, and applicants may select replicating that model. It is described in more detail at the Coalition for Essential School Web site at *http://www.essentialschools.org/*. The educational interventions described here are also consistent with the middle

school reforms recommended by the Carnegie Corporation in their *Turning Points* report, *http://www.carnegie.org/sub/research/index.html#adol.* Applicants may also wish to consider in designing their projects the work of the Consortium on Chicago Public School Research and the Turnaround Challenge report by Mass Insight referenced earlier in this grant announcement.

#3. *Employment Strategies.* The employment component should emphasize internships for juniors and seniors in high-growth occupations and industries. These internships can occur during afternoons on school days or during the summer. Points to consider in designing this component include:

- To the extent that the school is broken down into career-focused academies, this employment component should be tied to the themes of these academies. See MDRC's research on Career Academies at *http://www.mdrc.org/project_29_1.html.*
- These internships should be carefully designed so that students are doing useful work to earn their wages as opposed to job shadowing or sitting idly at their desks.
- Developing these internships will require linkages to major corporations in the city, including possibly corporations willing to adopt the school both to provide internships to the students and to have their employees serve as mentors to the students.
- Implementing this component will also require developing a partnership with the local workforce system to provide access both to the corporations represented on the Workforce Investment Board and the service providers funded by the local workforce system.
- The employment component can also include efforts to expose students to careers and to coordinate with industry-based youth organizations. See the Web sites of Skills USA (*http://www.skillsusa.org/*) and Health Occupations Students of America (*http://www.hosa.org/natorg.html*).
- The employment component should also include efforts to expand the career awareness of students and to make them aware of the educational requirements of various careers.
- Some grant funds may be used for wages for these after-school and summer internships. Summer internship efforts should be coordinated where appropriate with summer jobs programs operated by the local Workforce Investment Board.
- In designing the employment component, grantees will need to do a scan of existing DOL-funded initiatives in the community, including the WIA formula youth program, WIRED, Beneficiary Choice projects, community-based job training projects, youth offender projects, and high-growth job training grants, to determine potential linkages.

#4. *Efforts to Improve the School Environment and Student Behavior.* This component can include conflict resolution classes, anti-bullying efforts, student courts, peer mediation, anger management classes, crisis intervention strategies, increased involvement of parents, and training teachers in effective classroom management. This component should include both school-wide activities and efforts targeted towards the students who are causing the most discipline problems at the school. Resources for developing this component of the program include:

- *Safeguarding Our Children: An Action Guide* was produced by the Center for Effective Collaboration and Practice of the American Institutes for Research and the National Association of School Psychologists under a cooperative agreement with the U.S. Department of Education. This guide presents a comprehensive plan for preventing school violence. It is available at *http://cecp.air.org/guide/aifr5_01.pdf.*
- The *Resolving Conflict Creatively Program* is a nationally recognized violence prevention program developed by Educators for Social Responsibility (ESR), a non-profit organization that offers comprehensive programming, staff development, and consultation to schools. ESR has also developed a *Partners in Learning Program* specifically for high schools that covers failing students, classroom discipline, school-wide discipline, positive peer culture, peer mediation, and countering bullying. More information is available at *http://www.esrnational.org/index.php?location=high_school&l=hs.*

#5. *Case Management.* This component will provide a team of full-time advocates for youth stationed at the school serving as case managers. The Department sees these case managers or advocates as assisting school counselors in addressing the behavioral, truancy, and academic problems of youth, and in linking students to available social services. The Department also sees these case managers or advocates getting to know the parents of youth and making home visits to the youth. The Department expects that a CBO experienced in providing social services in schools with large numbers of at-risk youth will have the lead in operating this component of the program. This can be the same CBO that will be operating the mentoring component or it can be a different CBO. Consistent with the mentoring component, the Department does not expect that every student in the school will be assigned to a case manager or advocate, but that a sufficient proportion of students will be served through this component to make a difference in the school climate.

There are many models of in-school case management programs which grantees can use or build upon in developing their own program. Such models include:

- The Communities in Schools model emphasizes bringing to schools the social service and health resources available from the community. Site coordinators within schools identify the social service needs of individual students and find the appropriate community resources to address those needs, whether it be eyeglasses, tutoring, food, or a safe place to be. See *http://www.cisnet.org/.*
- The Quantum Opportunity Program (QOP), developed by OIC of America, focuses on advocates staying with the same small group of entering ninth graders throughout the students' four or sometimes five years of high school. Each QOP advocate is assigned to roughly 20 entering ninth graders. QOP also includes academic remediation, life skills, and community service components. The QOP model has been evaluated through a random assignment study. The program did not produce impacts overall across the seven sites studied, but did have positive impacts in selected sites and with youth who were under age 14 at enrollment. See *http://www.mathematica-mpr.com/publications/pdfs/QOPfinalimpacts.pdf.*
- The Jobs for America's Graduates' Multi-Year Dropout Prevention Program has career specialists within schools working with groups of 35 to 45 students to keep the youth on track to graduation. The program starts working with youth in the ninth grade and continues through graduation and one-year of follow-up after graduation. See *http://www.jag.org/model.htm.*
- The Violence-Free Zone model developed by the Center for Neighborhood Enterprise uses mature young adults who are from the same neighborhoods as the students in the schools that they serve. The Youth Advisors serve as hall monitors, mentors, counselors, and role models for youth. See *http://www.cneonline.org/pages/Violence-Free_Zone*
- The Futures Program in Baltimore operated by the Mayor's Office of Employment Development provides advocates in schools to offer tutoring, incentives, cultural enrichment, and

work experience to youth. See *http://www.oedworks.com/youthserv/index.htm.*

• The Partnership for Results program in the Auburn, New York school district uses counselors to conduct home visits and provide links to various social services to families of students with severe behavioral and truancy problems. See *http://www.partnershipforresults.org/.*

• The College Bound Foundation model emphasizes assisting students to go on to college. The Foundation places College Access Program Specialists in Baltimore City's public high schools to help students and their parents learn about opportunities to attend college, and to make sure students take academic courses to prepare for college, take the PSAT and SAT tests on time, apply for college admission on time, and apply for available student aid. See *http://www.collegeboundfoundation.org/.*

II. Award Information

A. Award Amount

Grants to serve high schools with enrollments of 1,000 students or more will amount to $3,167,575 a year for each of two years. Grants to serve high schools with enrollments of less than 1,000 students, including ungraded special education schools that primarily serve students ages 14 and above, will amount to $1,781,761 a year for each of two years. The Department expects to award five grants to larger high schools and five grants to smaller high schools. Applicants should request in their proposals the entire $6,335,151 covering two years of operation for the larger high schools and the entire $3,563,523 covering two years of operation for the smaller schools. These grants will be funded incrementally, with roughly 40 percent of the funds being provided in June of 2008 and the balance being provided in October 2008. Each grant may receive additional years of funding depending on the availability of such funds and satisfactory performance.

B. Period of Performance

Grants will be awarded for an initial 38 month period of performance, which may be later extended with grant officer approval. This period of performance includes a planning period of up to 14 months leading up to the start of the school year in September 2009, and an operations period of two years. Applicants should budget for two years of direct service delivery for each major component. Grantees do not need to use the entire 14-month planning period and can stagger the implementation of their major components. For example, grantees have the option of opening a 9th Grade Academy this fall and then implementing the other major components the following fall. In this case, grantees would still budget the 9th Grade Academy for two years of operation and the remaining components for two years of operation. All program components need to be started by the beginning of the 2009 school year. If grantees start all of their components early, they will complete their two years of operation early before the end of the 38-month period of performance. Grantees must provide separate budgets for planning and operations, and indicate the anticipated length of their planning period. Grantees should be judicious in their use of planning funds and careful to use them specifically for planning components associated with this grant.

III. Eligibility Information and Other Grant Specifications

A. Eligible Applicants

Either school districts or CBOs can apply for these grants. Applications can only be submitted for projects to serve high schools that have been identified by the State Department of Education for the 2007–2008 school year as persistently dangerous under section 9532 of the Elementary and Secondary Education Act. This includes ungraded special education schools that primarily serve students ages 14 and above. High schools that have been identified as persistently dangerous this year are located in the school districts of Baltimore City, New York City, Berkshire Farms (New York), Salem-Keiser (Oregon), Philadelphia, and Puerto Rico. These high schools and their most recently available enrollment level are listed in Section VIIIA below. Schools that had been identified as persistently dangerous this school year, but that have had this designation removed because of successful appeals are not eligible for award. School districts may apply for persistently dangerous schools that are the subject of ongoing appeals regarding their persistently dangerous status, but the application should note that such an appeal is in process and the appeal process will need to be resolved prior to award.

School districts applying will need to have one or more CBOs as sub-grantees/contractors to operate at a minimum the mentorship component. These proposed CBO sub-grantees/contractors do not need to be listed in the application, as the Department strongly encourages the use of competition in selecting sub-grantees and contractors either before or after grant award. CBOs applying will need to have the school district as a partner, with a memorandum of understanding signed by the school district included in the application. To be eligible to apply for these grants as a CBO, organizations must be not-for-profit entities and can operate either nationally or locally. Separate applications must be submitted for each high school to be served, but school districts and CBOs may submit as many applications as they have eligible schools.

Because the Department intends that activities started with these grants will be sustained over time, school districts and CBOs must include in each application a statement by the school district that there are no plans currently in place to close the school that is the focus of the proposal.

Note: DOL/ETA's acceptance of a proposal and award of Federal funds to sponsor any program do not provide a waiver of any grant requirements and/or procedures. OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

B. Cost Sharing or Matching

There are no cost-sharing or matching requirements for these grants.

C. Other Eligibility Requirements

All students enrolled in the target high school are eligible for services under this grant, including youth who are no longer attending but still listed as enrolled.

D. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

Direct Federal grants, sub-award funds, or contracts under this program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the Workforce Investment Act of 1998 and DOL regulations implementing the Workforce Investment Act, a recipient

may not use direct Federal assistance to train a participant in religious activities, or employ participants to construct, operate, or maintain any part of a facility that is used or to be used for religious instruction or worship. See 29 CFR 37.6(f). Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.'' Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at See 29 CFR Part 2, Subpart D. Provision relating to the use of indirect support (such as vouchers) are at 29 CFR 2.33(c) and 20 CFR 667.266.

A faith-based organization receiving federal funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with Federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of HHS funded activities.

Faith-based and community organizations may reference the ''Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government'' at: *http://www.whitehouse.gov/government/fbci/guidance/index.html.*

IV. Application and Submission Information

A. Address To Request Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

The proposal will consist of two separate and distinct parts—a cost proposal and a technical proposal. Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be considered.

Part I. The Cost Proposal. The Cost Proposal must include the following three items:

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the representative of the applicant.
- All applicants for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. See Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.
- The SF 424A Budget Information Form (available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*). In preparing the Budget Information Form, the applicant must provide a detailed backup budget for both the planning and operations aspects of the project, with a narrative explanation in support of the request. The budget narrative should break down the budget and leveraged resources by project activity, should discuss cost-per-participant, and should discuss precisely how the administrative costs support the project goals. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form.

Please note that applicants who fail to provide a SF 424, SF 424A and/or a budget narrative will be removed from consideration prior to the technical review process. If the proposal calls for integrating WIA or other Federal funds or includes other leveraged resources, these funds should not be listed on the SF 424 or SF 424A Budget Information Form, but should be described in the budget narrative and in Part II of the proposal. The amount of Federal funding requested for the entire period of performance should be shown on the SF 424 and SF 424A Budget Information Form. Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at *http://www.doleta.gov/sga/forms.cfm.*

Part II. The Technical Proposal. The Technical Proposal will demonstrate the applicant's capability to plan and implement a project in accordance with the provisions of this solicitation. The guidelines for the content of the Technical Proposal are provided in Part V Section A of this SGA. The Technical Proposal is limited to twenty (20) double-spaced single-sided pages with 12 point text font and one-inch margins. Any pages submitted in excess of this 20 page limit will not be reviewed. In addition, the applicant must provide a one-page abstract of their proposal and a letter from the school superintendent committing to not displace state and local funds going to the high school with these grant funds and stating that there are no plans currently in place to close the high school. Also, CBOs applying for these grants must include evidence of not-for-profit status. These additional materials do not count against the 20-page limit for the Technical Proposal.

Applicants submitting proposals in hard-copy must submit an original signed application (including the SF–424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hard-copy are also requested, though not required, to provide an electronic copy of the proposal on CD–ROM.

C. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement is June 11, 2008. Applications must be received at the address below, or electronically received at the Web site below, no later than 5 p.m. (Eastern Daylight Saving Time). Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted.

Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training

Administration, Division of Federal Assistance, Attention: James W. Stockton, Reference SGA/DFA PY 07–09, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time.

Applicants may apply online through Grants.gov *(http://www.grants.gov).* Any application received after the deadline will not be accepted. It is strongly recommended that that before the applicant begins to write the proposal, applicants immediately review the Grants.gov Web site including all frequently asked questions, and initiate and complete ''Get Started'' registration steps at *http://www.grants.gov/GetStarted.* These steps may take multiple days to complete, and this time should be factored into plans for electronic application submission in order to avoid facing unexpected delays that could result in rejection of an application as untimely. If submitted electronically through *http://www.grants.gov,* the application must be submitted as either .doc., .pdf., or .xlx files.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, it was properly addressed, and it was: (a) Sent by U.S. Postal Service mail, postmarked not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application required to be received by the 20th of the month must be postmarked by the 15th of that month) or (b) was sent by professional overnight delivery service or properly submitted and accepted by Grants.gov to the addressee not later than one working day prior to the date specified for receipt of applications. It is highly recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. Applicants take a significant risk by waiting to the last day to submit by Grants.gov. ''Post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

E. Funding Restrictions

All proposal costs must be necessary and reasonable in accordance with Federal guidelines. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs. Funds provided under these grants shall only be used for activities that are in addition to those that would otherwise be available in the local area in the absence of such funds. In accepting funds under this grant as either the grant recipient or sub-recipient, the school district agrees not to divert funds received through this grant to other purposes by reducing the annual budget the school would have received in the absence of the grant. The Department prohibits paying for security officers, police officers, and clinical psychologists with funds provided under this grant. Paying for food is only allowable in circumstances in which it is integral to a training activity. Grant funds may be used to pay wages to students for after-school and summer internships as long as students are assigned real work at these internships, but grant funds cannot be used for paying stipends to youth. Grantees must submit an implementation plan and detailed budget for project officer review and approval prior to starting operations. If grantees are starting some components sooner than others, they can submit separate plans for the components as they are ready to start them.

Indirect Costs. As specified in OMB Circulars on Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. In order to utilize grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal Cognizant Agency either before or shortly after the grant award. The Federal Cognizant Agency is generally determined based on the preponderance of Federal dollars received by the recipient.

Administrative Costs. An entity that receives a grant to carry out a project or program may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect costs and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an Indirect Cost Rate Agreement from its Federal Cognizant Agency as specified above.

V. Application Review Information

A. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate proposals submitted. These criteria and point values are:

Criterion	Points
1. Statement of Need	15
2. Analysis of the problems faced by the school and its students	20
3. Project design	45
4. The commitment of the applicant and the community to the project and the quality of proposed staff	20
Total Possible Points	100

The rated components listed above make up the Technical Proposal (along with the additional requirements listed in section IV. B).

1. Statement of Need (15 points)

• Provide the number of students in the school's ninth grade class (both

entering ninth graders and repeating ninth graders) in the fall of 2003 and the number of students who graduated from the school in the spring of 2007. If the school includes only grades 10 through 12, provide the number of 10th graders in the fall of 2004 and the number of students who graduated from the school in the spring of 2007.

• Discuss the number and severity of behavioral incidents in the school during the past two school years.

• Discuss the extent of juvenile crime and youth gangs in the community served by the school. If the school draws students from the entire city, describe the extent of juvenile crime and youth gangs in the communities from which most students are drawn. Where possible, provide data on the level of juvenile crime and youth gang involvement in the community or communities served.

• Ungraded schools serving students with special needs should discuss the behavioral issues and academic challenges faced by their students instead of the three discussion points above.

Proposals will be evaluated under this criterion based on:

• The percentage of students lost between the ninth grade class in the fall of 2003 and the graduating class in the spring of 2007, or for schools that include only grades 10 through 12, the percentage of students lost between the tenth grade class in the fall 2004 and the graduating class in the spring of 2007 (5 points).

• The number and severity of behavioral incidents per student in the school during the past two school years (5 points).

• The extent of the juvenile crime and youth gang problem in the community served by the school (5 points).

• Ungraded schools serving students with special needs will be evaluated based on the severity of the behavioral problems and academic challenges of the students that they serve, with a maximum total of 15 points for their answer.

2. Analysis of the Problems Faced by the School and Its Students (20 points)

If a school district is applying, this section should be prepared jointly by the school district and the principal and staff of the high school. If a CBO is applying, it should be prepared jointly by the school district, principal and staff of the high school, and the CBO. The section should present a discussion of the problems and challenges faced by the school and its students, and a discussion of why students drop out without graduating and of why students become involved in behavioral incidents at the school or in juvenile crime or youth gangs outside the school. This section should also provide evidence that the principal and staff of the school were involved in these discussions.

Proposals will be evaluated under this criterion based on:

• The clarity of the discussion of the problems and challenges faced by the school and its students (10 points).

• Evidence that the school principal and staff were active participants in these discussions. Such evidence could include, for example, dates of meetings held (10 points).

3. Project Design (45 Points)

We are asking you to describe your project design in two ways in this section—(1) in a summary form in the matrix below and (2) in a more detailed way in a narrative. Begin this section by filling out the matrix below by inserting the new activities to be funded under this grant that will be directed towards (1) the whole school; (2) particular target groups of at-risk youth, such as entering ninth graders and repeating ninth graders; and (3) individual youth who present the greatest challenges relating to misconduct, truancy, and poor school performance. Use the matrix to show how new activities will be introduced at all three of these levels to improve student attendance, behavior, effort, and course performance.

Here are some examples. (1) If mentors will be provided to particular target groups of students and to individual students with the greatest challenges and if the mentors will attempt to improve student attendance, behavior, motivation, and course performance, then mentoring should be listed in all of the blocks relating to target groups and individual youth. (2) If tutoring and credit retrieval will be made available to all students, then both of these activities should be listed in the block for initiatives affecting the whole school to improve student course performance. (3) If conflict resolution skills will be taught to all students in the school, then it should be listed as an initiative affecting the whole school aimed at improving student behavior. (4) If new counselors are to be hired to conduct home visits to chronically truant students, it should be listed as an initiative aimed at students with greatest challenges to improve attendance. (5) If a Twilight School will be started for repeating ninth graders to improve their attendance, behavior, motivation, and course performance, it should be listed as an activity in all four blocks for targeted at-risk groups. There can be one, two, three, or more activities listed in each block.

	Improving student attendance	Improving student behavior and reducing violence	Improving student effort and motivation	Improving student course performance
Initiatives Affecting Whole School				
Initiatives Targeted at Specific At-Risk Groups (for example, all 9th graders, repeating 9th graders, juvenile offenders, and teen parents)				
Intensive Interventions for Individual Students with Greatest Challenges				

In addition to completing the matrix, provide a narrative that describes your strategies in detail that includes the following:

• More complete information on each of the strategies identified in the matrix, including roles and responsibilities for identified project partners;

• Implementation plans to meet the required project components in Part I of the grant announcement:

1. *Turnaround Team:* Discuss who will serve on this team, including community-based and faith-based organizations and groups. Discuss the roles and responsibilities of the Turnaround Team.

2. *Mentoring:* Describe how the mentoring component will be carried out, including how mentors will be recruited, screened, and trained, the anticipated number of students who will receive mentors, and the number of

full-time staff to be hired for this component.

3. *Educational Strategies:* Discuss the educational strategies that you will implement with grant funds. Provide details regarding how you will implement each strategy, including the number of full-time staff positions that will be dedicated to each new strategy and the expected number of students to be served each year by each strategy. Describe the level of staff development that will be provided in implementing these educational strategies. If vouchers for after-school tutoring or supportive services are proposed, describe how the vouchers will be implemented in a way consistent with federal Equal Treatment rules on indirect support of religious organizations.

4. *Employment Strategies:* Discuss plans for developing internships for juniors and seniors during the school year or during the summer. Discuss ideas for possible places for these internships, and the number of students expected to be involved in the internships. Describe potential linkages with other DOL-funded formula and discretionary youth employment programs that currently exist in the neighborhood served by the school, and possible links with the local Workforce Investment Board and local One-Stop Centers.

5. *Improving the School Environment and Student Behavior:* Discuss how you will provide students with conflict resolution and anger management skills, how you will in other ways promote violence reduction in the school, and the anticipated number of students to be served by this component.

6. *Case Management:* Discuss plans for carrying out this component, including the number of case managers or advocates you expect to hire, how these case managers or advocates will interact with guidance counselors and staff, the expected number of students to be served each year in this component, and the anticipated case load size.

• Projected outcomes to be achieved. Indicate for each component the expected outcomes to be attained. For example, the expected outcomes of the mentoring component may be reducing truancy by 5 percent, reducing behavioral incidents by 10 percent, and increasing the percentage of ninth graders promoted to the 10th grade by 10 percent.

Proposals will be evaluated under this criterion based on:

• The design for school-wide activities, including its potential for having a measurable impact on the school, the extent to which the applicant demonstrates that it has thought through how it will implement the various school-wide activities, and the extent to which it has considered possible links with other DOL grants and other neighborhood programs (15 points).

• The design for initiatives aimed at specific target groups, including its potential for having a measurable impact on the school and the extent to which the applicant demonstrates that it has thought through how it will implement the various target group activities (15 points).

• The design for initiatives aimed at students with the greatest challenges, including its potential for having a measurable impact on the school and the extent to which the applicant demonstrates that it has thought through how it will implement the various activities aimed at students with the greatest challenges (15 points).

4. The Commitment of the Applicant and the Community to the Project and the Quality of Proposed Staff (20 points)

If the school district is applying, this section should include:

• A clear statement indicating the school district's commitment to this project, including a commitment to making a good faith effort to sustain initiatives after federal funds cease using average daily attendance funds and other resources. This statement should be backed up by a letter of support from the school superintendent. This letter should acknowledge that ''in accepting funds under this grant as either the grant recipient or sub-recipient, the school district agrees not to divert funds received through this grant to other purposes by reducing the annual budget the school would have received in the absence of the grant'' and that no plans are currently in place to close the school.

• A description of the experience of key school district staff that will be involved in the project.

• A description of the requirements that will go into the grant announcement for selecting CBO sub-grantees/contractors. The Department strongly encourages the competitive selection of sub-grantees and contractors either before or after grant award.

• A discussion of the community's potential commitment to the project, including a description of organizations that serve the same neighborhoods as the school that could be potential partners, including churches with youth programs, Settlement Houses, Boys and Girls Clubs, Girls Inc, YMCAs, and YWCAs, and how these organizations could help serve as a community-wide net for at-risk youth.

• A discussion of other partners that the school district hopes to develop in implementing this grant, including the juvenile justice system, the local police, the workforce investment system, local foundations, and corporations.

If a CBO is applying, this section should include:

• A clear statement indicating the school district's commitment to this project, including a commitment to making a good faith effort to sustain initiatives after federal funds cease using average daily attendance funds and other resources. This statement should be backed up by a letter of support from the school superintendent. This letter should acknowledge that ''in accepting funds under this grant as either the grant recipient or sub-recipient, the school district agrees not to divert funds received through this grant to other purposes by reducing the annual budget the school would have received in the absence of the grant'' and that no plans are currently in place to close the school.

• A description of the experience of key CBO and school district staff that will be involved in the project, and of how CBO staff who will serving students will be recruited.

• A description of the experience of the CBO either in providing social services in schools with large numbers of at-risk students or in operating mentoring or other youth-serving programs.

• A description of the requirements that will go into the grant announcement for selecting other CBOs as sub-grantees/contractors. The Department strongly encourages the competitive selection of sub-grantees and contractors either before or after grant award.

• A discussion of the community's potential commitment to the project, including a description of organizations that serve the same neighborhoods as the school that could be potential partners, and how these organizations could help serve as a community-wide net for at-risk youth.

• A discussion of other partners that the CBO and school district hope to develop in implementing this grant, including the juvenile justice system, the local police, the workforce investment system, local foundations, and corporations.

If a school district is applying, proposals will be evaluated under this criterion based on:

• The commitment of the school district to the project, as demonstrated in the letter of support from the school superintendent and evidence in the application that staff at the school

district level will be involved in designing and overseeing the proposed project (4 points);

• The experience of school district staff assigned to the project, as demonstrated by their involvement in other efforts to improve and restructure high schools (4 points);

• The requirements that will be included in the grant announcement for selecting CBO sub-grantees (4 points);

• The potential commitment of the community to the project, as demonstrated by the description of organizations that serve the same neighborhoods as the school that could be potential partners and how these organizations could help serve as a community-wide net for at-risk youth (4 points).

• Plans for developing partnerships with other agencies and organizations, as demonstrated by how specific and practical such plans are (4 points).

If a CBO is applying, proposals will be evaluated under this criterion based on:

• The commitment of the school district to the project, as demonstrated in the letter of support from the school superintendent and evidence in the application that staff at the school district level will be involved in designing and overseeing the proposed project (4 points);

• The experience of CBO and school district staff assigned to the project, as demonstrated by their involvement in other efforts to improve and restructure high schools (4 points);

• The experience of the CBO either in providing social services in schools with large numbers of at-risk students or in operating mentoring or other youth-serving programs (4 points).

• The potential commitment of the community to the project, as demonstrated by the description of organizations that serve the same neighborhoods as the school that could be potential partners and how these organizations could help serve as a community-wide net for at-risk youth (4 points);

• Plans for developing partnerships with other agencies and organizations, as demonstrated by how specific and practical such plans are (4 points).

B. Review and Selection Process

Proposals that are timely and responsive to the requirements of this SGA will be rated against the criteria listed above by an independent panel comprised of representatives from DOL. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as geographic balance; the availability of funds; and which proposals are most advantageous to the Government. Applications that receive a score of 80 and above will be considered for award. The panel results are advisory in nature and not binding on the Grant Officer, and the Grant Officer may consider any information that comes to his/her attention. The Government may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer by the applicant (including electronic signature via E-Authentication on (*http://www.grants.gov*).

C. Anticipated Announcement and Award Dates

The anticipated date of announcement and award is June 30, 2008. Both school districts and CBOs applying for these grants should include in their technical proposals the name and contact information for persons who will be available for discussions with the Department in late June when awards are made.

VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA homepage (*http://www.doleta.gov*). The notice of award signed by the Grants Officer will serve as the authorizing document. Applicants not selected for award will be notified as soon as possible.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees, including faith-based organizations, will be subject to all applicable Federal laws (including provisions of appropriation laws), regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA must comply with all provisions of this solicitation and will be subject to the following statutory and administrative standards and provisions, as applicable to the particular grantee:

1. 20 Code of Federal Regulations (CFR) 667.220, administrative costs;

2. Non-Profit Organizations—OMB Circular A–122 (cost principles) and 29 CFR part 95 (administrative requirements);

3. Educational Institutions—OMB Circular A–21 (cost principles) and 29 CFR part 95 (administrative requirements);

4. State, local and Indian Tribal—OMB Circular A–87 (cost principles) and 29 CFR part 97 (administrative requirements);

5. All entities must comply with 29 CFR parts 93 and 98 and, where applicable, 29 CFR parts 96 and 99;

6. In accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611), non-profit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants;

7. 29 CFR Part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries;

8. 29 CFR Part 30—Equal Employment Opportunity in Registered Apprenticeship and Training;

9. 29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964;

10. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance;

11. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor;

12. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Program or Activities Receiving Federal Financial Assistance from the Department of Labor;

13. 29 CFR Part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

14. 29 CFR Part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA);

15. 29 CFR Part 1926, Safety and Health Regulations for Construction of the Occupational Safety and Health Act (OSHA); and

16. 29 CFR Part 570, Child Labor Regulations, Orders and Statements of Interpretation of the Employment Standard Administration's Child Labor Provisions.

2. Special Program Requirements

Evaluation. DOL will require that grantees participate in an evaluation of overall performance. To measure the effect of the project, DOL will arrange for or conduct an independent evaluation of the outcomes and benefits of the project. The grantee must agree to

make records on participants, employers and funding available, and to provide access to program operating personnel and participants, as specified by the evaluator(s) under the direction of DOL, including after the expiration date of the grant.

ETA Intellectual Property Rights. Applicants should note that grantees must agree to provide DOL/ETA a fully paid, nonexclusive and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed or for which ownership was purchased under an award, including but not limited to curricula, training models, technical assistance products, and any related materials. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.

C. Reporting and Accountability

These grants will be subject to performance standards measuring their progress in meeting the goals of the grants. The problems of truancy, failing the ninth grade, having low reading and math skills, dropping out of school, creating behavioral problems in school, and participating in violence and gangs are all interrelated, and the performance measures for these grades will reflect each of these. National goals will be set after grant award in the following areas:

- Decreasing the number and seriousness of behavioral incidents at the school: This will require tracking the number and type of behavioral incidents at the school each year. This information is already collected by school districts.
- Decreasing the number of students who become involved in the juvenile justice system: This will require increased coordination with the city's juvenile justice system. Such increased coordination also will have positive benefits in serving youth involved in delinquency, as research shows that such youth currently have very poor educational outcomes.
- Improving the high school's daily attendance rate: This will involve tracking the high school's daily attendance. High schools and school districts already collect this information.
- Decreasing its rate of students failing the ninth grade: This will require tracking the number of entering ninth graders who fail the ninth grade and the number of repeating ninth grade who fail the ninth grade a second time. High schools and school districts already collect this information.
- Increasing the reading and math scores of its students: This will involve conducting baseline and follow-up reading and math tests of students. DOL will accept the results of reading and math tests already being conducted by high schools that are the focus of these grants. Given that some special groups of youth such as repeating ninth graders or entering ninth graders will likely receive more concentrated reading and math instruction under this grant, it will make sense from both a programmatic and a performance management standpoint to provide additional reading and math testing of these students.
- Decreasing the school's dropout rate: This will require tracking the number of students in the school's ninth grade each year and the subsequent number of students who graduate four years later. High schools and school districts already collect such information.
- Increasing the proportion of the school's graduating seniors who are placed in post-secondary education or employment: This will involve documenting the number of seniors who have either been accepted into a college or have been placed in employment at the time of their graduation. High schools already collect such information on college acceptances of students, and this would add looking at whether youth who are not going on to college have jobs that they will enter.
- The cost-effectiveness of the program: DOL will coordinate with grantees in setting this measure and in identifying the data sources necessary for this element.

Quarterly financial reports, quarterly progress reports, and MIS data will be submitted by the grantee electronically. Grantees must agree to meet DOL reporting requirements. The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report is required until such time as all funds have been expended or the grant period has expired, whichever is sooner. Quarterly reports are due 45 days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System; information and instructions will be provided to grantees.

Quarterly Progress Reports. The grantee must submit a quarterly progress report based on a DOL template to its designated Federal Project Officer within 45 days after the end of each quarter. This report should provide a detailed account of activities undertaken during that quarter. The quarterly progress report should be in narrative form and should include:

1. In-depth information on accomplishments, including project success stories, upcoming grant activities, and promising approaches and processes.
2. Progress toward meeting performance outcomes.
3. Challenges being faced by the grantee in implementing the project.

MIS Reports. Organizations will be required to submit updated MIS data within 45 days after the end of each quarter based on a DOL template that reports on enrollment, services provided, placements, outcomes, and follow-up status.

VII. Agency Contacts

For further information regarding this SGA, please contact B. Jai Johnson, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3296 (please note this is not a toll-free number). Applicants should fax all technical questions to (202) 693–2705 and must specifically address the fax to the attention of B. Jai Johnson and should include SGA/DFA PY 06–10, a contact name, fax and phone number, and e-mail address. This announcement is being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm*, at *http://www.grants.gov*, and in the **Federal Register**.

VIII. Additional Resources and Other Information

A. High Schools and Ungraded Schools That Serve Primarily Students Ages 14 and Above That Have Been Designated as Persistently Dangerous for the 2007–2008 School Year

Maryland

- Dr. W.E.B. Dubois High School, Baltimore, 684 students.
- Liberal Arts Academy—Walbrook Campus, Baltimore, 389 students.

New York

- Jamaica High School, New York City, 2,489 students.
- Samuel Tilden High School, New York City, 2,295 students.
- The American Sign Language and English Dual Language High School, New York City, 166 students.
- Berkshire Junior-Senior High School, Canaan, 185 students.
- PS 12, New York City, 246 students ages 14 and above.
- PS 752, New York City, 535 students ages 14 and above.
- PS 754, New York City, 472 students ages 14 and above.
- PS 811, New York City. There are four PS 811 schools in New York City, depending which one has been designated persistently dangerous it is eligible if it serves primarily students ages 14 and above.

Oregon

• McKay High School, Salem, 1,791 students.

Pennsylvania

• Frankford High School, Philadelphia, 2,057 students.
• Germantown High School, Philadelphia, 1,496 students.
• John Bartram High School, Philadelphia, 1,931 students.
• Abraham Lincoln High School, Philadelphia, 1,970 students.
• Martin Luther King High School, Philadelphia, 1,655 students.
• Overbrook High School, Philadelphia, 1,993 students.
• Samuel Fels High School, Philadelphia, 1,546 students.
• South Philadelphia High School, Philadelphia, 1,469 students.
• Thomas Fitzsimons High School, Philadelphia, 613 students.
• University City High School, Philadelphia, 1,639 students.
• West Philadelphia High School, Philadelphia, 1,217 students.

Puerto Rico

• Superior Dra. Trina Padilla de Sanz, Arecibo, 732 students.
• Superior Dr. Rafael Lopez Landron, Guayama, 1,094 students.
• Superior Benito Cerezo, Aguadilla, 616 students.
• Superior Medardo Carazo, Trujillo Alto, 781 students.
• Superior Judith Vivas, Utuado, 443 students.
• Superior Lorenzo Coballes Gandia, Hatillo, 800 students.

B. Resources for the Applicant

DOL maintains a number of Web-based resources that may be of assistance to applicants:

• Questions and responses submitted to the Grant Officer regarding the SGA will be posted on the Employment and Training Web site at *http://www.doleta.gov*. Questions will be received for one month after publication.

C. Other Information

OMB Information Collection No. 1205–0458.

Expires September 30, 2009.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. PLEASE DO NOT RETURN YOUR COMPLETED APPLICATION TO THE OMB. SEND IT TO THE SPONSORING AGENCY AS SPECIFIED IN THIS SOLICITATION.

This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Signed at Washington, DC, this 8th day of May, 2008.

James W. Stockton,

Grant Officer.

[FR Doc. E8–10688 Filed 5–13–08; 8:45 am]

BILLING CODE 4510–FN–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 2, 2008.
Time: 9 a.m. to 5 p.m.
Room: 402.
Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities, at the April 2, 2008, deadline.

2. *Date:* June 2, 2008.
Time: 2 p.m. to 5 p.m.
Room: 421.
Program: This meeting, which will be by teleconference, will review applications for America's Media Makers, submitted to the Division of Public Programs, at the August 27, 2008, deadline.

3. *Date:* June 4, 2008.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Advancing Knowledge in Preservation and Access Advancing Knowledge, submitted to the Division of Preservation and Access, at the March 18, 2008, deadline.

4. *Date:* June 9, 2008.
Time: 9 a.m. to 5 p.m.
Room: 402.
Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities, at the April 2, 2008, deadline.

5. *Date:* June 11, 2008.
Time: 9 a.m. to 5 p.m.
Room: 402.
Program: This meeting will review applications for Institutes for Advanced Topics in the Digital Humanities, submitted to the Office of Digital Humanities, at the April 9, 2008, deadline.

Heather C. Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E8–10781 Filed 5–13–08; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that six meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Media Arts (application review): June 2–4, 2008 in Room 716. This meeting, from 9 a.m. to 5:45 p.m. on June 2nd, from 9 a.m. to 6 p.m. on June 3rd, and from 9 a.m. to 4 p.m. on June 4th, will be closed.

Musical Theater (application review): June 3–4, 2008 in Room 714. A portion of this meeting, from 2 p.m. to 3 p.m. on June 4th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5 p.m. on June 3rd and from 9 a.m. to 2 p.m. and 3 p.m. to 4:30 p.m., will be closed.

Design (application review): June 5–6, 2008 in Room 716. A portion of this meeting, from 11:30 a.m. to 12:30 p.m. on June 6th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on June 5th, and from 9 a.m. to 11:30 a.m. and 12:30 p.m. to 3:30 p.m. on June 6th, will be closed.

Local Arts Agencies (application review): June 10–11, 2008 in Room 730. A portion of this meeting, from 11:45 a.m. to 12:30 p.m. on June 11th, will be open to the public for a policy discussion. The remainder of the meeting, from 8:45 a.m. to 5:30 p.m. on June 10th, and from 9 a.m. to 11:45 a.m. and 12:30 p.m. to 12:45 p.m. on June 11th, will be closed.

Presenting (application review): June 18, 2008 in Room 716. This meeting, from 8:30 a.m. to 5:30 p.m., will be closed.

Presenting (application review): June 19, 2008 in Room 716. This meeting, from 9 a.m. to 4 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 8, 2008.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E8–10713 Filed 5–13–08; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station; Notice of Availability of the Final Supplement 32 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding the License Renewal of Wolf Creek Generating Station

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a final plant-specific supplement to the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS),'' NUREG–1437, regarding the renewal of operating license NPF–42 for an additional 20 years of operation for the Wolf Creek Generating Station (Wolf Creek). Wolf Creek is located 3.5 miles northeast of the town of Burlington, in Coffey County, Kansas. It is approximately 75 miles southwest of Kansas City and approximately 3.5 miles east of the Neosho River and the John Redmond Reservoir. The nearest population center, Emporia, is 28 miles west-northwest of the site. Other nearby communities are New Strawn and Burlington. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final Supplement 32, based on: (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by Wolf Creek Nuclear Operating Corporation; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for Wolf Creek are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable.

The final Supplement 32 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agency-wide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The Accession Number for the final Supplement 32 to the GEIS is ML081260608. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.* The Accession Number for the final Supplement 32 to the GEIS is ML081260608. In addition, the Kansas Public Library Burlington Branch in Burlington, Kansas, has agreed to make the final Supplement available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Tam Tran, Project Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Tran may be contacted by telephone at 1–800–368–5642, extension 3617 or via e-mail at *Tam.Tran@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of May, 2008.

For the Nuclear Regulatory Commission.

Louise Lund,

Branch Chief, Project Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E8–10822 Filed 5–13–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Extension, Without Change, of a Currently Approved Information Collection: RI 38–47

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for extension, without change, of a currently approved information collection. RI 38–47, Information and Instructions on Your Reconsideration Rights, outlines the procedures required to request reconsideration of an initial OPM decision about Civil Service or Federal Employees retirement, Federal or Retired Federal Employees Health Benefits requests to enroll or change enrollment, or Federal Employees' Group Life Insurance coverage. This form lists the procedures and time periods required for requesting reconsideration.

Approximately 3,100 annuitants and survivors request reconsideration annually. We estimate it takes approximately 45 minutes to apply. The annual burden is 2,325 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–10754 Filed 5–13–08; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28263; File No. 812–13455]

Prudential Retirement Insurance and Annuity Company, et al., Notice of Application

May 7, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order approving the terms of certain offers of exchange pursuant to Section 11 of the Investment Company Act of 1940 (the ''1940 Act'').

Applicants: Prudential Retirement Insurance and Annuity Company (''PRIAC''), the PRIAC Variable Contract Account A (the ''PRIAC Account''), and Prudential Investment Management Services LLC (''PIMS'') (collectively, the ''Applicants'').

Summary of Application: Applicants request an order on behalf of PRIAC and any current or future affiliated life insurance company (each an ''Insurance Company'' and collectively, the ''Insurance Companies''), the PRIAC Account and any current or future separate account of an Insurance Company (each a ''Separate Account'' and collectively, the ''Separate Accounts''), and PIMS and any current or future broker-dealer affiliated with an Insurance Company serving as principal underwriter of variable annuity contracts issued by an Insurance Company or registered open-end management investment companies advised by an affiliate of an Insurance Company (each a ''Distributor'' and collectively, the ''Distributors'') pursuant to Section 11 of the 1940 Act approving the terms of certain offers of exchange between certain variable annuity contract subaccounts and certain registered open-end management investment companies.

Filing Date: The application was filed on November 29, 2007, and an amended and restated application was filed on May 2, 2008.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 29, 2008, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: John M. Ewing, Vice President and Corporate Counsel, The Prudential Insurance Company of America, 200 Wood Avenue South, Iselin, NJ 08830–2706, with a copy to Christopher E. Palmer, Goodwin Procter LLP, 901 New York Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mark A. Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549, (202) 551–8090.

Applicants' Representations

1. PRIAC is a stock life insurance company incorporated under the laws of Connecticut. PRIAC is an indirect wholly-owned subsidiary of Prudential Financial, Inc.

2. The PRIAC Account was established by PRIAC as a separate account under Connecticut law and is registered under the 1940 Act as a unit investment trust for the purpose of funding certain variable annuity contracts issued by PRIAC (the ''Contracts''). Security interests under the Contracts have been registered under the Securities Act of 1933 (the ''1933 Act''). The PRIAC Account currently has five subaccounts, each of which invests exclusively in a single corresponding portfolio of the Advanced Series Trust (''AST''). AST is a Massachusetts business trust and is registered under the 1940 Act as an open-end management investment company with multiple separate series or portfolios. Shares of the AST portfolios are sold to insurance company separate accounts, including

the PRIAC Account, and are registered under the 1933 Act. AST is advised by Prudential Investments LLC and AST Investment Services, Inc., both of which are indirect wholly-owned subsidiaries of Prudential Financial, Inc.

3. PIMS is registered with the Commission as a broker-dealer and is a member of the Financial Industry Regulatory Authority. PIMS is an indirect wholly-owned subsidiary of Prudential Financial, Inc. PIMS serves as the distributor and principal underwriter of the Contracts. PIMS also serves as distributor and principal underwriter for the registered open-end management investment companies advised by Prudential Investments LLC and/or AST Investment Services, Inc. (any such current or future investment company advised by Prudential LLC, AST Investment Services, Inc. or an affiliate, or series thereof, hereinafter referred to as a ''Prudential Mutual Fund'' and collectively, the ''Prudential Mutual Funds'').

4. Applicants and their affiliates propose to offer certain retirement programs, each of which is designed to provide participants (''Participants'') in a single coordinated program a selection of investment options, including both Contracts and mutual fund options, and the ability to periodically transfer their account values among the investment options without charge (each a ''Program'' and collectively, the ''Programs''). The Programs are designed to serve the retirement income needs of Participants by combining the benefits of direct investments in mutual funds with the insurance benefits available through variable annuity contracts, including benefits designed to provide guaranteed withdrawal benefits for the life of the Participant and/or his or her spouse. Applicants have designed two Programs, which are described below, and Applicants may in the future design additional similar Programs.

5. The first Program (the ''IRA Program'') is an individual retirement account (''IRA'') that qualifies for federal tax benefits under Section 408 of the Internal Revenue Code of 1986, as amended (the ''Code''). The IRA will be funded by a rollover transaction from certain employment based retirement plans or arrangements administered by PRIAC or its affiliates or from certain group annuity contracts issued by PRIAC.

6. Participants in the IRA Program may allocate their investments to a Contract and/or to certain Prudential Mutual Funds.[1]

7. The Contract permits Contract owners to allocate Contract value to and among four subaccounts of the PRIAC Account (each, a ''Subaccount'' and collectively, the ''Subaccounts''). Each current Subaccount invests in an AST asset allocation portfolio. The Contract permits transfers of Contract value among the Subaccounts subject to certain restrictions set forth in the Contract prospectus. The Contract offers a guaranteed withdrawal benefit which guarantees certain minimum withdrawal amounts for the life of the Participant and/or his or her spouse subject to certain conditions (the ''Guaranteed Withdrawal Benefit'').

8. PIMS currently makes available to the IRA Program shares of the following 16 Prudential Mutual Funds: Jennison 20/20 Focus Fund; Dryden Government Income Fund, Inc.; Dryden Index Series Fund; Jennison Small Company Fund, Inc.; The Prudential Investment Portfolios, Inc. (Jennison Growth Fund); Jennison Mid-Cap Growth Fund, Inc.; JennisonDryden Portfolios (Jennison Value Fund); The Target Portfolio Trust (Large Capitalization Growth, Small Capitalization Growth; International Equity; Total Return Bond, Large Capitalization Value, Small Capitalization Value); Jennison Natural Resources Fund, Inc.; Jennison Sector Funds, Inc. (Jennison Utility Fund); Dryden High Yield Fund, Inc.; and MoneyMart Assets, Inc.

9. PIMS may make available shares of additional Prudential Mutual Funds in the future. Any class of shares of a Prudential Mutual Fund made available in the IRA Program are not subject to any sales charges on purchases or any sales charges or other withdrawal charges on redemption. No fee or charge applies to any exchange from one Prudential Mutual Fund to another Prudential Mutual Fund within the IRA Program. The Prudential Mutual Funds permit exchanges between multiple funds subject to certain conditions set forth in the prospectuses for the Prudential Mutual Funds. Therefore, Participants are permitted to transfer from one Prudential Mutual Fund to another Prudential Mutual Fund subject to the conditions set forth in the prospectuses.

10. Participants in the IRA Program are charged an overall asset-based account fee for the IRA account and also bear the expenses of the investment options available under the IRA Program. The IRA account fee varies by account size and ranges from an annual rate of 0.25% to 1.10% of assets in the IRA Program, subject to a minimum annual fee of $100 and a maximum annual fee of $500. The Contract does not impose any sales charges on investments in the Contract or any sales charges or other withdrawal charges on withdrawals from or surrenders of the Contract. PRIAC reserves the right to charge a maximum transfer fee of $30 per transfer after the twelfth transfer among investment options in the Contract in any one Contract year, but it currently does not impose any transfer fee. PRIAC may also deduct the charge for premium taxes imposed on PRIAC by certain states or jurisdictions, which currently range from 0% to 3.5% of Contract value. No premium tax deduction will be applied to any exchange between a Subaccount and a Prudential Mutual Fund under the IRA Program. The Contract provides for the following periodic expenses. PRIAC reserves the right to charge an annual Contract fee of up to $150, but currently does not assess this charge. PRIAC assesses the following charges, expressed as an annual percentage of Contract value: insurance and administrative charge (maximum charge of 1.60% and current charge of 0.50%); base Guaranteed Withdrawal Benefit charge (maximum charge of 1.45% and current charge of 0.95%); and optional spousal Guaranteed Withdrawal Benefit charge (maximum charge of 0.60% and current charge of 0.50%). Investments in the Contract also bear indirectly the fees and expenses of the underlying AST portfolios. Investments in the shares of Prudential Mutual Funds available under the IRA Program are not subject to any sales charges on purchases or any sales charges or other withdrawal charges on redemption. No fee or charge applies to any exchange from one Prudential Mutual Fund to another Prudential Mutual Fund under the IRA Program. Investments in the Prudential Mutual Funds are subject to ongoing fees and expenses.

11. The second Program (the ''Retirement Plan Program'') is designed for ongoing retirement arrangements that qualify for federal tax benefits under Section 401(a), 403 or 457 of the Code and certain non-qualified arrangements. The Retirement Plan Program permits Participants to allocate

[1] Participants may also direct investments under the IRA Program to an annuity contract offering a fixed rate investment option (the ''Fixed Rate Annuity Contract''). Interests under the Fixed Rate Annuity Contract are exempt from registration under the 1933 Act under Section 3(a)(8) of the 1933 Act. Because the interests under the Fixed Rate Annuity Contract are not securities issued by a registered investment company, Applicants are not seeking exemptive relief with respect to exchanges to and from the Fixed Rate Annuity Contract.

program investments to a Contract and/or to certain Prudential Mutual Funds.[2]

12. The Contract used in the Retirement Plan Program is substantially identical to the Contract used in the IRA Program, with minor changes needed to reflect the existence of an employment based retirement plan and plan sponsor and related provisions required by tax law.

13. PIMS currently makes available to the Retirement Plan Program shares of the following Prudential Mutual Funds: Dryden Total Return Bond Fund, Inc.; Jennison 20/20 Focus Fund; Dryden California Municipal Fund (California Income Series); Dryden Government Income Fund, Inc.; Cash Accumulation Trust (Liquid Assets Fund); Dryden Index Series Fund; Dryden Global Real Estate Fund; Jennison Small Company Fund, Inc.; Prudential Institutional Liquidity Portfolio, Inc. (Institutional Money Market Series); The Prudential Investment Portfolios, Inc. (Dryden Active Allocation Fund, Jennison Growth Fund, Jennison Equity Opportunity Fund, JennisonDryden Conservative Allocation Fund, JennisonDryden Moderate Allocation Fund, JennisonDryden Growth Allocation Fund); Dryden Municipal Bond Fund (Insured Series, High Income Series); Dryden Tax-Managed Funds (Dryden Large-Cap Core Equity Fund); Dryden Small-Cap Core Equity Fund, Inc.; Jennison Mid-Cap Growth Fund, Inc.; JennisonDryden Portfolios (Jennison Value Fund, Dryden U.S. Equity Active Extension Fund); Prudential World Fund, Inc. (Jennison Global Growth Fund, Dryden International Equity Fund, Dryden International Value Fund); The Target Portfolio Trust (Large Capitalization Growth, Small Capitalization Growth; International Equity; Total Return Bond, Mortgage Backed Securities, Large Capitalization Value, Small Capitalization Value, International Bond, Intermediate-Term Bond, U.S. Government Money Market); Target Asset Allocation Funds (Target Conservative Allocation Fund, Target Moderate Allocation Fund, Target Growth Allocation Fund); Strategic Partners Style Specific Funds (Jennison Conservative Growth Fund, Dryden Small Capitalization Value Fund); Strategic Partners Opportunity Funds (Jennison Select Growth, Dryden Strategic Value Fund); Strategic Partners Mutual Funds, Inc. (Dryden Mid-Cap Value Fund, Jennison Equity Income Fund, Dryden Money Market Fund); Dryden Government Securities Trust (Money Market Series); Jennison Blend Fund, Inc.; Jennison Natural Resources Fund, Inc.; Jennison Sector Funds, Inc. (Jennison Financial Services Fund, Jennison Health Sciences Fund, Jennison Utility Fund); Nicholas-Applegate Fund, Inc.; Dryden Global Total Return Fund, Inc.; Dryden High Yield Fund, Inc.; MoneyMart Assets, Inc.; Prudential Tax-Free Money Fund, Inc. (Dryden Tax-Free Money Fund); Dryden National Municipals Fund, Inc.; and Dryden Short-Term Bond Fund, Inc.

14. PIMS may make available shares of additional Prudential Mutual Funds in the future. Any class of shares of a Prudential Mutual Fund made available in the Retirement Plan Program are not subject to any sales charges on purchases or any sales charges or other withdrawal charges on redemption. No fee or charge applies to any exchange from one Prudential Mutual Fund to another Prudential Mutual Fund. Investments in the Prudential Mutual Funds are subject to ongoing fees and expenses.

15. Unlike the IRA Program, there is no set account fee under the Retirement Plan Program. Instead, each plan sponsor negotiates an administrative services agreement with PRIAC or an affiliate under which PRIAC or the affiliate provides recordkeeping and other services to the Plan. Although the terms of these administrative services agreements vary from plan to plan, in all cases no transaction fees are charged for exchanges from one investment option to another investment option under the Program.

16. The Programs are designed to provide flexibility to transfer value among the investment options available under the Program. Applicants state that under existing procedures and Rules 11a–2 and 11a–3 under the 1940 Act, exchanges may be made among the Variable Annuity Subaccounts and exchanges may be made among the Prudential Mutual Funds.

17. Applicants propose to add an additional exchange feature under the Programs. In particular, Applicants propose that Participants be permitted to transfer value: (1) From a Separate Account to a Prudential Mutual Fund; and (2) from a Prudential Mutual Fund to a Separate Account. Applicants seek a Commission Order under Section 11 of the 1940 Act to permit this additional exchange feature.

18. Applicants represent that the exchange feature under any Program will meet the following conditions:

(a) No sales charge or other charge will be assessed in connection with a withdrawal from a Separate Account to be transferred to a Prudential Mutual Fund;

(b) No sales charge or other charge will be assessed in connection with an allocation to a Separate Account from a transfer from a Prudential Mutual Fund;

(c) The Distributor will offer in the Program only classes of Prudential Mutual Funds that do not charge any sales or other charges on purchases or redemption;

(d) The exchange will not be a taxable event or have adverse tax consequences for the Participant; and

(e) the Separate Account prospectus will disclose the terms of the exchange feature, including (i) the fact that Applicants reserve the right to terminate or modify the Program upon notice, (ii) any limitations on exchanges, and (iii) the effect of an exchange on any Contract benefits, including the Guaranteed Withdrawal Benefit.

19. Applicants state that exchanges will be subject to any rules or procedures established under the Contract or established by the Prudential Mutual Funds with respect to transfers and redemptions generally, including minimum transfer amounts and policies and procedures relating to frequent transfers and abusive trading practices. Applicants also reserve the right to implement exchange limitations for the Programs generally. No fees or charges will be assessed in connection with any exchange from a Separate Account to a Prudential Mutual Fund or from a Prudential Mutual Fund to a Separate Account.

20. Applicants intend to make this exchange feature available on an ongoing basis to all Participants, but reserve the right to terminate the offer with respect to all or any of the investment options with advance notice to affected Participants.

Applicants' Legal Analysis

1. Section 11(a) of the 1940 Act provides, in pertinent part, that ''[i]t shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first

[2] Participants may also direct investments to the Fixed Rate Annuity Contract. Participants may also direct investments to registered open-end investment companies for which Applicants or their affiliates do not serve as investment adviser or principal underwriter (the ''Unaffiliated Mutual Funds''). Because the Unaffiliated Mutual Funds and their principal underwriters are not affiliated with Applicants, Applicants are not seeking exemptive relief with respect to exchanges to and from the Unaffiliated Mutual Funds.

been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made.'' Section 11(c) provides that, irrespective of the basis of exchange, subsection (a) shall be applicable to any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust, or to any offer of exchange of any security of a registered unit investment trust for the securities of any other investment company. Although all the proposed exchanges would be at net asset value, the involvement of any registered unit investment trust (such as a Separate Account) requires a prior order of approval of the Commission.

2. The legislative history of Section 11 indicates that the purpose of the provision is to provide the Commission with an opportunity to review the terms of certain offers of exchange to ensure that a proposed offer is not being made ''solely for the purpose of exacting additional selling charges.'' H. Rep. No. 2639, 76th Cong., 2d Sess. 8 (1940). One of the practices Congress sought to prevent through Section 11 was the practice of inducing investors to switch securities so that the promoter could charge investors another sales load. Applicants assert that the proposed offers of exchange involve no possibility of such abuse.

3. Applicants assert that, because the proposed exchange offers for which approval is sought will be based on the relative net asset values or unit values of the interests being exchanged, there is no possibility of the abuse to which Section 11 was directed. Nevertheless, because each of the proposed exchange offers involves a unit investment trust, Section 11(c) makes Section 11(a) inapplicable irrespective of the basis of the exchange. Applicants state that exemptive relief is necessary for Applicants to offer the proposed exchange feature.

4. Applicants note that previous applications under Section 11(a) and orders granting those applications appropriately have focused on sales loads or sales load differentials and administrative fees to be imposed for effecting a proposed exchange. Rule 11a–2, adopted under Section 11 of the 1940 Act, provides blanket Commission approval of certain types of offers of exchange of one variable annuity contract for another, or of one variable life insurance contract for another. Applicants state that adoption of Rule 11a–3 represents the most recent Commission action under Section 11 of the 1940 Act. As with Rule 11a–2, the focus of the Rule is primarily on sales and administrative charges that would be incurred by investors for effecting exchanges. Applicants submit that the terms of the proposed offer are consistent with Rule 11a–3 because no sales or administrative charge will be incurred as a result of the exchange. Because one investment company involved in the proposed exchange offer is organized as a unit investment trust rather than as a management investment company, Applicants believe that they may not rely upon Rule 11a–3.

Class Relief

1. Applicants request that the Order extend to all similarly situated current and affiliated entities, defined previously as Insurance Companies, Separate Accounts and Distributors. Applicants also request that the Order extend to all variable annuity contracts issued by an Insurance Company that are substantially similar to the Contracts and to any share class of any Prudential Mutual Fund for which there are no front-end sales charges or deferred sales charges.

2. Applicants submit that providing class relief is appropriate. Applicants assert that because no front-end or deferred sales charges are applicable and all exchanges will be at relative net asset value, there will be no possibility of the abuses Congress sought to prevent through Section 11. Furthermore, without such exemptive relief, before Participants could be given any additional exchange options, Applicants would have to apply for and obtain additional approval orders. Applicants believe that such additional applications would present no new issues under the 1940 Act not already addressed in the application.

Conclusion

For the reasons and upon the facts summarized above, Applicants submit that the proposed exchange offers at net asset value do not involve any of the abuses that Section 11 is designed to prevent and provide a benefit to Participants by expanding exchange privileges under Programs designed to provide a mix of investment options and annuity benefits for retirement savings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10705 Filed 5–13–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Federal Register Citation of Previous Announcement: [To be published].

STATUS: Open Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: May 14, 2008 at 10 a.m.

CHANGE IN THE MEETING: Additional Item Date Change.

The following matter will be considered during the 10 a.m. Open Meeting scheduled for Wednesday, May 21, 2008, at 10 a.m., in the Auditorium, Room L–002:

The Commission will consider whether to propose amendments to provide for mutual fund risk/return summary information to be filed with the Commission in interactive data format.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 8, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–10720 Filed 5–13–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on May 15, 2008 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for May 15, 2008 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of litigation claims; and an

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: May 8, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–10721 Filed 5–13–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57803; File No. SR–NASD–2005–114]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 Relating to the Regulation of Compensation, Fees and Expenses in Public Offerings of Real Estate Investment Trusts and Direct Participation Programs

May 8, 2008.

I. Introduction

On September 28, 2005, the National Association of Securities Dealers, Inc. (''NASD'') [1] filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] proposed amendments to NASD Rule 2810. On June 12, 2006, NASD filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change was published for comment in the **Federal Register** on July 17, 2006 (''Original Proposal''),[5] and the Commission received six comments.[6]

On April 16, 2007, NASD submitted Amendment No. 2 to the proposed rule change, and on November 9, 2007 and January 2, 2008, FINRA submitted Amendment No. 3 and No. 4, respectively, to the proposed rule change.[7] The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on January 31, 2008 (''Revised Proposal''),[8] and the Commission received six comments, which are discussed below in Section III.[9] On April 11, 2008, FINRA submitted Amendment No. 5 to the proposed rule change.[10]

This notice and order solicits comment from interested persons on Amendment No. 5 and approves the proposed rule change, as amended, on an accelerated basis. The text of the proposed rule change is available at *http://www.finra.org*, the principal offices of FINRA, and the Commission's Public Reference Room.

II. Description of the Proposed Rule Change

As discussed in more detail in the Original Proposal and Revised Proposal, FINRA is proposing to amend NASD Rule 2810 to address the regulation of compensation, fees and expenses in public offerings of direct participation programs (as defined in NASD Rule 2810(a)(4)) (''DPPs'') and unlisted real estate investment trusts (as defined in NASD Rule 2340(d)(4)) (''REITs'') (collectively ''Investment Programs'').[11] Specifically, the proposed rule change addresses: (1) Compensation limitations and the use and allocation of offering proceeds; (2) disclosure regarding the liquidity of prior programs offered by the same sponsor; (3) sales loads on reinvested dividends; and (4) non-cash compensation provisions regarding the appropriate location for training and education meetings. The proposed rule change also adds REITs to provisions that already apply to DPPs, but does not make any substantive changes to these sections.[12]

III. Summary of Comments Received and FINRA Response

In Amendment No. 5, FINRA responded to comments on the Revised Proposal and proposed additional amendments to the proposed rule change.

A. Registered Representatives Engaged in de minimis and Incidental Sales Activities

The proposed amendment to Rule 2810(b)(4)(C)(ii)(c) would exclude from the underwriting compensation limit [13] payments to registered representatives, including dual employees, engaged in the solicitation, marketing, distribution or sales of the offering whose functions in connection with that offering are solely and exclusively clerical and ministerial. The IPA suggested that this should be revised to permit a *de minimis* exception for payments to registered representatives whose functions are predominantly—i.e., at least 95 percent of the employee's time—clerical or ministerial, but who

[1] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (Aug. 1, 2007).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Amendment No. 1 replaced and superseded the original rule filing.

[5] *See* Securities Exchange Act Release No. 54118 (July 10, 2006), 71 FR 40569 (July 17, 2006) (SR–NASD–2005–114).

[6] *See* letters from the Committee on Federal Regulation of Securities of the American Bar Association (Keith F. Higgins), dated Aug. 22, 2006; North American Securities Administrators Association (Patricia D. Struck), dated Aug. 11, 2006; Dominion Investor Services, Inc. (Kevin P. Takacs), dated Aug. 7, 2006; Investment Program Association (Rosemarie Thurston), dated Aug. 7, 2006; the Securities Division of Office of the Secretary of the Commonwealth of Massachusetts (Bryan Lantagne), dated Aug. 4, 2006; and Cambridge Legacy Group (Frank Akridge, Jr.), dated Aug. 4, 2006.

[7] Each amendment replaced and superseded the earlier amendment. Amendment No. 4 also responded to comments on the Original Proposal.

[8] *See* Securities Exchange Act Release No. 57199 (Jan. 25, 2008), 73 FR 5885 (Jan. 31, 2008) (SR–NASD–2005–114).

[9] *See* letters from R.J. O'Brien Fund Management, LLC (Annette A. Cazenave), dated Apr. 28, 2008 (''R.J. O'Brien''); Michael V. Scillia, ASG Securities, Inc., dated Feb. 24, 2008 (''Scillia''); Committee on Federal Regulation of Securities of the American Bar Association (Keith F. Higgins), dated Feb. 22, 2006 (''ABA Committee''); Snyder Kearney LLC, dated Feb. 21, 2008 (''Snyder''); David Lerner, David Lerner Associates, Inc., dated Feb. 21, 2008 (''Lerner''); and Investment Program Association (Jack L. Hollander), dated Feb. 21, 2006 (''IPA'').

[10] Amendment No. 5 responded to comments on the Revised Proposal and proposed several amendments to the proposed rule change.

[11] The DPPs and REITs that comprise Investment Programs typically are structured so that several affiliated entities make up the program. The affiliated entities include the sponsor, the trust or limited partnership, and a broker-dealer.

[12] *See* proposed amendments to Rule 2810(b)(3)(A), Rule 2810(b)(4)(A), Rule 2810(b)(4)(B)(v), Rules 2810(b)(4)(D)–(G) and Rule 2810(b)(5). The proposed amendment to Rule 2810(b)(4)(G) also corrects a typographical error by citing ''subparagraph (C),'' instead of ''subparagraph (E)'' under the existing rule.

[13] The underwriting compensation payable to underwriters, broker-dealers, or affiliates may not exceed ten percent of the gross proceeds of the offering, regardless of the source from which the compensation is derived. *See* current Rule 2810(b)(4)(B)(i) and Notice to Members 82–51. As explained in the Revised Proposal, the ten percent figure currently is FINRA policy. The proposed amendment to Rule 2810(b)(4)(B)(ii) would expressly state that all items of compensation shall not exceed ten percent of the gross proceeds of the offering.

on rare occasions may go beyond performing solely clerical and ministerial functions, such as answering questions.

FINRA stated that the proposed amendment to Rule 2810(b)(4)(C)(ii)(c)(2) was intended to achieve clarity and ease of administration by excluding only those registered representatives whose functions are ''solely and exclusively clerical and ministerial.'' In response to comments, FINRA has amended proposed Rule 2810(b)(4)(C)(ii)(c)(3) to include registered representatives engaged in sales activities provided those activities are ''*de minimis* and incidental to his or her clerical or ministerial functions.'' However, FINRA stated that it did not intend to adopt a particular metric with respect to this exception, such as percentage of time spent, as it could serve as a tool to evade the purpose and spirit of the rule. FINRA stated that it expected the ''*de minimis* and incidental'' exception to be a very narrow one for registered persons whose sales activities are truly incidental to their job functions. FINRA noted that the exception in the proposed amendment to Rule 2810(b)(4)(D) for firms with ''ten or fewer registered representatives'' engaged in wholesaling is intended to apply to those firms that are most likely to have a need for personnel performing multiple functions.

B. Calculating Items of Underwriting Compensation

Two commenters stated that proposed amendments to Rules 2810(b)(4)(C)(ii)(a)–(c) could result in double counting certain items for purposes of the underwriting compensation limit.[14] For example, these commenters stated that payments received by a member that would be counted as underwriting compensation under the proposed amendment to Rule 2810(b)(4)(C)(ii)(a) would have to be counted again for purposes of the proposed amendments to Rules 2810(b)(4)(C)(ii)(b)–(c) when the member re-allows the payments to its registered representatives.

FINRA responded that it did not intend that items of compensation already required to be counted under proposed amendments to Rule 2810(b)(4)(C)(ii)(a) be double-counted for purposes of the underwriting compensation limit. In response to these comments, FINRA has revised the proposed amendments to Rules 2801(b)(4)(C)(ii)(b)–(c).[15]

C. Allocation of Compensation to Dual Employees in Connection With More Than One Offering

Two commenters addressed proposed guidance with respect to allocation of payments to dual employees for purposes of the underwriting compensation limit where the dual employees receive payments for services in connection with more than one offering.[16] Footnote 36 of the Revised Proposal provided guidance (''Guidance'')[17] that if a dual employee receives compensation for services provided in connection with more than one public offering, or for private placements in addition to offerings of Investment Programs, payments to such employees may be reasonably allocated between the offerings based on the time periods in which the employee was engaged in the offerings, if they are distinct, or based on the relative size of the offerings.

The ABA Committee and IPA sought clarification as to whether the Guidance would apply only to dual employees to whom the exceptions from the underwriting compensation set forth in the proposed amendment to Rule 2810(b)(4)(D) are available. FINRA responded that its Corporate Financing Department (the ''Department'') will allocate compensation among multiple offerings with regard to all relevant payments and expenses, not just those for dual employees.

The IPA also stated that the concepts addressed in the Guidance should be incorporated into the proposed amendments to Rule 2810 with general application to payments to dual employees among multiple offerings, not just the exceptions in Proposed Rule 2810(b)(4)(D). The ABA Committee suggested that the Guidance should allow the allocation of the salary of any registered representative.

FINRA responded that it will continue its longstanding practice, with respect to a registered representative receiving compensation for services provided in connection with more than one public offering, or for private placements in addition to offerings of Investment Programs, of allowing payments to such registered representatives to be allocated between the offerings on a reasonable basis taking into account relevant factors, including the time periods spent on particular offerings, the relative sizes of the offerings and the number of investors in each. FINRA noted that, in the course of its review of particular offerings, information and representations by members with respect to such factors will vary. As a result, FINRA determined not to codify these factors and their respective weights in the proposed rule change, but rather will continue its current review practices that permit reasonable basis allocations.

D. Analysis of Employee Compensation

1. Per Employee Analysis in All Investment Programs

The proposed amendment to Rule 2810(b)(4)(D) would have excepted from the underwriting compensation limit, subject to the Department's determination, some portion of the non-transaction-based payments to a registered representative dual employee of an Investment Program with ''fewer than ten people engaged in wholesaling.'' The ABA Committee suggested that the exception should instead be available to smaller members that have fewer than ten registered representatives engaged in wholesaling with respect to an Investment Program in order to avoid the inclusion of persons who are not registered in the calculation.[18]

The IPA also asked FINRA to clarify the proposed rule to provide that in determining whether there are fewer than ten people engaged in wholesaling, only those persons engaged in wholesaling for a particular Investment Program should be counted, rather than all registered representatives who are employed by a sponsor or affiliate and engaged in wholesaling some other product of the sponsor or affiliate.

The Revised Proposal explained that the Department would engage in the same detailed job function analysis with respect to certain compensation associated with smaller Investment Programs as it would with respect to certain compensation of the ten highest paid executives in any Investment Program. Accordingly, a member could provide detailed per-employee information to the Department from which the Department could conclude that certain salary and other non-

[14] ABA Committee and IPA.

[15] The ABA Committee also requested that the language in the proposed amendment to Rule 2810(b)(4)(B)(ii) be modified slightly to rearrange some commas and clarify that trail commissions are not paid with offering proceeds. FINRA has revised the text accordingly.

[16] ABA Committee and IPA.

[17] The Guidance appeared in the purpose section of the Revised Proposal and not the proposed rule text.

[18] The ABA Committee also stated that the rule should be amended to clarify that it applies to a dual employee of a ''member and the sponsor, issuer or other affiliate.''

transaction-based compensation provided to the employee could be allocated to issuer expenses.

In response to these comments, FINRA has amended the exception to clarify that for every program or REIT filed for review, the Department will engage in the detailed per-employee analysis. The proposed amendment to Rule 2810(b)(4)(D) would apply to ''ten or fewer registered representatives'' engaged in wholesaling if they are dual employees in a smaller Investment Program and to the ten highest paid executives in any Investment Program.[19] FINRA also clarified that the rule would only apply to ''ten or fewer registered representatives [of an Investment Program] engaged in wholesaling.'' FINRA also clarified that the rule applied to a dual employee of a ''member and the sponsor, issuer or other affiliate.'' [20]

The ABA Committee also suggested that the calculation of the number of persons engaged in wholesaling should only include those registered representatives directly contacting other members to solicit new selling agreements with respect to the specific Investment Program. FINRA disagreed. As discussed in the Revised Proposal, the Department expects to conduct accurate and efficient reviews of the individual's job functions to determine whether the exceptions in proposed amendment to Rule 2810(b)(4)(D) would be available. FINRA stated that it does not believe it is useful or appropriate to conduct a two-step analysis of each registered representative's functions (to analyze every registered representative's activities to determine whether ten or fewer were engaged in wholesaling with regard to a specific Investment Program, and then to analyze the job functions of up to ten registered representatives to determine what portion of payments to them should be included in the underwriting compensation calculation).

2. Top Ten Executives

The proposed amendment to Rule 2810(b)(4)(D) would except from the underwriting compensation limit, subject to the Department's determination, some portion of the non-transaction-based payments to a registered representative dual employee who is one of the top ten highest paid executives based on non-transaction-based compensation in any Investment Program. The ABA Committee sought clarification as to whether the executives to whom this exception would be available must be registered representative dual employees. As discussed above, FINRA has amended the exception to make this clarification.

Two commenters stated that the exception should not require that the dual employees must be executives or have executive titles.[21] Further, both commenters suggested that the top-ten calculation should be based on non-transaction-based compensation ''in connection with'' an Investment Program.[22]

FINRA responded that the term ''executive'' is not intended as a formal job designation or title, but rather as a characterization of the registered representative dual employee's role in the Investment Program. As explained in the Revised Proposal, the Department believes that it can identify and evaluate a small group of individuals performing executive job functions within an Investment Program. However, FINRA disagreed with the suggestion of amending the rule to base the top ten executive calculation on non-transaction-based compensation ''in connection with'' a particular Investment Program. As with firms with up to ten registered representatives engaged in wholesaling, FINRA does not believe it is useful or appropriate to conduct a two-step analysis for each executive (to determine the extent to which each executive's compensation varies and is attributable to particular programs in order to identify the relevant executives eligible for the exception, and then to determine what portion of payments to them should be included in the underwriting compensation calculation).

E. Issuer Expenses

1. Overhead Expenses

Both the ABA Committee and the IPA stated that the proposed amendment to Rule 2810(b)(4)(C)(i) should be revised to clarify that issuer expenses, not just overhead expenses, that are reimbursed or paid for with offering proceeds must be included for purposes of the cap on organization and offering expenses. FINRA has revised the proposed amendment to Rule 2810(b)(4)(C)(i) to make this clarification.

2. Services for the Issuer

The ABA Committee stated that the proposed amendment to Rule 2810(b)(4)(C)(i)(c) should clearly specify the scope of services provided by employees or agents of the sponsor or issuer that must be included for purposes of the cap on organization and offering expenses. When proceeds of an offering are used to pay issuer expenses, these payments or reimbursements must be identified in filings with the Department. FINRA responded that if the rule limited the scope of payments that could be made to employees or agents of the sponsor or issuer for performing services for the issuer to only those activities specifically described in the rule, some otherwise legitimate payments or reimbursements using offering proceeds would be prohibited. Accordingly, FINRA has not revised the proposed amendments to Rule 2810(b)(4)(C)(i)(c), other than to clarify that the proposed rule refers to services for the issuer.

F. Liquidity and Marketability Disclosure

The IPA expressed concern that the proposed amendments to Rule 2810(b)(3)(D) would impose upon members a burdensome due diligence review requirement with respect to the liquidity and marketability of an Investment Program. In its response, FINRA recognized the burdens associated with these requirements, but noted that the proposed amendment to Rule 2810(b)(3)(D) is intended to permit members to rely upon the liquidity and marketability information as provided to the member by the sponsor or general partner of an Investment Program, provided that the member does not know or have reason to know that the information is inaccurate. Accordingly, FINRA has not revised the proposed amendment to Rule 2810(b)(3)(D).

G. Reinvested Dividends

One commenter expressed concern regarding the prohibition set forth in the proposed amendment to Rule 2810(b)(4)(B)(vi) against sales loads on reinvested dividends for Investment Programs.[23] After considering the comment, FINRA determined to maintain the prohibition on sales loads on reinvested dividends. FINRA emphasized that commenters on the Original Proposal supported this

[19] The wholesaling exception discussed in the Revised Proposal would have been available to an Investment Program with ''fewer than ten people'' engaged in wholesaling. In response to comments, FINRA stated that allowing the exception for ''ten or fewer'' registered representatives rather than ''fewer than ten'' would be consistent with the goal of clarity and ease of administration.

[20] Telephone conversation among Gary Goldsholle, Vice President and Associate General Counsel, FINRA; Joseph Price, Vice President, Corporate Financing, FINRA; Adam Arkel, Assistant General Counsel, FINRA; Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Commission; and Michael Hershaft, Special Counsel, Commission (May 7, 2008).

[21] ABA Committee and IPA.

[22] *Id.*

[23] Lerner.

amendment [24] and the amendment is intended to conform Rule 2810 to similar changes made to Rule 2830 with respect to sales loads on reinvested dividends for sales of mutual funds. Further, so as to avoid the indirect payment of sales loads on reinvested dividends for Investment Programs, FINRA has amended proposed Rule 2810(b)(4)(B)(ii) to clarify that the calculation of ''ten percent of the gross proceeds of the offering'' excludes securities purchased through the reinvestment of dividends.

H. Due Diligence Services

One commenter sought guidance as to what levels of detail and itemization, as required by the proposed amendment to Rule 2810(b)(4)(B)(vii), would be appropriate for an invoice prepared by a law firm conducting on behalf of a member due diligence services that are intended to be reimbursed as issuer expenses.[25] FINRA responded that industry best practices may be effective in establishing a threshold for itemization rather than additional rulemaking. The commenter also sought guidance as to whether it would be permissible for the issuer or sponsor to reimburse the law firm directly, so that the member need not go through the extra step of first itself paying the law firm and then seeking reimbursement from the issuer or sponsor.[26] FINRA responded that a law firm could not provide bona fide due diligence in an offering if its client was the issuer or sponsor rather than the broker-dealer. The method of reimbursement for due diligence services should be irrelevant so long as it does not undermine the law firm's duties to its client, the broker-dealer.[27]

[24] Massachusetts Securities Division and NASAA.

[25] Snyder.

[26] *Id.*

[27] FINRA also addressed two other comments. Scillia suggested that the five percent limitation on issuer expenses that currently exists in NASD Rule 2810 precludes offerings of smaller DPPs. FINRA disagreed with this comment. FINRA stated that the five percent limitation on issuer expenses pertains to the amount that may be used from offering proceeds. An issuer can spend additional funds from other sources. Thus, FINRA believes that the sponsor of a smaller DPP or REIT can absorb the higher fixed overhead costs owing to the small size of the offering. Finally, the five percent limitation on issuer expenses in the proposed rule change is not new and is consistent with the standards in existing NASD Rule 2810, which was approved by the SEC. *See* e-mail from Gary Goldsholle, Vice President and Associate General Counsel, FINRA, to Michael Hershaft, Special Counsel, Commission (May 7, 2008).

With respect to the letter from R.J. O'Brien, FINRA stated that the comments were beyond the scope of the filing as the proposed rule change does not impose any new requirements with respect to commodity pool trail commissions. The issues raised in this letter were addressed by the SEC in an approval order issued in a prior rulemaking proceeding. *See* Securities Exchange Act Release No. 50335 (Sept. 9, 2004), 69 FR 55855 (Sept. 16, 2004) (SR–NASD–2004–136). *Id.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 5, including whether Amendment No. 5 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–114 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2005–114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–114 and should be submitted on or before June 4, 2008.

V. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[28] which require, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[29] The Commission notes that the proposed rule change would codify FINRA's longstanding policy of applying certain regulatory requirements in NASD Rule 2810 to REITs.

The Commission believes that clarifying the standards for determining the fairness and reasonableness of compensation, treating the use and allocation of offering proceeds in a more explicit and objective manner, requiring disclosure regarding the liquidity of prior programs offered by the same sponsor, prohibiting sales loads on reinvested dividends and enabling bona fide training and education meetings to take place at appropriate locations, are measures designed to prevent fraudulent practices, promote just and equitable principles of trade, and protect investors and the public interest.

Accelerated Approval of Amendment No. 5

The Commission finds good cause for approving Amendment No. 5 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act. Amendment No. 5 clarifies several provisions of the proposed rule change, including calculating and allocating compensation, requiring issuer compensation to be included in the cap on organization and offering expenses, and providing greater specificity regarding the prohibition on sales loads on reinvested dividends. The Commission believes that these changes will provide greater clarity with respect to the applicability of and compliance with the proposed rule change, while continuing to protect investors and the public interest. Accordingly, the Commission finds that the accelerated approval of Amendment No. 5 is appropriate.

[28] 15 U.S.C. 78o–3(b)(6).

[29] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change, as amended (SR–NASD–2005–114), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10704 Filed 5–13–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–57802; File No. SR–FICC–2008–02]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Require Demand Processing for Blind-Brokered Repo Trades

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 9, 2008, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to amend the rules of the Government Securities Division (''GSD'') to mandate Demand Comparison submission and processing for blind-brokered repo trades that are submitted by a specified cut-off time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Background

In 2001, the Government Securities Clearing Corporation (''GSCC''), the GSD's predecessor, redesigned its comparison rules and procedures soon after the introduction of the real-time trade matching system. At that time, GSCC also moved the timing of its settlement guaranty from the point of netting to the point of comparison, which was much earlier in the day. In designing these changes, GSCC's goal was to provide straight through processing by providing for easy identification and resolution of uncompared trades intraday in order to achieve 100 percent comparison. These changes reduced risk by ensuring that more transactions were compared and guaranteed by the clearing corporation earlier in the day so that intraday credit exposure to counterparties was minimized.

As part of the redesign of the GSCC comparison rules, GSCC introduced Demand Comparison, which was a new type of comparison that was created to provide members with flexibility and control over the comparison process for trades executed via intermediaries.[3] Demand Comparison strikes a balance between ''bilateral comparison'' (the traditional form of comparison), where each member is required to submit trade data to the clearing agency in order for the clearing agency to compare the trade, and ''locked-in comparison,'' where the trade is submitted as a compared trade to the clearing agency by one side or by one intermediary.[4]

Demand Comparison entails submission of trade data by approved intermediaries (*e.g.*, brokers) called ''Demand Trade Sources.'' FICC deems a trade submitted for Demand Comparison to be compared upon FICC's receipt of the trade data from the Demand Trade Source. However, if a dealer ''does not know'' a trade submitted on its behalf by a Demand Trade Source, the dealer is able to submit a DK (*i.e.*, ''don't know'') to the GSD. The receipt of a DK by FICC causes the demand comparison trade to no longer be deemed compared. In order to effect comparison for a demand comparison trade that has been DKed, the DK must be removed. If the member that sent the DK determines that it did so erroneously, the member is able to remove the DK so that the trade is compared.[5] Modification of a DKed trade by the Demand Trade Source also removes the DK so that the trade is compared.[6] The removal of the DK and modification of a DKed trade are subject to the prescribed time frames for Demand DK processing.

2. Proposal

FICC's current proposal is to mandate Demand Comparison for all blind-brokered repo trades that are submitted by 4 pm New York time. The GSD's members acting as inter-dealer brokers for repos will be designated as approved Demand Trade Sources. Members on whose behalf the brokers submit trades will not need to separately authorize the brokers as their Demand Trade Sources for GSD's purposes because GSD's rules will do so. After approval of the rule change, counterparties to blind-brokered repo trades will still need to submit their trade data as they do currently. Dealers will need to monitor the broker submissions against them in order to submit DKs where necessary to block any further processing of the submission. In order to provide the dealer counterparties with adequate time by which to submit their DKs, especially for trades submitted close to the 4 p.m. deadline, GSD will create a 30 minute DK window following the 4 p.m. Demand Comparison submission deadline (until 4:30 p.m.) during which time the dealer counterparties can DK previously received demand trades; however, dealer counterparties will be able to submit DKs at any time during the Demand Comparison submission processing time frame. Under Demand Comparison processing, a dealer counterparty that does not submit a DK with respect to a blind-brokered repo trade submitted against it will be responsible for that trade. Blind-brokered repo trades submitted after the 4 pm deadline will be treated as trades submitted for ''bilateral comparison'' requiring two-sided submission and matching for comparison to occur.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] Securities Exchange Act Release No. 44946 (October 17, 2001), 66 FR 53816 [File No. SR–GSCC–2001–01].

[4] A Treasury auction take-down trade is a typical example of a trade submitted for Locked-In Comparison.

[5] Under this proposal to require Demand Comparison processing of blind-brokered repo trades, the cut-off time for removing DKs will be 8 pm New York time.

[6] Under this proposal to require Demand Comparison processing of blind-brokered repo trades, the cut-off time for modifications by Demand Trade Sources will be 8:00 pm New York time.

FICC believes that requiring Demand Comparison for blind-brokered repo trades as described above will reduce risk by promoting earlier comparison and a higher rate of comparison. Demand Comparison trade entry will also encourage members to reconcile differences on a timely basis.

FICC plans to implement the proposed changes four months after submission of this filing to the Commission (*i.e.*, early August), subject to approval by the Commission, in order to provide members with the opportunity to make any necessary system changes.

3. Statutory Basis

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [7] and the rules and regulations thereunder applicable to FICC because it should support the prompt and accurate clearance and settlement of securities transactions by enabling earlier comparison and a higher rate of comparison of blind-brokered repo transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments have not been solicited with respect to the proposed rule change, and none have been received. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[7] 17 U.S.C. 78q–1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2008–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2008–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2008/ficc/2008–02.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2008–02 and should be submitted on or before June 4, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10725 Filed 5–13–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57800; File No. SR–NASDAQ–2008–039]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Managed Fund Shares

May 8, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On May 7, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Nasdaq Rule 4420(o) to list and trade, or trade pursuant to unlisted trading privileges (''UTP''), securities issued by actively managed, open-end investment management companies (''Managed Fund Shares'') and to amend certain other Nasdaq rules to incorporate references to Managed Fund Shares. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nasdaq.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Nasdaq Rule 4420(o) to permit the listing and trading, or trading pursuant to UTP, of Managed Fund Shares.[3] The Exchange also proposes to make conforming changes to the introductory paragraph of Nasdaq Rule 4420, Nasdaq Rules 4120(a)(9) and 4120(b)(4)(A), which relate to trading halts, and Nasdaq Rule 4540, which relates to entry and annual fees for issuers, to incorporate references to Managed Fund Shares.

Proposed Listing Rules for Managed Fund Shares

Proposed Nasdaq Rule 4420(o)(2)(A) provides that Nasdaq will file separate proposals under section 19(b) of the Act before the listing and/or trading of Managed Fund Shares. Proposed Nasdaq Rule 4420(o)(2)(B) provides that transactions in Managed Fund Shares will occur throughout Nasdaq's trading hours.[4] Proposed Nasdaq Rule 4420(o)(2)(C) provides that the minimum price variation for quoting and entry of orders in Managed Fund Shares will be $0.01. Proposed Rule Nasdaq 4420(o)(2)(D) provides that Nasdaq will implement written surveillance procedures for Managed Fund Shares. Proposed Nasdaq Rule 4420(o)(2)(E) provides that, for Managed Fund Shares based on an international or global portfolio, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 (''1940 Act'') for such series of Managed Fund Shares must state that such series must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

Proposed Definitions. Proposed Nasdaq Rule 4420(o)(3)(A) defines the term ''Managed Fund Share'' as a security that: (1) Represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (2) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''); and (3) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

In addition, proposed Nasdaq Rule 4420(o)(3)(B) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of NAV at the end of the business day. Proposed Nasdaq Rule 4420(o)(3)(C) defines the term ''Intraday Indicative Value'' as the estimated indicative value of a Managed Fund Share based on current information regarding the value of the securities and other assets in the Disclosed Portfolio. Proposed Nasdaq Rule 4420(o)(3)(D) defines the term ''Reporting Authority'' as Nasdaq, an institution, or a reporting service designated by Nasdaq or by the exchange that lists a particular series of Managed Fund Shares (if Nasdaq is trading such series pursuant to UTP) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Intraday Indicative Value, the Disclosed Portfolio, the amount of any cash distribution to holders of Managed Fund Shares, NAV, or other information relating to the issuance, redemption, or trading of Managed Fund Shares. A series of Managed Fund Shares may have more than one Reporting Authority, each having different functions.

Initial and Continued Listing. Proposed Nasdaq Rule 4420(o)(4) sets forth the initial and continued listing criteria applicable to Managed Fund Shares.[5] Proposed Nasdaq Rule 4420(o)(4)(A)(i) provides that, for each series of Managed Fund Shares, Nasdaq will establish a minimum number of Managed Fund Shares required to be outstanding at the time of commencement of trading. In addition, under proposed Nasdaq Rule 4420(o)(4)(A)(ii), Nasdaq must obtain a representation from the issuer of each series of Managed Fund Shares that the NAV per share for such series will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Proposed Nasdaq Rule 4420(o)(4)(B) provides that each series of Managed Fund Shares will be listed and traded subject to the application of the following continued listing criteria: (1) The Intraday Indicative Value for Managed Fund Shares must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on Nasdaq; (2) the Disclosed Portfolio must be disseminated at least once daily and

[3] The Exchange notes that proposed Nasdaq Rule 4420(o) is substantively identical to NYSE Arca Equities Rule 8.600. *See* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (approving, among other things, listing standards for Managed Fund Shares).

[4] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7 a.m. to 9:30 a.m; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m.).

[5] The Exchange represents that, for initial and/or continued listing, Managed Fund Shares must also be in compliance with Rule 10A–3 under the Act. *See* 17 CFR 240.10A–3. In addition, the Exchange represents that, with respect to a series of Managed Fund Shares, the investment adviser and its related personnel are subject to Rule 204A–1 under the Investment Advisers Act of 1940 (''Advisers Act''), which relates to codes of ethics for investment advisers. *See* 17 CFR 275.204A–1. Rule 204A–1 requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, the Exchange notes that ''firewall'' procedures, as well as procedures designed to prevent the misuse of non-public information by an investment adviser, must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act (17 CFR 275.206(4)–7) makes it unlawful for an investment adviser to provide investment advice to clients, unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the rules thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of such policies and procedures and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering such policies and procedures. *See also* Section 204A of the Advisers Act (15 U.S.C. 80b–4a) (requiring investment advisers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such investment adviser or any person associated with such investment adviser). E-mail from Jonathan F. Cayne, Associate General Counsel, Exchange, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated May 5, 2008 (confirming policies and procedures relating to protections against the misuse of material, non-public information concerning an Investment Company's portfolio).

made available to all market participants at the same time; and (3) the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

Proposed Nasdaq Rule 4420(o)(4)(B)(iii) provides that Nasdaq will consider the suspension of trading in, or removal from listing of, a series of Managed Fund Shares under any of the following circumstances: (1) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of Management Fund Shares for 30 or more consecutive trading days; (2) if the value of the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time; (3) if the Investment Company issuing the Managed Fund Shares has failed to file any filings required by the Commission or if Nasdaq is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Managed Fund Shares; or (4) if such other event shall occur or condition exists which, in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Proposed Nasdaq Rule 4420(o)(4)(B)(iv) provides that, if the Intraday Indicative Value of a series of Managed Fund Shares is not being disseminated as required, Nasdaq may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, Nasdaq will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Fund Shares is trading on Nasdaq pursuant to UTP, Nasdaq will halt trading in that series as specified in Nasdaq Rules 4120 and 4121. In addition, if the Exchange becomes aware that NAV or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV or the Disclosed Portfolio is available to all market participants.

In addition, proposed Nasdaq Rule 4420(o)(4)(B)(v) provides that, upon termination of an Investment Company, the Managed Fund Shares issued in connection with such entity must be removed from listing on Nasdaq. Proposed Nasdaq Rule 4420(o)(4)(B)(vi) provides that voting rights must be as set forth in the applicable Investment Company prospectus. Proposed Nasdaq Rule 4420(o)(5) relates to the limitation of liability of the Exchange in connection with an issuance of a series of Managed Fund Shares.

Proposed Nasdaq Rule 4420(o)(6) relates to obligations with respect to those Managed Fund Shares that receive an exemption from certain prospectus delivery requirements under section 24(d) of the 1940 Act. Lastly, proposed Nasdaq Rule 4420(o)(7) provides that, if the investment adviser of the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser must erect a ''firewall'' between such investment adviser and broker-dealer with respect to access to information regarding the composition and/or changes to the Investment Company's portfolio. This proposed rule also requires personnel who make decisions on the Investment Company's portfolio composition to be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Investment Company's portfolio.

Other Proposed Rule Changes

The Exchange also proposes to amend: (1) The introductory paragraph of Nasdaq Rule 4420 to add a reference to new paragraph (o) thereunder; (2) Nasdaq Rule 4120(a)(9) and Nasdaq Rule 4120(b)(4)(A) to add references to Managed Fund Shares with respect to trading halts; [6] and (3) Nasdaq Rule 4540(a) and (b) to add references to Managed Fund Shares to those securities already covered under the rule relating to both entry and annual fees.

Key Features of Managed Fund Shares

Registered Investment Company. A Managed Fund Share means a security that represents an interest in an investment company registered under the 1940 Act organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, the open-end investment company that issues securities of an exchange-traded fund seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

1940 Act Exemptive Relief. The 1940 Act contemplates two categories of investment companies: (1) Those which issue redeemable securities (*i.e.*, open-end investment companies); and (2) those which do not issue redeemable securities (*i.e.*, closed-end investment companies). Index Fund Shares [7] and Portfolio Depository Receipts [8] (collectively, ''Index ETFs'') are redeemable, but only in large blocks of shares, not individually, so it is not certain whether they would be redeemable under the 1940 Act. Because Index ETFs do not fit neatly into either the open-end category or the closed-end category, Index ETFs have had to seek exemptive relief from the Commission to permit registration as an open-end investment company. Managed Fund Shares share key structural features with Index ETFs—creation and redemption in large blocks of shares being the most important one—that result in the need for exemptive relief, and therefore, Managed Fund Shares will require relief from the same provisions of the 1940 Act.

Intraday Trading. Like Index ETFs, Managed Fund Shares will be listed and traded on a national securities exchange, and therefore, will be available for sale and purchase on an intraday basis, like other listed securities. In contrast, shares of managed mutual funds may only be purchased and sold (issued and redeemed) in direct transactions with the fund, once each day.

Creations and Redemptions. As with Index ETFs, Managed Fund Shares will be issued and redeemed on a daily basis at NAV. Also, like Index ETFs, creations and redemptions for Managed Fund Shares must be in large specified blocks of shares called ''Creation Units.'' Purchases and sales of shares in amounts smaller than the number of shares required for a Creation Unit may be effected only in the secondary market and not directly with the fund.

In addition, for most Index ETFs, the creation and redemption process is effected ''in kind.'' Creation ''in kind'' typically means that the investor—usually a brokerage house or large institutional investor—purchases the Creation Unit with a ''Portfolio Deposit'' equal in value to the aggregate NAV of the shares in the Creation Unit. The Portfolio Deposit generally consists of a

[6] Nasdaq also seeks to make an unrelated, minor typographical change to Nasdaq Rule 4120(b)(4)(A) with respect to the term ''Trust Issued Receipt.''

[7] *See* Nasdaq Rule 4420(j).

[8] *See* Nasdaq Rule 4420(i).

basket of securities that reflects the composition of the Index ETF's portfolio. Similarly, an investor redeeming shares in the Index ETF receives in exchange for shares in the Index ETF the securities in the ''Redemption Basket,'' which is usually the same as the Portfolio Deposit and consists of securities that reflect the composition of the Index ETF's portfolio.[9] The Portfolio Deposit often includes a small cash component to make the value of the deposit or basket exactly equal to the aggregate NAV. Most Index ETFs also permit cash creations and redemptions under specified, limited circumstances.

Managed Fund Shares may use one or more of the following three approaches to creations and redemptions: (1) ''In kind'' creations and redemptions using a Portfolio Deposit that reflects the composition of the fund; (2) cash creations and redemptions; or (3) ''in kind'' creations and redemptions using a Portfolio Deposit consisting of securities that do not reflect the composition of the fund, but instead consisting of other securities including, for example, specified Index ETFs.

Portfolio Disclosure. One common feature of Index ETFs is disclosure of the contents of the Portfolio Deposit on a daily basis. Aside from providing the information required for daily creations and redemptions, the Portfolio Deposit gives market participants a basis for estimating the intraday value of the fund and thus, provides a basis for the arbitrage that keeps the market price of Index ETFs generally in line with the NAV of the Index ETF. While Managed Fund Shares may use an in-kind or cash creation and redemption mechanism, as noted above, each series of Managed Fund Shares will disclose daily the identities and quantities of the portfolio of securities and other assets (*i.e.*, the Disclosed Portfolio) held by the applicable fund that will form the basis for the fund's calculation of NAV at the end of the business day.

Intraday Indicative Value.[10] For each series of Managed Fund Shares, an estimated value, defined in proposed Nasdaq Rule 4420(o)(3)(C) as the ''Intraday Indicative Value'' that reflects an estimated intraday value of the fund portfolio, will be disseminated. The Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be disseminated by the Exchange at least every 15 seconds during the regular market session through the facilities of the Consolidated Tape Association The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a series of Managed Fund Shares on a daily basis and to provide a close estimate of that value throughout the trading day.

Trading Halts

Nasdaq will halt trading in Managed Fund Shares under the conditions specified in Nasdaq Rules 4120 and 4121, as proposed to be amended, and in proposed Nasdaq Rule 4420(o)(4)(B)(iv), as discussed above. With respect to trading of Managed Fund Shares pursuant to UTP, the conditions for a halt include a regulatory halt by the listing market, and Nasdaq will stop trading Managed Fund Shares if the listing market delists them. Additionally, Nasdaq may cease trading Managed Fund Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market.

Trading Rules

Nasdaq deems Managed Fund Shares to be equity securities, thus rendering trading in the Managed Fund Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in Managed Fund Shares from 7:00 a.m. until 8:00 p.m. Eastern Time.[11]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including exchange-traded funds) to monitor trading in Managed Fund Shares and represents that such procedures are adequate to address any concerns regarding the trading of Managed Fund Shares on Nasdaq. Trading of Managed Fund Shares on Nasdaq will be subject to surveillance procedures of the Financial Industry Regulatory Authority (''FINRA'') for equity securities, in general, and exchange-traded funds, in particular.[12] The Exchange may also obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliate members of ISG.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading Managed Fund Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Managed Fund Shares in Creation Units (and that Managed Fund Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Managed Fund Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Managed Fund Shares prior to or concurrently with the confirmation of a transaction; (5) the risks involved in trading Managed Fund Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Fund value will not be calculated or publicly disseminated; (6) any exemptive, no-action, or interpretive relief granted by the Commission from any rules under the Act; (7) related fees and expenses; (8) trading hours of the Managed Fund Shares; (9) NAV calculation and dissemination; and (10) trading information.

The Exchange notes that investors purchasing Managed Fund Shares directly from a Fund will receive a prospectus. Members purchasing Managed Fund Shares from a Fund for resale to investors will deliver a prospectus to such investors.

2. Statutory Basis

[9] References to the ''Portfolio Deposit'' herein include the Redemption Basket unless otherwise specified.

[10] This value of the estimated NAV is for use by investors, professionals, and persons wishing to create or redeem shares.

[11] *See supra* note 4.

[12] The Exchange states that FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rules will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the Exchange believes that the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–039 and should be submitted on or before June 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10701 Filed 5–13–08; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57801; File No. SR–NYSEArca–2008–31]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of Twelve Actively Managed Exchange-Traded Funds of the WisdomTree Trust

May 8, 2008.

I. Introduction

On April 4, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares of twelve actively managed exchange-traded funds of the WisdomTree Trust (''Trust'') pursuant to NYSE Arca Equities Rule 8.600 (Managed Fund Shares). The proposed rule change was published for comment in the **Federal Register** on April 21, 2008 for a 15-day comment period.[3] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to list and trade the shares (''Shares'') of the following twelve actively managed exchange-traded funds of the Trust pursuant to NYSE Arca Equities Rule 8.600 (Managed Fund Shares): (1) WisdomTree U.S. Current Income Fund (''Current Income Fund''); (2) WisdomTree Dreyfus Australian Dollar Fund; (3) WisdomTree Dreyfus Brazilian Real Fund; (4) WisdomTree Dreyfus British Pound Sterling Fund; (5) WisdomTree Dreyfus Canadian Dollar Fund; (6) WisdomTree Dreyfus Chinese Yuan Fund; (7) WisdomTree Dreyfus Euro Fund; (8) WisdomTree Dreyfus Indian Rupee Fund; (9) WisdomTree Dreyfus Japanese Yen Fund; (10) WisdomTree Dreyfus New Zealand Dollar Fund; (11) WisdomTree Dreyfus South African Rand Fund; and (12) WisdomTree Dreyfus South Korean Won Fund (''International Currency Income Funds,'' and together with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57670 (April 15, 2008), 73 FR 21397.

Current Income Fund, collectively, the ''Funds'').

The Exchange proposes to list and trade the Shares of the Funds pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[4] Each Fund will be an actively managed exchange-traded fund. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005 and is registered with the Commission as an investment company.[5]

Description of the Funds and the Shares

WisdomTree Asset Management, Inc. (''WisdomTree Asset Management'') is the investment adviser to each Fund.[6] The Exchange represents that WisdomTree Asset Management is not affiliated with any broker-dealer. Mellon Capital Management serves as the sub-adviser for the Current Income Fund. The Dreyfus Corporation serves as the sub-adviser to each International Currency Income Fund. The Bank of New York is the administrator, custodian, and transfer agent for each Fund. ALPS Distributors, Inc. serves as the distributor for the Funds.[7]

The Current Income Fund. The Current Income Fund seeks to earn current income while preserving capital and maintaining liquidity by investing primarily in very short term, high-quality money market securities denominated in U.S. dollars. Eligible investments include commercial paper, time deposits and certificates of deposits, asset-backed securities, government bills, government notes, corporate notes, and repurchase agreements. The Current Income Fund intends to maintain an average portfolio maturity of 90 days or less and will not purchase any money market security with a remaining maturity of more than 397 calendar days.

The International Currency Income Funds. Each of the WisdomTree Dreyfus Australian Dollar Fund, British Pound Sterling Fund, Canadian Dollar Fund, Euro Fund, and Japanese Yen Fund seeks (1) to earn current income reflective of money market rates available to foreign investors in the specified country or region, and (2) to maintain liquidity and preserve capital measured in the currency of the specified country or region. Each of these Funds intends to invest primarily in very short term, investment grade money market securities denominated in the non-U.S. currency specified in its name. Eligible investments include short-term securities issued by non-U.S. governments, agencies, or instrumentalities, bank debt obligations and time deposits, bankers' acceptances, commercial paper, short-term corporate debt obligations, mortgage-backed securities, and asset-backed securities.

Each of the WisdomTree Dreyfus Brazilian Real Fund, Chinese Yuan Fund, Indian Rupee Fund, New Zealand Dollar Fund, South African Rand Fund, and South Korean Won Fund seeks (1) to earn current income reflective of money market rates available to foreign investors in the specified country, and (2) to provide exposure to changes in the value of the designated non-U.S. currency relative to the U.S. dollar. Each of these Funds intends to achieve exposure to the non-U.S. market designated by its name using the following strategy. Each of the Funds will invest primarily in short-term U.S. money market securities. In addition, each such Fund will invest a smaller portion of its assets in forward currency contracts and swaps[8] designed to provide exposure to exchange rates and/or money market instruments available to foreign investors in the non-U.S. market designated in the Fund's name. The combination of U.S. money market securities with forward currency contracts and currency swaps is designed to create a position economically similar to a money market instrument denominated in a non-U.S. currency.[9]

Each International Currency Income Fund generally will maintain a weighted average portfolio maturity of 90 days or less and will not purchase any money market instrument with a remaining maturity of more than 397 calendar days. The Exchange represents that none of the Funds will invest in non-U.S. equity securities.

The Shares. Each Fund will issue and redeem Shares on a continuous basis at NAV[10] only in large blocks of shares, typically 50,000 shares or more (''Creation Units''), in transactions with authorized participants. Each International Currency Income Fund may issue and redeem Creation Units in exchange for a designated basket of non-U.S. currency and an amount of U.S. dollar-denominated cash, a basket of non-U.S. money market instruments and a designated amount of cash, or simply a designated amount of cash. In addition, creations and redemptions of the Current Income Fund and the WisdomTree Dreyfus Brazilian Real Fund, Chinese Yuan Fund, Indian Rupee Fund, New Zealand Dollar Fund, South African Rand Fund, and South Korean Won Fund would usually occur in exchange for a basket of U.S. money market instruments and/or a designated amount of cash. Once created, Shares of the Funds will trade on the secondary

[4] ''Managed Fund Shares'' are securities that: (1) Represent an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (2) are issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''); and (3) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV. *See* NYSE Arca Equities Rule 8.600(c)(1) (defining Managed Fund Shares). *See also* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (approving, among other things, rules permitting the listing and trading of Managed Fund Shares).

[5] *See* Post-Effective Amendment No. 14 to Registration Statement on Form N–1A for the Trust (File Nos. 333–132380 and 811–21864) (''Registration Statement'').

[6] WisdomTree Investments, Inc. (''WisdomTree Investments'') is the parent company of WisdomTree Asset Management.

[7] The Exchange states that the Trust has received and been granted by Commission order certain exemptive relief under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Funds will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

[8] A forward currency contract is an agreement to buy or sell a specific currency at a future date at a price set at the time of the contract. A currency swap is an agreement between two parties to exchange one currency for another at a future rate.

[9] The Exchange states that each of these Funds may pursue its objectives through direct investments in money market instruments issued by entities in the applicable non-U.S. country and denominated in the applicable non-U.S. currency when WisdomTree Asset Management believes it is in the best interest of the Fund to do so. The decision to secure exposure directly or indirectly will be a function of, among other things, market accessibility, credit exposure, and tax ramifications for foreign investors. If any of these Funds pursues direct investment, eligible investments will include short-term securities issued by the applicable foreign government and its agencies or instrumentalities, bank debt obligations and time deposits, bankers' acceptances, commercial paper, short-term corporate debt obligations, mortgage-backed securities, and asset-backed securities.

[10] The NAV of each Fund's Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange LLC, generally 4 p.m. Eastern Time or ''ET.'' NAV per Share is calculated by dividing a Fund's net assets by the number of Fund Shares outstanding. The Exchange states that more information regarding the valuation of Fund investments in calculating a Fund's NAV can be found in the Registration Statement.

market in amounts less than a Creation Unit.

More information regarding the Shares and the Funds, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes can be found in the Registration Statement.[11]

Availability of Information

The Funds' Web site (*http://www.wisdomtree.com*), which will be publicly available prior to the public offering of the Shares, will include a form of the Prospectus for each Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for each Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[12] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of the Core Trading Session,[13] the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'')[14] held by each Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[15] The Web site information will be publicly available at no charge.

In addition, for each Fund, an estimated value, defined in Rule 8.600 as the Portfolio Indicative Value,[16] will be updated and disseminated by the Exchange at least every 15 seconds during the Core Trading Session on the Exchange through the facilities of the Consolidated Tape Association. The Exchange states that the dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the facilities of the Consolidated Tape Association.

Initial and Continued Listing

The Exchange represents that the Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.[17] The Exchange further represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A–3 under the Exchange Act,[18] as provided by NYSE Arca Equities Rule 5.3.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. The Shares of the Funds will be halted if the ''circuit breaker'' parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange states that it has appropriate rules to facilitate transactions in the Shares during all such trading sessions. The minimum trading increment for the Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which will include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange states that it may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliate members of ISG.[19] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders[20] in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the

[11] *See supra* note 5.

[12] The Bid/Ask Price of a Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[13] The Core Trading Session is 9:30 a.m. to 4 p.m. ET.

[14] *See* NYSE Arca Equities Rule 8.600(c)(2) (defining the Disclosed Portfolio for a series of Managed Fund Shares as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of NAV at the end of the business day).

[15] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in the NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in the NAV on such business day. Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[16] NYSE Arca Equities Rule 8.600(c)(3) (defining Portfolio Indicative Value as the estimated indicative value of a Managed Fund Share based on current information regarding the value of the securities and other assets in the Disclosed Portfolio).

[17] *See also supra* note 7 (describing the Funds' compliance with Commentary .05 to NYSE Arca Equities Rule 8.600).

[18] *See* 17 CFR 240.10A–3.

[19] The Exchange notes that not all of the components of the Disclosed Portfolio for each Fund may trade on exchanges that are members or affiliate members of ISG.

[20] ETP Holder refers to a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or ''ETP.'' An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. *See* NYSE Arca Equities Rule 1.1(n).

Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),[21] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement, discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act, and disclose that the NAV for the Shares will be calculated after 4 p.m. ET each trading day.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of section 6 of the Act [22] and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[24] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that, for the Shares to be listed and traded on the Exchange, such Shares must be in compliance with the initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The Commission believes that the proposal to list and trade the Shares on the Exchange is consistent with section 11A(a)(1)(C)(iii) of the Act,[25] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information for the Shares will be disseminated by means of the facilities of the Consolidated Tape Association. In addition, the Portfolio Indicative Value will be updated and disseminated at least every 15 seconds during the Core Trading Session on the Exchange through the facilities of the Consolidated Tape Association, and, on each business day before commencement of the Core Trading Session, the Trust will disseminate the Disclosed Portfolio on its Web site. The Commission also notes that information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Additionally, the following information will be available on the Funds' Web site (*http://www.wisdomtree.com*), which will be publicly accessible at no charge: (1) The prior business day's reported NAV, the Bid/Ask Price, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange is required to obtain a representation from the Trust, prior to listing, that the NAV per Share will be calculated daily, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[26] The Exchange may consider the suspension of trading in, or removal from listing of, the Shares if the value of the Portfolio Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.[27] In addition, NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) requires that the Reporting Authority that provides the Disclosed Portfolio implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio. Lastly, the Commission notes that the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D) and that, if WisdomTree Asset Management becomes affiliated with a broker-dealer, WisdomTree Asset Management must erect a firewall between it and such broker-dealer with respect to access to information concerning the composition and/or changes to the investment portfolio of the Funds, in accordance with Commentary .07 to NYSE Arca Equities Rule 8.600.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Exchange's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

1. The Shares will be subject to the initial and continued listing criteria applicable to Managed Fund Shares and, for initial and/or continued listing, the Shares must comply with Rule 10A–3 under the Act,[28] as provided by NYSE Arca Equities Rule 5.3.

2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, NYSE Arca will rely on its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares.[29]

[21] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that the ETP Holder believes would be useful to make a recommendation.

[22] 15 U.S.C. 78f.

[23] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[26] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[27] *See* NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

[28] 17 CFR 240.10A–3.

[29] The Commission notes that none of the Funds will invest in non-U.S. equity securities and believes that the Exchange's proposed rules and procedures are adequate with respect to the Shares. However, the Commission notes that other proposed series of Managed Fund Shares may

Continued

3. Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Bulletin of the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement, discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act, and disclose that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the investment objectives of the Funds are similar to those applicable to other Managed Fund Shares, the listing and trading of which the Commission has previously approved for other national securities exchanges.[30] The Commission believes that accelerated approval of the proposed rule change should provide additional choices for investors in, and promote additional competition in the market for, Managed Fund Shares. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NYSEArca–2008–31) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10724 Filed 5–13–08; 8:45 am]

BILLING CODE 8010–01–P

require additional Exchange rules and procedures to govern their listing and trading on the Exchange. For example, in the case of a proposed series of Managed Fund Shares that are based on a portfolio, at least in part, of non-U.S. equity securities, rules relating to comprehensive surveillance sharing agreements and quantitative initial and continued listing standards may be required.

[30] *See, e.g.*, Securities Exchange Act Release Nos. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (approving, among other things, the listing and trading of shares of the PowerShares Active Low Duration Portfolio, which seeks to exceed the total return of the Lehman Brothers 1–3 Year U.S. Treasury Index by investing, normally, at least 80% of its assets in a diversified portfolio of U.S. government and corporate debt securities); and 57514 (March 17, 2008), 73 FR 15230 (March 21, 2008) (SR–Amex–2008–02) (approving the listing and trading of shares of the Bear Stearns Current Yield Fund, which seeks to invest primarily in short-term debt obligations, including U.S. government securities, bank obligations, corporate debt obligations, foreign bank obligations (U.S. dollar denominated), foreign corporate debt obligations (U.S. dollar denominated), and other financial instruments).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

C3 Capital Partners II, L.P. (License No. 07/07–0113); Notice Seeking Exemption Under 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that C3 Capital Partners II, L.P., 4520 Main Street, Suite 1600, Kansas City, Missouri, 64111–7700, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings Which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2008)). C3 Capital Partners II, L.P. proposes to provide loans to Clinical Research Investments, LLC, (holding company for Clinical Research Holding, LLC) 4520 Main St., Ste. 1600, Kansas City, MO 64111. The financing is contemplated for the acquisition of an Alabama based manager of clinical trials.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because C3 Capital Partners, LP, an Associate of C3 Capital Partners II, L.P., currently owns greater than 10 percent of Clinical Research Investments, LLC, and therefore, Clinical Research Investments, LLC, is considered an Associate of C3 Capital Partners II as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. E8–10758 Filed 5–13–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to Intacct Corporation, 125 South Market Street, Suite 600, San Jose, CA 95113. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., all Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Intacct Corporation and therefore Intacct Corporation is considered an Associate of Emergence Capital Partners SBIC, L.P. as detailed in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: April 15, 2008.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. E8–10760 Filed 5–13–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0456]

Horizon Ventures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to Invivodata, Inc., 2100 Wharton Street, Suite 505, Pittsburgh, PA 15203. The financing will provide funding for research and development, sales and marketing, and working capital.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Horizon Ventures Fund I, L.P. and Horizon Ventures Advisors Fund I, L.P., both Associates of Horizon Ventures Fund II, L.P., own more than ten percent of Invivodata, Inc. Therefore, Invivodata, Inc. is considered an Associate of Horizon Ventures Fund II, L.P., as defined at 13 CFR 107.50 of the SBIC Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: April 7, 2008.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. E8–10759 Filed 5–13–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region I Regulatory Fairness Board

AGENCY: U.S. Small Business Administration, Office of the National Ombudsman.

ACTION: Notice of Federal Regulatory Fairness Hearing.

SUMMARY: The SBA is issuing this notice to advise the public of a Federal Regulatory Fairness Hearing in Concord, NH. The hearing is open to the public however, advance notice of attendance is requested.

DATES: The hearing will be held on Thursday, May 29, 2008 from 9:30 a.m. to 12 noon Eastern Standard Time.

ADDRESSES: The hearing will be held at the New Hampshire Department of Environmental Services (Auditorium), 29 Hazen Drive, Concord, NH 03301.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), SBA Regional Regulatory Fairness Board and the Office of the National Ombudsman hold Regulatory Fairness hearings across the nation. Issues addressed at these hearings will be directed to the appropriate Federal regulatory agency for a high-level review of fairness of the enforcement action.

The purpose of the hearing is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

FOR FURTHER INFORMATION CONTACT: Alice Zachos, Business Development Specialist, SBA, New Hampshire District Office, JC Cleveland Federal Building, 55 Pleasant Street, Suite 3101, Concord, NH 03301, telephone: (603) 225–1607, fax: (202) 481–0159, e-mail: *Alice.zachos@sba.gov.* Anyone wishing to testify and/or make a presentation to the Regulatory Fairness Board must contact Alice Zachos by May 28, by fax or e-mail in order to be placed on the agenda.

Additionally, if you need accommodations because of a disability or require additional information, please contact Alice Zachos at the information above.

For more information, please visit our Web site at *http://www.sba.gov/ombudsman.*

Cherylyn Lebon,

SBA Committee Management Officer.

[FR Doc. E8–10757 Filed 5–13–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6223]

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, As Amended—Continuation of Waiver Authority

Pursuant to the authority vested in the President under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter ''the Act''), and assigned to the Secretary of State by virtue of Section 1(a) of Executive Order 13346 of July 8, 2004, as well as the authority delegated to the Deputy Secretary of State by Delegation of Authority 245 of April 23, 2001, I determine, pursuant to Section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by Section 402 of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that continuation of the waiver applicable to Turkmenistan will substantially promote the objectives of Section 402 of the Act.

This determination shall be published in the **Federal Register**.

Dated: May 6, 2008.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–10772 Filed 5–13–08; 8:45 am]

BILLING CODE 4710–46–P

DEPARTMENT OF STATE

[Public Notice 6213]

Notice of Meeting of the Cultural Property Advisory Committee

There will be a meeting of the Cultural Property Advisory Committee on Thursday, July 24, 2008, from approximately 8:30 a.m. to 5 p.m., and on Friday, July 25, from approximately 8:30 a.m. to 12 noon at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. During its meeting the Committee will review a proposal to extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras (''MOU''). The Government of the Republic of Honduras has notified the Government of the United States of America of its interest in extending the MOU. The Committee will also conduct an interim review of the MOU with El Salvador.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601, *et seq.*). The text of the Act and subject MOUs, as well as related information, may be found at *http://exchanges.state.gov/culprop.* Portions of the meeting on July 24 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h), the latter of which stipulates that ''The provisions of the Federal Advisory

Committee Act shall apply to the Cultural Property Advisory Committee except that the requirements of subsections (a) and (b) of section 10 and 11 of such Act (relating to open meetings, public notice, public participation, and public availability of documents) shall not apply to the Committee, whenever and to the extent it is determined by the President or his designee that the disclosure of matters involved in the Committee's proceedings would compromise the Government's negotiation objectives or bargaining positions on the negotiations of any agreement authorized by this title.'' However, on July 24, the Committee will hold an open session from approximately 10:30 a.m. to 12 noon, to receive oral public comment only on the proposal to extend the MOU with Honduras. Such an open session is not a statutory requirement, nor is the invitation for public oral or written comment. These steps are taken at the initiative of the Department of State. Persons wishing to attend this open session should notify the Cultural Heritage Center of the Department of State at (202) 453–8800 no later than July 15, 2008, 5 p.m. (EST) to arrange for admission. Seating is limited.

Anyone wishing to make an oral presentation at the public session must request to be scheduled, and must submit a written text of the oral comments by July 15, 2008, to allow time for distribution to Committee members prior to the meeting. Oral comments will be limited to allow time for questions from members of the Committee and must specifically relate to the determinations under Section 303(a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602, pursuant to which the Committee must make findings. This citation for the determinations can be found at the Web site noted above.

The Committee also invites written comments and asks that they be submitted no later than July 15, 2008, to allow time for distribution to Committee members prior to the meeting. All written materials, including the written texts of oral statements, may be faxed to (202) 453–8803 or sent to *culprop@state.gov*. If more than three (3) pages, 20 duplicates of written materials must be sent by express mail to: Cultural Heritage Center, Department of State, Annex 44, 301 4th Street, SW., Washington, DC 20547; tel: (202) 453–8800.

Dated: May 2, 2008.

Goli Ameri,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–10771 Filed 5–13–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6212]

Proposal To Extend Agreement Between the Government of the United States and the Republic of Honduras

Notice of Proposal to Extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras.

The Government of the Republic of Honduras has informed the Government of the United States of its interest in an extension of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras, which entered into force on March 12, 2004.

Pursuant to the authority vested in the Assistant Secretary for Educational and Cultural Affairs, and pursuant to the requirement under 19 U.S.C. 2602(f)(1), an extension of this Memorandum of Understanding is hereby proposed.

Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of this Memorandum of Understanding, the designated list of restricted categories of material, and related information can be found at the following Web site: *http://exchanges.state.gov/culprop*.

Dated: May 2, 2008.

Goli Ameri,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–10773 Filed 5–13–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Dealer's Aircraft Registration Certificate Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. AC Form 8050–5 is an application for a dealer's Aircraft Registration Certificate which, under 49 USC, 1404, may be issued to a person engaged in manufacturing, distributing, or selling aircraft.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Dealer's Aircraft Registration Certificate Application.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0024.

Form(s): AC Form 8050–5.

Affected Public: A total of 2,740 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 45 minutes per response.

Estimated Annual Burden Hours: An estimated 2,055 hours annually.

Abstract: AC Form 8050–5 is an application for a dealer's Aircraft Registration Certificate which, under 49 USC, 1404, may be issued to a person engaged in manufacturing, distributing, or selling aircraft.

ADDRESSES:

Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will

have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10547 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Malfunction or Defect Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This information allows the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

Federal Aviation Administration (FAA)

Title: Malfunction or Defect Report.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0003.

Form(s): 8010–4.

Affected Public: A total of 56,045 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 9 minutes per response.

Estimated Annual Burden Hours: An estimated 8,407 hours annually.

Abstract: This information allows the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10554 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Advanced Qualification Program (AQP) NPRM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The Advanced Qualification Program (AQP) incorporates data driven quality control processes for validating and maintaining the effectiveness of air carrier training program curriculum content.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Advanced Qualification Program (AQP) NPRM.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0701.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 18 respondents.

Frequency: The information is collected monthly.

Estimated Average Burden Per Response: Approximately 1.2 hours per response.

Estimated Annual Burden Hours: An estimated 432 hours annually.

Abstract: The Advanced Qualification Program (AQP) incorporates data driven quality control processes for validating and maintaining the effectiveness of air carrier training program curriculum content.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10556 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Advisory Circular (AC): Reporting of Laser Illumination of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This collection covers the reporting of unauthorized illumination of aircraft by lasers.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Advisory Circular (AC): Reporting of Laser Illumination of Aircraft.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0698.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 400 Respondents.

Frequency: The information is collected as needed.

Estimated Average Burden per Response: Approximately 15 minutes per response.

Estimated Annual Burden Hours: An estimated 100 hours annually.

Abstract: This collection covers the reporting of unauthorized illumination of aircraft by lasers.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10557 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; License Requirements for Operation of a Launch Site

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The information to be collected includes data required for performing launch site location analysis.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: License Requirements for Operation of a Launch Site.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0644.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 2 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 1,551 hours per response.

Estimated Annual Burden Hours: An estimated 3,102 hours annually.

Abstract: The information to be collected includes data required for performing launch site location analysis. The launch site license is valid for a period of 5 years. Respondents are licensees authorized to operate sites.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10558 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The information is used to determine if applicants satisfy requirements for obtaining a launch license to protect the public from risks associated with reentry operations from a site not operated by or situated on a Federal launch range.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA).

Title: Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulation.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0643.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 3 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 3,333 hours per response.

Estimated Annual Burden Hours: An estimated 10,000 hours annually.

Abstract: The information is used to determine if applicants satisfy requirements for obtaining a launch license to protect the public from risks associated with reentry operations from a site not operated by or situated on a Federal launch range.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10559 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; FAA Acquisition Management System (FAAAMS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Pursuant to Public Law 104–50, the FAA implements an acquisition management system that addresses the unique needs of the agency. This document established the policies and internal procedures for the FAA's acquisition system.

DATES: Please submit comments by July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Acquisition Management System (FAAAMS).

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0595.

Form(s): 93 Forms available online: *http://fast.faa/gov/docs/forms/form.html.*

Affected Public: A total of 15,298 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 6.5 hours per response.

Estimated Annual Burden Hours: An estimated 1,701,099 hours annually.

Abstract: Pursuant to Public Law 104–50, the FAA implements an acquisition management system that addresses the unique needs of the agency. This document established the policies and internal procedures for the FAA's acquisition system.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 6, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–10561 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Crewmember Demand Oxygen Mask

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Technical Standard Order (TSO) C–78a, Crewmember Demand Oxygen Mask. This TSO tells persons seeking a TSO authorization (TSOA) or letter of design approval (LODA) what minimum performance standards (MPS) their crewmember demand oxygen mask must meet to be identified with the appropriate TSO marking. This TSO has been revised to address a general requirement for oxygen masks to be supplied with an oxygen supply tube.

DATES: TSO–C78a will be available on or before June 13, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. John Petrakis, AIR–120, Room 815, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267–9274, fax (202) 267–5340, or e-mail at: *john.petrakis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

TSO C–78a addresses crewmember demand oxygen masks and breathing valves that use either panel mounted or mask mounted demand and pressure-demand oxygen regulators.

This ''a'' revision to TSO–C78, became effective on February 13, 2008. Shortly after its release, we determined that the general requirement to provide an oxygen supply tube for Type II and Type IV oxygen masks needed to be revised. While an oxygen supply tube is a required component of the Type II and Type IV oxygen mask, the original TSO C–78 manufacturers are approved to provide oxygen supply tubes of different lengths. The lengths of those oxygen tubes provided by the manufacturer are aircraft specific. As is the case with all FAA approved TSO articles, which are only design and production approvals, the installation of a TSO C–78 or C–78a approved crewmember demand oxygen mask requires a separate installation approval. Therefore, to eliminate any confusion, we revised appendix 1 of TSO C–78a by removing changes we made to paragraph 3.9, Oxygen Supply Tube, regarding the length of the oxygen supply tube.

How to Obtain Copies

You can view or download TSO C–78a from its online location at: *http://*

www.faa.gov/regulations_policies/orders_notices/. At this Web page, select Technical Standard Orders (TSO) Database. At the TSO page, select ''Current.'' For a paper copy, contact the person listed in **FOR FURTHER INFORMATION CONTACT.** Note that referenced SAE International documents are copyrighted and may not be reproduced without the written consent of SAE International. You may purchase copies of SAE International documents from: SAE International, 400 Commonwealth Drive, Warrendale, PA 15096–0001, or directly from their Web site: *http://www.sae.org/.*

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

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. E8–10555 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of Finding of No Significant Impact (FONSI) on a Short Form Environmental Assessment (EA); Quad City International Airport; Moline, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Approval of Documents.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the approval of a Finding of No Significant Impact (FONSI) on an Environmental Assessment for proposed Federal actions at Quad City International Airport, Moline, Illinois. The FONSI specifies that the proposed federal actions and local development projects are consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act of 1969 and will not significantly affect the quality of the environment.

A description of the proposed Federal actions is: (a) To issue an environmental finding to allow approval of the Airport Layout Plan (ALP) for the development items listed below.

The items in the local airport development project are to: Construct hangar, apron, connecting taxiways, entrance road, auto parking lot, fuel farm and dispenser, extend utilities and relocate the Automated Surface Observing System (ASOS), all including necessary lighting, grading and drainage.

Copies of the environmental decision and the Short Form EA are available for public information review during regular business hours at the following locations:

1. Quad City International Airport, 2200 69th Avenue, Moline, IL 61265.

2. Division of Aeronautics-Illinois Department of Transportation, One Langhorne Bond Drive, Capital Airport, Springfield, IL 62707.

3. Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Amy B. Hanson, Environmental Protection Specialist, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Ms. Hanson can be contacted at (847) 294–7354 (voice), (847) 294–7046 (facsimile) or by e-mail at *amy.hanson@faa.gov*.

Issued in Des Plaines, Illinois, on April 30, 2008.

Mia Ratcliff,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8–10434 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Request for Public Comment, Elkins Randolph County Airport, Elkins, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the proposed release of 5.67 acres of land currently owned by the Elkins Randolph County Airport, Elkins, West Virginia. The parcel is located at Chenoweth Creek; Beverly District, Elkins, West Virginia. The property is undeveloped and is not needed for aeronautical purposes. Once released, the land will be exchanged for 5.67 acres of land situated within the approach of Runway 23. This property is to be exchanged to facilitate Runway Protection Zone requirements. The airport land being released is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land has been established for the land exchange between the Elkins Randolph Airport and the aforementioned property.

DATES: Comments must be received on or before June 13, 2008.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Connie Boley-Lilly, Program Specialist, Federal Aviation Administration, Beckley Airports Field Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Joe Biola, President of the Elkins Randolph County Airport Authority, Elkins Randolph County Airport at the following address:

Joe Biola, President, Elkins Randolph County Airport Authority, Elkins Randolph County Airport, Rt. 1, Box 271–1, Elkins, West Virginia 26241.

FOR FURTHER INFORMATION CONTACT: Connie Boley-Lilly, Program Specialist, Beckley Airport Field Office, (304) 252–6216 ext. 125, FAX (304) 253–8028.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (April 5,2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Beckley, West Virginia on April 29, 2008.

Matthew P. DiGiulian,

Manager, Beckley Airport Field Office, Eastern Region.

[FR Doc. E8–10428 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2006–25549]

Availability of a Finding of No Significant Impact

AGENCY: Department of Transportation, Maritime Administration.

ACTION: Notice of the availability of a Finding of No Significant Impact

SUMMARY: The purpose of this Notice is to make available to the public the Finding of No Significant Impact (FONSI) derived from the Environmental Assessment (EA) regarding the Decommissioning of the Nuclear Ship *Savannah.*

The objective of this Project is to consider the available decommissioning options for the Nuclear Regulatory Commission (NRC) licensed nuclear facilities onboard the N.S. *Savannah.*

FOR FURTHER INFORMATION CONTACT: Erhard W. Koehler, Manager, N.S. *Savannah* Programs, Office of Ship Disposal Programs, U.S. Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–2631, fax (202) 366–3954; e-mail *Erhard.koehler@dot.gov* or *savannah@dot.gov*

SUPPLEMENTARY INFORMATION: NRC regulations at 10 CFR 50.82(a)(3) require decommissioning and license termination of nuclear power reactors within 60 years of permanent cessation of operations. For the N.S. *Savannah,* the effective end date for license termination occurs in 2031. The Maritime Administration completed an EA that studied potential environmental effects associated with three alternatives for decommissioning of the NRC-licensed nuclear power plant onboard the N.S. *Savannah.* The EA considered potential effects to the natural and human environment including: air quality; water quality; geology and soils; coastal resources; terrestrial resources; aquatic resources; navigation; hazardous materials; cultural and historic resources; visual and aesthetic resources; and other topics associated with the proposed action. The FONSI is based on the analysis presented in the Nuclear Ship *Savannah* Decommissioning EA.

Copies of the FONSI and the EA will be made available for review upon request. Requests may be forwarded by e-mail to *savannah@dot.gov.* The FONSI and EA may be viewed online at *http://www.regulations.gov.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: May 7, 2008.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. E8–10683 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0088; Notice 1]

Ford Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford), on behalf of Jaguar and Land Rover, has determined that certain motor vehicles seat belt assemblies sold during the period 1981 through 2008 for certain model year 1981 through 2008 Jaguar and Land Rover make vehicles, did not fully comply with paragraphs S4.1(k) and S4.1(l) of 49 CFR 571.209 Federal Motor Vehicle Safety Standards (FMVSS) No. 209 *Seat Belt Assemblies.* Ford has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Ford has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Ford's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are an undetermined number of model year 1981 through 2008 Jaguar and Land Rover make passenger cars and multi-purpose vehicles. Ford stated that because these seat belt assemblies are supplied as replacement parts they can be used for non-warranty purposes, and therefore it is unable to ascertain into which individual vehicles these parts may have been installed. The model years that are affected are:

2001–2008 Model Year Jaguar X-Type
1999–2008 Model Year Jaguar S-Type
1982–2008 Model Year Jaguar XJ
1997–2008 Model year Jaguar XK
1981–1996 Model Year Jaguar XJS
2002–2005 Model Year Land Rover Freelander
2008 Model Year Land Rover LR2
1993–1997 Model Year Land Rover Defender
1994–1999 Model Year Land Rover Discovery Series I
1999–2004 Model Year Land Rover Discovery Series II
2005–2008 Model Year Land Rover LR3
1987–2008 Model Year Land Rover Range Rover
2006–2008 Model Year Land Rover Range Rover Sport

Paragraphs S4.1(k) and S4.1(l) of FMVSS No. 209 require:

(k) Installation instructions. A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, ''Motor Vehicle Seat Belt Installations,'' November 1973. If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., ''front right''] in [insert specific vehicle make(s) and model(s)].

(l) Usage and maintenance instructions. A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened. Instructions for a nonlocking retractor shall include a caution that the webbing must be fully extended from the retractor during use of the seat belt assembly unless the retractor is attached to the free end of webbing which is not subjected to any tension during restraint of an occupant by the assembly. Instructions for Type 2a shoulder belt shall include a warning that the shoulder belt is not to be used without a lap belt.

Ford explains that the subject seat belt assemblies were sold in the United States and federalized territories without the installation, usage, and maintenance instructions required by paragraphs in S4.1(k) and S4.1(1) of FMVSS 209.

Ford makes the argument that the service seat belt assemblies in question are only made available to Jaguar and Land Rover authorized dealerships for their use or subsequent resale and that the Jaguar and Land Rover parts ordering process used by its dealers clearly identifies the correct service part required by model year, model, and seating position. By way of example, Ford further explains that an order for a driver's-side front buckle assembly for a 2002 model year Range Rover would be filled by the components specifically designed to be installed in that particular position in that specific vehicle. Furthermore, Ford states that Jaguar's and Land Rover's service seat belt assemblies are designed to be installed properly only in their intended application.

Ford additionally states that technicians at Jaguar and Land Rover dealerships that replace seat belts have access to the installation instruction information available in workshop manuals. Installers other than Jaguar and Land Rover dealership technicians also have seat belt installation information available because most workshop manual information, including seat belt replacement information, is made available to the general public on the Jaguar and Land Rover Global Technical Reference (GTR) Web sites.

Ford additionally argues that a significant portion of paragraph S4.1(k) appears to address a concern with proper installation of aftermarket seat belts into vehicles that were not originally equipped with these restraints. Ford also notes that SAE J800c which is cited in the regulation involves installation of ''universal type seat belt assemblies,'' particularly where no seat belt had previously been installed, and that these concerns do not apply to the service seat belts. The vehicles involved in this petition have uniquely designed seat belt components and replacement seat belt assemblies are installed into the identical location from which the original parts were removed.

Ford also states that proper seat belt usage instructions are clearly explained in the Owner Handbook that is included with each new vehicle. Information concerning maintenance, periodic inspection for wear and function of the seat belts, as well as for their proper usage is included in the vehicle Owner Handbook and this information equally applies to replacement seat belt assemblies. Many Jaguar and Land Rover Owner Handbooks are also available to the public, free of charge on the Jaguar and Land Rover (GTR) Web sites.

Ford is not aware of any customer or field reports of service seat belt assemblies being incorrectly installed in the subject applications as a result of installation instructions not accompanying the service part. Ford also is not aware of any reports requesting installation instructions.

Ford also informed NHTSA that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, Ford states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. *Electronically:* By logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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.). DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

You may view documents submitted to a docket at the address and times given above. You may also view the documents on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets available at that Web site.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 13, 2008.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: May 8, 2008.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E8–10730 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2008–0094]

Notice of Receipt of Petition for Decision That Nonconforming 1988–1994 ALPINA Burkard Bovensiepen GmbH B12 5.0 Model Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1988–1994 ALPINA Burkard Bovensiepen GmbH (ALPINA) B12 5.0 model passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1988–1994 ALPINA B12 5.0 model passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATE: The closing date for comments on the petition is June 13, 2008.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that

two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

How to Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov*.

Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, and has no substantially similar U.S.-certified counterpart, shall be refused admission into the United States unless NHTSA has decided that the motor vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

101 Innovations, LLC, of Ferndale, Washington (101 Innovations)(Registered Importer 07–350) has petitioned NHTSA to decide whether nonconforming 1988–1994 ALPINA B12 5.0 model passenger cars are eligible for importation into the United States. 101 Innovations believes that these vehicles are capable of being modified to meet all applicable FMVSS.

In its petition, 101 Innovations stated its belief that nonconforming 1988–1994 ALPINA B12 5.0 model passenger cars are substantially similar to both the U.S. version 1988–1994 BMW 7-series (e32) passenger cars and the nonconforming 1988–1994 BMW 7-series (e32) passenger cars that are eligible for importation by Registered Importers under vehicle eligibility number VSP–299 and VSA–28. 101 Innovations explained that the subject 1988–1994 ALPINA B12 5.0 model passenger cars were originally manufactured by BMW as 7-series (e32) passenger cars and were subsequently altered by ALPINA Burkard Bovensiepen GmbH. 101 Innovations additionally explained that ALPINA Burkard Bovensiepen GmbH assigned new VINs to the altered vehicles prior to the vehicles being sold as ALPINA brand vehicles in Europe and other regions outside of the United States. While there may be similarities between the 1988–1994 ALPINA B12 5.0 model passenger cars and the 1988–1994 BMW 7-series (e32) passenger cars that BMW has manufactured for importation into and sale in the United States, NHTSA has decided that due to the vehicle and VIN alterations, the 1988–1994 ALPINA B12 5.0 model passenger cars cannot be regarded as substantially similar to 1988–1994 BMW 7-series (e32) passenger cars for the purpose of establishing import eligibility under section 30141(a)(1)(A). Therefore, we will construe 101 Innovation's petition as a petition pursuant to 49 U.S.C. 30141(a)(1)(B), seeking to establish import eligibility for the 1988–1994 ALPINA B12 5.0 model passenger cars on the basis that they have safety features that comply with, or are capable of being modified to comply with, the FMVSS based on destructive test data or such other evidence that NHTSA decides to be adequate.

101 Innovations submitted information with its petition intended to demonstrate that non-U.S. certified 1988–1994 ALPINA B12 5.0 model passenger cars conform to many FMVSS and are capable of being altered to comply with all other standards to which they were not originally manufactured to conform.

Specifically, the petitioner claims, based on a comparison with the U.S. certified 1988–1994 BMW 7-series (e32) passenger cars, that non-U.S. certified 1988–1994 ALPINA B12 5.0 model passenger cars, as originally manufactured, conform to: Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hub Caps*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Installation of U.S.-model instrument cluster and U.S.-version software.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: Installation of U.S.-model: (a) Headlamps; (b) front and rear side marker lamps; and (c) rear high mounted stop lamp and associated wiring.

Standard No. 110 *Tire Selection and Rims*: Installation on the vehicle of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection*: Installation of U.S.-version software and a U.S.-model ignition switch to meet the requirements of this standard.

Standard No. 115 *Vehicle Identification:* Installation of a vehicle identification plate near the left

windshield post to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems*: Inspection of all vehicles and modification or deactivation of any remote activation features that cause the system not to conform to the standard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of U.S.-model knee bolsters; and (b) inspection of all vehicles and replacement of any non U.S.-model air bag system components, including all warning systems, warning labels and telltales, with U.S.-model components on vehicles not already so equipped.

Standard No. 209 *Seat Belt Assemblies*: Inspection of all vehicles and replacement of any non U.S.-model seat belt components on vehicles not already so equipped.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 8, 2008.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E8–10729 Filed 5–13–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35125]

Dakota, Minnesota & Eastern Railroad Corporation—Acquisition Exemption—Line of BNSF Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 10902 for Dakota, Minnesota & Eastern Railroad Corporation to acquire from BNSF Railway Company an approximately 3.5-mile rail line, known as the Yale Extension, extending from milepost 145.0 to milepost 148.5 in Yale, SD. The exemption is subject to employee protective conditions.

DATES: The exemption will be effective on June 13, 2008. Petitions to stay must be filed by May 29, 2008. Petitions to reopen must be filed by June 9, 2008.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35125, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative: William C. Sippel, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 8, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–10833 Filed 5–13–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 7, 2008.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 13, 2008 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0731.

Type of Review: Extension.

Title: PS–262–82 (Final) Definition of an S Corporation.

Description: The regulations provide the procedures and the statements to be filed by certain individuals for making the election under section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed would be used to verify that taxpayers are complying with requirements imposed by Congress under subchapter S.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 1,005 hours.

OMB Number: 1545–0988.

Type of Review: Extension.

Title: Form 8609, Low-Income Housing Credit Allocation Certification, Schedule A (Form 8609) Annual Statement.

Form: 8609.

Description: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to bet a credit allocation from the housing-credit agency. The form, along with Schedule A, is used by the owner to certify necessary information required by the law.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 3,329,400 hours.

OMB Number: 1545–2089.

Type of Review: Extension.

Title: Report of Employer-Owned Life Insurance Contracts.

Form: 8925.

Description: IRC 6039I requires every policyholder of employer-owned life insurance contracts to file a return showing the number of contracts owned, the total number of employees at the end of the year, the number of such employees insured, and that the policyholder has a valid consent for each insured employee. Form 8925 is used to report this information.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 71,360 hours.

OMB Number: 1545–1570.

Type of Review: Extension.

Title: REG–120168–97 (Final) Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility.

Description: Income tax return preparers who satisfy the due diligence requirements in this regulation will avoid the imposition of the penalty under section 6695(g) of the Internal Revenue Code for returns or claims for refund due after December 31, 1997. The due diligence requirements include soliciting the information necessary to

determine a taxpayer's eligibility for, and amount of, the Earned Income Tax Credit, and the retention of this information.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 507,136 hours.

OMB Number: 1545–2086.

Type of Review: Extension.

Title: Notice 2007–100, Transition Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to comply with § 409A(a) in Operation.

Description: This Notice sets forth the procedures to be followed by service recipients and service provides in order to correct certain operational failures of a nonqualified deferred compensation plan to comply with § 409A(a). It also describes the types of operational failures that can be corrected under the Notice.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 5,000 hours.

OMB Number: 1545–1914.

Type of Review: Revision.

Title: Low Sulfur Diesel Fuel Production Credit.

Form: 8896.

Description: IRC section 45H allows small business refiners a 5 cent/gallon credit for the production of low sulfur diesel fuel.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 313 hours.

OMB Number: 1545–1780.

Type of Review: Extension.

Title: TD 9052—Notice of Significant Reduction in the Rate of Future Benefit Accrual; REG–136193–01 (Final) Notice of Significant Reduction in the Rate of Future Benefit Accrual.

Form: 1065–B, Schedule K–1.

Description: In order to protect the rights of participants in qualified pension plans, plan administrators must provide notice to plan participants and other parties, if the plan is amended in a particular manner. No government agency receives this information.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 40,000 hours.

OMB Number: 1545–1672.

Type of Review: Extension.

Title: REG–142299–01 and REG–209135–88 (Final) Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

Description: The regulation applies with respect to the net built-in gain of Corporation property that becomes property of a Regulated Investment Company (RIC) or Real Estate Investment Trust (REIT) by the qualification of a Corporation as a RIC or REIT or by the transfer of property of a Corporation to a RIC or REIT in certain tax-free transactions.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 70 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8–10710 Filed 5–13–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, June 13, 2008, and Saturday, June 14, 2008.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or (718) 488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be held Friday, June 13, 2008, 8:30 a.m. to 5 p.m., and Saturday, June 14, 2008, from 8 a.m. to noon, in Atlanta, GA. You can submit written comments to the panel by faxing to (718) 488–2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201, or you can contact us at *http://www.improveirs.org.* Public comments will also be welcome during the meeting. Please contact Marisa Knispel at 1–888–912–1227 or (718) 488–3557 for additional information.

The agenda will include the following: Various VITA Issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–10696 Filed 5–13–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 0730a)]

Proposed Information Collection (Child Care Subsidy) Activity: Proposed Collection; Comment Request

AGENCY: Human Resources Management, Department of Veterans Affairs.

AGENCY: Notice.

SUMMARY: The Human Resources Management (HRM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine VA employees' eligibility to participate in VA's child care subsidy program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 14, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Katie McCullough-Bradshaw, Human Resources Management (058), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *Katie.McCullough-Bradshaw@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (VA Form 0730a)'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Katie McCullough-Bradshaw at (202) 461–7076 or FAX (202) 275–7607.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C.

3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, HRM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of HRM's functions, including whether the information will have practical utility; (2) the accuracy of HRM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Child Care Subsidy Application Form, VA Form 0730a.

b. Child Care Provider Information (For the Child Care Subsidy Program), VA Form 0730b.

OMB Control Number: 2900–New.

Type of Review: New collection.

Abstracts:

a. VA employees complete VA Form 0730a to request participation in the VA child care subsidy program. VA will use the data collected to determine the percentage of monthly costs to be subsidized for child care.

b. VA Form 0730b is completed by the child care provider. The data will be used to determine whether the child care provider is licensed and/or regulated by the state to perform child care.

Affected Public: Individuals or households and business or other for profit.

Estimated Annual Burden:

a. VA Form 0730a—667 hours.

b. VA Form 0730b—333 hours.

Estimated Average Burden per Respondent:

a. VA Form 0730a—20 minutes.

b. VA Form 0730b—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 0730a—2,000.

b. VA Form 0730b—2,000.

Dated: May 5, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10739 Filed 5–13–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0556]

Proposed Information Collection (Living Will and Durable Power of Attorney for Health Care) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information used by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to record patient's specific instructions about health care decisions in the event he or she is no longer has decision-making capability.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 14, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov.* Please refer to ''OMB Control No. 2900–0556'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Advance Directive: Living Will and Durable Power of Attorney for Health Care, VA Form 10–0137.

OMB Control Number: 2900–0556.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants admitted to a VA medical facility complete VA Form 10–0137 to appoint a health care agent to make decision about his or her medical treatment and to record specific instructions about their treatment preferences in the event they no longer can express their preferred treatment. VA's health care professionals use the data to carry out the claimant's wish.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 171,811 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 343,622.

Dated: May 5, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10740 Filed 5–13–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0108]

Proposed Information Collection (Report of Income From Property or Business) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to

publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine whether children's incomes can be excluded from consideration in determining a parent's eligibility for non-service-connected pension.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 14, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0108'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Income from Property or Business, VA Form 21–4185.

OMB Control Number: 2900–0108.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–4185 to report income and expenses that derived from rental property and/or operation of a business. VA uses the information to determine whether the claimant is eligible for VA benefits and, if eligibility exists, the proper rate of payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,700.

Dated: May 5, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10741 Filed 5–13–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0545]

Proposed Information Collection (Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine a claimant's entitlement to income based benefits and the amount payable.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 14, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0545'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death, VA Form 21–8416b.

OMB Control Number: 2900–0545.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–8416b to report compensation awarded by another entity or government agency for personal injury or death. Such award is consider as countable income; however, medical, legal or other expenses incident to the injury or death, or incident to the collection or recovery of the compensation may be deducted from the amount awarded or settled. The information collected is use to determine the claimant's eligibility for income based benefits and the rate payable.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,500.

Dated: May 5, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10744 Filed 5–13–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 4939)]

Proposed Information Collection (Complaint of Employment Discrimination) Activity: Comment Request

AGENCY: Human Resources and Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Human Resources and Administration (HRA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to process complaints of employment discrimination filed by former VA employees and applicants for employment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 14, 2008.

ADDRESSES: Submit written comments on the collection of information to Lillette Turner, Human Resources and Administration, Office of Resolution Management (08B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *lillette.turner@va.gov.* Please refer to ''OMB Control No. 2900–New (VA Form 4939)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Lillette Turner at (202) 501–2685 or FAX (202) 501–2811.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, HRA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of HRA's functions, including whether the information will have practical utility; (2) the accuracy of HRA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Complaint of Employment Discrimination, VA Form 4939.

OMB Control Number: 2900–new (VA Form 4939).

Type of Review: New collection.

Abstract: VA employees, former employees and applicants for employment who believe they were denied employment based on race, color, religion, gender, national origin age, physical or mental disability and/or reprisal for prior Equal Employment Opportunity activity complete VA Form 4939 to file complaint of discrimination.

Affected Public: Individuals or households.

Estimated Annual Burden: 162 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 324.

Dated: May 5, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10745 Filed 5–13–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (10–21087)]

Proposed Information Collection (Deployment Risk and Resilience Inventory (DRRI); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to prepare future military personnel for the challenges of being deployed overseas and how to better assist them after deployment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 14, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *mary.stout@va.gov.* Please refer to ''OMB Control No. 2900–New (10–21087)'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Deployment Risk and Resilience Inventory (DRRI), VA Form 10–21087.

OMB Control Number: 2900–New (10–21087).

Type of Review: New collection.

Abstract: The primary goal of the DRRI project is to provide a suite of scales that will be useful to researchers

and clinicians to study factors that increase or reduce risk for Post Traumatic Stress Disorder (PTSD) and other health problems that Operation Enduring Freedom/Operation Iraqi Freedom veterans experienced before, during, and after deployment.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,383.

Estimated Average Burden Per Respondent: 50 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

Dated: May 5, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–10746 Filed 5–13–08; 8:45 am]

BILLING CODE 8320–01–P



Federal Register

Wednesday,
May 14, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Status Review for Rio Grande Cutthroat Trout; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0056; 1111 FY07 MO–B2]

Endangered and Threatened Wildlife and Plants; Status Review for Rio Grande Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of candidate status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the results of the status review for the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) under the Endangered Species Act of 1973 (Act), as amended. After a thorough review of all available scientific and commercial information, we find that listing the Rio Grande cutthroat trout is warranted but precluded by higher priority actions. Upon publication of this status review, we will add the Rio Grande cutthroat trout to our list of candidate species with a listing priority number of 9, because the threats affecting it have a moderate magnitude and are imminent. We will develop a proposed rule to list the subspecies as our priorities allow. We ask the public to continue to submit to us any new information that becomes available concerning the status of or threats to the subspecies. This information will help us to monitor and encourage the ongoing conservation of this subspecies.

DATES: The finding announced in this document was made on May 14, 2008.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov.* Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, New Mexico 87113; telephone (505) 346–2525; facsimile (505) 248–6788. Please submit any new information, materials, comments, or questions concerning this finding to the above address or via electronic mail (e-mail) at *r2fwe_al@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, 2105 Osuna Road, NE., Albuquerque, New Mexico 87113. (505) 346–2525 ext 106. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition containing substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but that immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On February 25, 1998, we received a petition from Kieran Suckling, of the Southwest Center for Biological Diversity requesting that the Service add the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) to the list of threatened and endangered species. The petition addressed the range-wide distribution of the Rio Grande cutthroat trout that includes populations in Colorado and New Mexico. We subsequently published a notice of a 90-day finding in the **Federal Register** (63 FR 49062) on September 14, 1998. In the 90-day finding we concluded that the petition did not present substantial information indicating that listing of the Rio Grande cutthroat trout may be warranted.

On June 9, 1999, a complaint was filed by the Southwest Center for Biological Diversity alleging that the September 14, 1998, 90-day petition finding violated the Administrative Procedure Act. While the litigation was pending, we received information (particularly related to the presence of whirling disease in hatchery fish in the wild) that led us to believe that further review of the status of the subspecies was warranted. On November 8, 2001, a settlement agreement executed by both parties (the Service and the Southwest Center for Biological Diversity) was filed with the court. The settlement stipulated that the Service would initiate a status review for the Rio Grande cutthroat trout, make a determination on or before June 4, 2002, and shortly thereafter, publish our determination in the **Federal Register**. On June 11, 2002, we published our determination that listing of Rio Grande cutthroat trout was not warranted (67 FR 39936).

Subsequently, on February 25, 2003, the Center for Biological Diversity, along with several other organizations, sued the Service for failing to list Rio Grande cutthroat trout. On June 7, 2005, the New Mexico Federal District Court (Court) ruled that our finding was not arbitrary and capricious, but also required that we explain in more detail our analysis of ''significant portion of the range''. The Court ordered the Service to provide a supplemental briefing discussing in more detail our analysis of significant portion of the range. We submitted this briefing on July 20, 2005. On December 19, 2005, the Court ruled in favor of the Service and upheld our interpretation of significant portion of the range and determined that our evaluation of Rio Grande cutthroat trout's status under the listing criteria was not arbitrary and capricious. Plaintiffs appealed this decision.

The appeal was pending with the Tenth Circuit Court of Appeals, when other courts issued opinions for other species that required the Service to reexamine our position on significant portion of the range. On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of In Danger of Extinction Throughout All or a Significant Portion of Its Range'' (U.S. DOI 2007). Because of this new formal opinion and because of our knowledge of changes in status of some populations that we had defined as ''secure'' in our 2002 review, in consultation with the court and the plaintiffs, the Service agreed to initiate a new status review. We subsequently published a notice seeking new information concerning the status of Rio Grande cutthroat trout on May 22, 2007 (72 FR 28664).

In response to our 2007 requests for information regarding Rio Grande cutthroat trout (72 FR 28664, 72 FR 46030 (August 16, 2007)), we received comments and information from Colorado Division of Wildlife (CDOW), New Mexico Department of Game and Fish (NMDGF), U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), private citizens and organizations, and the Rio Grande Cutthroat Trout Conservation Team. The Rio Grande Cutthroat Trout

Conservation Team is composed of biologists from CDOW, NMDGF, BLM, USFS, National Park Service, the Jicarilla Apache Nation and the Service. The Rio Grande Cutthroat Trout Conservation Team recently completed a range-wide status report (Alves *et al.* 2007) concerning the Rio Grande cutthroat trout. The status report and the comprehensive database (referred to as ''2007 database'' in this finding) that is the basis for the report, along with other supplemental submissions from the agencies listed above, provide the best scientific and commercial information available on Rio Grande cutthroat trout. The report summarizes information provided by 15 fisheries professionals from Colorado and New Mexico having specific knowledge of Rio Grande cutthroat trout (Alves *et al.* 2007, p. 58). In making this finding, we considered all scientific and commercial information that we received or acquired since our previous status review. We relied primarily on published and peer-reviewed documentation for our conclusions.

Biology and Distribution

The Rio Grande cutthroat trout, one of 14 subspecies of cutthroat trout, is native to the Rio Grande, Pecos, and the Canadian river basins in New Mexico and Colorado (Behnke 2002, p. 219). Rio Grande cutthroat trout has the distinction of being the first North American trout recorded by Europeans (Behnke 2002, p. 139). In 1541, Francisco de Coronado's expedition discovered Rio Grande cutthroat trout in the upper Pecos River (Behnke 2002, p. 139). The first specimens that were collected for scientific purposes came from Ute Creek in Costilla County, Colorado, in 1853. Rio Grande cutthroat trout was originally described in 1856 (Behnke 2002, p. 210). Cutthroat trout subspecies are distinguished by the red to orange slashes in the throat folds beneath the lower jaw.

The historical distribution of Rio Grande cutthroat trout is not known with certainty. In general, it is assumed that Rio Grande cutthroat trout occupied all streams capable of supporting trout in the Rio Grande, Pecos, and Canadian basins (Alves *et al.* 2007, p. 9). The Pecos River is a tributary of the Rio Grande, so a historic connection between the two basins likely existed. Although no early museum specimens document its occurrence in the headwaters of the Canadian River, it is almost certainly native there as well (Behnke 2002, p. 208). The Canadian River, tributary to the Mississippi River, has no connection with the Rio Grande. It is possible that through headwater capture (a tributary from one watershed joins with a tributary from another) there may have been natural migration of fish between the Pecos and Canadian headwater streams. There is evidence that Rio Grande cutthroat trout may have occurred in Texas (Garrett and Matlock 1991, p. 405; Behnke 1967, pp. 5, 6) and Mexico (Behnke 1967, p. 4). Currently, the southernmost distribution of Rio Grande cutthroat trout occurs in Animas Creek, Sierra County, New Mexico, and Indian Creek on the Mescalero Apache Indian Reservation in Otero County, New Mexico. Distribution in the southern portion of the range is currently limited and no conservation populations (see discussion of conservation populations below) exist south of Santa Fe, New Mexico.

In the range-wide status report, historically occupied habitat was based on habitat believed to be inhabited by Rio Grande cutthroat trout when early European explorers entered the Southern Rocky Mountain Region of Colorado and New Mexico (circa 1800) (Alves *et al.* 2007, p. 9). In general, streams currently capable of supporting trout (elevations of 1,829 meters (m) (6,000 feet (ft)) and above; 1,671 m (5,500 ft) and above on north-facing slopes) were assumed to have been historically occupied if they were not above a barrier to fish movement (*e.g.*, an impassable waterfall). Streams which cannot currently support trout were assumed not to have been historically occupied unless they were known to have been degraded by such things as water withdrawals, channel alterations, human-caused barriers, or chemical contamination. Based on these criteria, 10,622 kilometers (km) (6,660 miles (mi)) of stream habitat were identified as having the potential of being historically occupied by Rio Grande cutthroat trout (Alves *et al.* 2007, p. 9). The estimated amount of historical range in each State is about 5,196 km (3,229 mi) in Colorado (48 percent), and 5,521 km (3,431 mi) (52 percent) in New Mexico (Alves *et al.* 2007, p. 9).

To facilitate management and conservation efforts, the Rio Grande cutthroat trout range is divided into Geographic Management Units (GMUs) based on watersheds (Alves *et al.* 2007, p. 2). The GMUs are, from north to south, Rio Grande headwaters, Lower Rio Grande, Canadian, Pecos, and Caballo. Historical occupancy by GMU is 5,277 km (3,279 mi) (49 percent) in Rio Grande Headwaters, 3,396 km (2,110 mi) (32 percent) in Lower Rio Grande, 1,027 km (638 mi) (10 percent) in the Canadian, 1,003 km (623 mi) (9 percent) in Pecos, and 16 km (10 mi) (0.2 percent) in Caballo (Alves *et al.* 2007, p. 9).

In our prior status review (67 FR 39936; June 11, 2002), we focused our analysis primarily on ''core'' populations, which we defined using conservative criteria for genetic integrity, population stability, and security from invasion by nonnative salmonids (trout and salmon). The genetic criterion for these core populations was that the populations have less than one percent representation of genetic markers from another subspecies of cutthroat trout or from rainbow trout (*Oncorhynchus mykiss*), as determined by genetic testing. Rio Grande cutthroat trout are able to interbreed, or hybridize, with other subspecies of cutthroat trout and rainbow trout. This hybridization may result in genes of one species or subspecies being incorporated into the other species or subspecies. The incorporation of genes from one species into another is referred to by the technical term ''introgression'' (Mayr 1970) and a species that has received such genes is referred to as ''introgressed.'' To simplify discussion in this review, we will also use these terms when describing when genetic markers of another subspecies are found in Rio Grande cutthroat trout, although we recognize that these terms, as strictly defined, refer to species.

Our previous status review concluded that the core populations, as then defined by conservative criteria, were sufficiently abundant, distributed, and secure to conclude that listing of the Rio Grande cutthroat trout was not warranted. As described later in this review, the status of several of the original core populations has subsequently declined and we believe those populations alone are not sufficient to conserve the Rio Grande cutthroat trout.

For the current review, the genetic criterion for core populations is that they be less than one percent introgressed, which is the same genetic criterion for core populations followed in the previous review. Although population stability and security from invasion are not used to define core populations, as they were in the previous review, those factors are still addressed as attributes affecting the status of core and other populations. Core populations in the current review correspond to the core populations described in the multi-state position paper for cutthroat management (Utah Division of Wildlife Resources (UDWR) 2000, pp. 3, 4). In addition to these core populations, we focused our review on ''conservation populations'' as defined

by the position paper (UDWR 2000): populations less than 10 percent introgressed, as measured by genetic markers, and that retain the ecological, behavioral, and phenotypic characteristics of Rio Grande cutthroat trout. In addition, we have included as conservation populations those populations which have not been genetically tested, but that retain the ecological, behavioral, and phenotypic characteristics of Rio Grande cutthroat trout and are not suspected to be introgressed or co-occurring with hybridizing species.

The above criteria for core and conservation populations have been applied in Service status reviews of other subspecies of cutthroat trout published since 2002 (71 FR 8818; 72 FR 32589). The status review (68 FR 46989; August 7, 2003) for the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) included populations with up to 20 percent introgression, based on several studies of genetic markers and morphological traits of introgressed populations that indicate that populations with up to 20 percent of their nuclear genes derived from rainbow trout were morphologically indistinguishable from nonintrogressed westslope cutthroat trout populations. Comparable studies, where genetic and morphological characters in the same population are studied, have not been performed on Rio Grande cutthroat trout; therefore, we have no justification for departing from the general criterion of less than 10 percent introgression proposed in the position paper on cutthroat trout genetics (UDWR 2000).

In the remainder of this review, we collectively refer to both core and conservation populations, as defined above, as conservation populations.

Inclusion of conservation populations with up to 10 percent introgression in the present review does not mean we are any less concerned about the effects of introgression on Rio Grande cutthroat trout. Our evaluation of introgression as a threat to the Rio Grande cutthroat trout will be described along with other applicable threats later in this review.

Alves *et al.* (2007, p. 26) report that 120 conservation populations of Rio Grande cutthroat trout currently occupy about 1110 km (690 mi) of habitat, or 10.4 percent of the historical range of the subspecies. The 120 conservation populations include 12 populations that have not been tested for introgression and are suspected to be hybridized and one population that to date has tested as nonintrogressed but in which rainbow trout, a hybridizing species, co-occurs (Alves *et al.* 2007, p. 34; 2007 data base). An additional two streams (Placer Creek and Comanche Creek) included in the 120 are undergoing restoration and are currently unoccupied by Rio Grande cutthroat trout. Although we fully expect these two streams will become conservation populations within the next five years, they are not occupied by viable populations currently. Although we included in our analysis untested populations that are suspected to be nonintrogressed as conservation populations, we do not feel it is appropriate to include untested populations that are suspected to be introgressed or that co-occur with hybridizing species. Alves *et al.* (2007) provided all summary statistics (*e.g.*, percent populations with nonnative trout, percent historical habitat occupied, number of populations in each state) for 120 conservation populations. Although the inclusion of these populations in Alves *et al.* (2007) inflates the number of conservation populations and miles of stream occupied by Rio Grande cutthroat trout, their inclusion does not make a material difference in the outcome of our finding. Therefore, we have decided to present all summary statistics as presented in Alves *et al.* (2007) rather than recalculate the summary statistics to reflect the 105 populations we would classify as conservation populations.

Rio Grande cutthroat trout conservation populations currently occupy about 473 km (294 mi) in Colorado (9.1 percent of Colorado historical habitat) and 637 km (396 mi) in New Mexico (11.6 percent of historical habitat) (Alves *et al.* 2007, p. 26). The Lower Rio Grande GMU contains the largest amount of occupied habitat (489 km (304.1 mi)), followed by the Rio Grande Headwaters GMU (452 km (281.4 mi)), Canadian GMU (109 km (67.5 mi)), and Pecos GMU (60 km (37.3 mi)) (Alves *et al.* 2007, p. 26). The Caballo GMU contains a hybridized population of cutthroat trout that was not included as a conservation population. Rio Grande cutthroat trout occupy habitat in 14 of 19 watersheds that supported historical habitat. They are believed to be extirpated from the following watersheds: Arroyo Del Macho, Caballo, Upper Canadian, Rio Hondo, and Rio Penasco (Alves *et al.* 2007, p. 11). If Rio Grande cutthroat trout once occurred in Texas and Mexico, there is no evidence that they occur there now.

Life History

As is true of other subspecies of cutthroat trout, Rio Grande cutthroat trout is found in clear cold streams. Unlike some subspecies of cutthroat trout, such as the Bonneville (*Oncorhynchus clarki utah*) and Yellowstone (*Oncorhynchus clarki bouvieri*), Rio Grande cutthroat trout did not originally inhabit large lake systems. However, they have been introduced into coldwater lakes and reservoirs. They spawn as high water flows from snowmelt recede. In New Mexico, this typically occurs from the middle of May to the middle of June (NMDGF 2002, p. 17). Spawning is believed to be tied to day length, water temperature, and runoff (Sublette *et al.* 1990, p. 54; Behnke 2002, p. 141).

It is unknown if Rio Grande cutthroat trout spawn every year or if some portion of the population spawns every other year as has been recorded for westslope cutthroat trout (McIntyre and Rieman 1995, p. 1). Likewise, while it is assumed that females mature at age 3, they may not spawn until age 4 or 5 as seen in westslope cutthroat trout (McIntyre and Rieman 1995, p. 3). Sex ratio also is unknown with certainty, but based on field data, a ratio skewed towards more females might be expected (Pritchard and Cowley 2006, p. 27). Although Yellowstone (Gresswell 1995, p. 36), Bonneville (Shrank and Rahel 2004, p. 1532), and westslope (Bjornn and Mallet 1964, p. 73; McIntyre and Rieman 1995, p. 3) cutthroat trout subspecies are known to have a migratory life history phase, it is not known if Rio Grande cutthroat trout once had a migratory form when there was connectivity among watersheds.

Most cutthroat trout are opportunistic feeders, eating both aquatic invertebrates and terrestrial insects that fall into the water (Sublette *et al.* 1990, p. 54). Rio Grande cutthroat trout evolved with Rio Grande chub (*Gila pandora*), longnose dace (*Rhinichthys cataractae*) (all basins); Rio Grande sucker (*Catastomus plebius*) (Rio Grande Basin); white sucker (*C. commersoni*) and creek chub (*Semotilus atromaculatus*) (Pecos and Canadian Basins); and the southern redbelly dace (*Phoxinus erythrogaster*) (Canadian River Basin) (Rinne 1995, p. 24). Many of these fish have either been extirpated from streams with Rio Grande cutthroat trout or are greatly reduced in number (Sublette *et al.* 1990, p. 162; Calamusso and Rinne 1999, pp. 233–236). It is not known if they once were an important component of Rio Grande cutthroat trout diet. Other subspecies of cutthroat trout become more piscivorous (fish eating) as they mature (Moyle 1976, p. 139; Sublette *et al.* 1990, p. 54) and cutthroat trout living in lakes will prey heavily on other species of fish (Echo 1954, p. 244). It is possible that native cyprinids (i.e., chubs, minnows, and dace) and suckers may have once been

important prey items for Rio Grande cutthroat trout. Growth of cutthroat trout varies with water temperature and availability of food. Most populations of Rio Grande cutthroat trout are found in high elevation streams. Under these conditions growth may be relatively slow and time to maturity may take longer than is seen in subspecies that inhabit lower elevation (warmer) streams.

Typical of trout, Rio Grande cutthroat trout require several types of habitat for survival: spawning habitat, nursery or rearing habitat, adult habitat, and refugial habitat. Spawning habitat consists of clean gravel (little or no fine sediment present) that ranges between 6 to 40 millimeters (mm) (0.24–1.6 inches (in)) (NMDGF 2002, p. 17). Nursery habitat is usually at the stream margins where water velocity is low and water temperature is slightly warmer. Harig and Fausch (2002, pp. 542, 543) found that water temperature may play a critical role in the life history of the young-of-year cutthroat. Streams with mean daily temperature in July of less than 7.8 °C (46 °F) may not have successful recruitment (survival of individuals to sexual maturity and joining the reproductive population) or reproduction in most years. Adult habitat consists of pools with cover and riffles for food production and foraging. Refugial habitat in the form of large deep pools is also necessary for survival. The primary form of refugial habitat is deep pools that do not freeze in the winter and do not dry in the summer or during periods of drought. Lack of large pools may be a limiting factor in headwater streams (Harig and Fausch 2002, p. 543). Refugial habitat may also be a downstream reach of stream or a connected adjacent stream that has maintained suitable habitat in spite of adverse conditions.

A technical review of Rio Grande cutthroat trout was recently completed (Pritchard and Cowley 2006) which covers the biology of the subspecies in greater detail and the reader is referred to that document for additional background information on the subspecies.

Summary of Factors Affecting the Subspecies

Section 4 of the Act and regulations (50 CFR 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list of endangered or threatened species. A species may be determined to be threatened or endangered due to one or more of the five factors described in section 4(a)(1) of the Act. The following analysis examines the listing factors and their application to Rio Grande cutthroat trout.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Population Isolation and Fragmentation

The historic range of Rio Grande cutthroat trout has been greatly reduced over the last 150 years. Populations have been lost because of water diversions, stream drying, dams, habitat degradation, changes in hydrology, hybridization with rainbow trout, or competition with brown (*Salmo trutta*) and brook trout (*Salvelinus fontinalis*) (Pritchard and Cowley 2006, pp. 16, 34–37; 67 FR 39939). Quantifying the exact magnitude of loss in either number of fish or habitat is difficult because there are no baseline data. Alves *et al.* (2007, p. 26) estimate that conservation populations occupy about 10 percent of historically inhabited stream miles. Also, the current distribution of occupied miles on the landscape differs from the historical distribution. The range has contracted northward, Rio Grande cutthroat trout are now restricted primarily to headwater streams, and the large connected networks that once linked hundreds of stream miles together no longer exist. The change in distribution is discussed briefly followed by a discussion of fragmentation which has modified and curtailed habitat.

Historically, 43 percent of Rio Grande cutthroat trout populations occupied streams 2,438 m (8,000 ft) or less in elevation (Alves *et al.* 2007, p. 18). Currently, only about 1.6 percent of the populations are in streams less than 2,438 m (8,000 ft) (Alves *et al.* 2007, p. 18). Conservation populations, as defined above, are now concentrated in elevations from 2,743–3048 m (9,000–10,000 ft) (Alves *et al.* 2007, p. 18). High-elevation streams (above 2,743 m (9,000 ft)) are subject to extreme and fluctuating environmental conditions including forest fires, freezing, and dewatering (Novinger and Rahel 2003, p. 779). In addition, headwater mountain streams often lack critical resources such as deep pools (Harig and Fausch 2002, p. 546) and provide insufficient refuge from catastrophic disturbance (Pritchard and Cowley 2006, p. 17). Because high-elevation headwater streams are narrow and small compared to the larger downstream reaches that Rio Grande cutthroat trout once occupied, the absolute loss of habitat in both quantity and quality is greater than stream miles might indicate.

Historically, many watersheds supporting Rio Grande cutthroat trout contained streams that were connected. For example, in Colorado, the Trinchera, Conejos, Culebra, Costilla, and Alamosa rivers would all have been connected through the upper Rio Grande, forming a vast network of streams (Alves *et al.* 2007, p. 10). As a consequence of habitat loss, each of these watersheds is now isolated from the other and Rio Grande cutthroat trout are restricted to fragments of streams (Alves *et al.* 2007, pp. 12, 29). Of the 120 conservation populations, 112 (representing 80 percent of occupied miles) are in isolated stream fragments (Alves *et al.* 2007, p. 29). No populations are considered to have strong connectivity (i.e., ≥ 5 connected streams with open migration corridors) (Alves *et al.* 2007, pp. 29, 77). One population has a moderate degree of connectivity (4 to 5 connected streams); however, this watershed (Comanche Creek) is currently under restoration and has very few fish present. Seven populations have very little connectivity (2–3 connected streams, infrequent straying of adults may occur) (Alves *et al.* 2007, pp. 29, 77). Because Rio Grande cutthroat trout habitat is severely fragmented and because the effects of fragmentation are considered one of the primary threats to Rio Grande cutthroat trout populations, the consequences of fragmentation are discussed in detail below.

Habitat fragmentation reduces the total area of habitat available, reduces habitat complexity, and prevents gene flow (Saunders *et al.* 1991, p. 25; Rieman and McIntyre 1995, p. 293; Burkey 1995, pp. 527, 528; Dunham *et al.* 1997, pp. 1126, 1127; Frankham *et al.* 2002, p. 310; Noss *et al.* 2006, p. 219). Fragmentation accelerates extinction, especially when movement of fish among fragments is not possible, as is the case with Rio Grande cutthroat trout (Burkey 1995, p. 540; Frankham *et al.* 2002, p. 314). Isolated populations are vulnerable to extinction through demographic stochasticity (random changes in the population structure, e.g., uneven male/female ratios); environmental stochasticity (random changes in the fishes' surroundings) and catastrophes (e.g., fires, stream drying, freezing); loss of genetic heterozygosity (genetic diversity) and rare alleles (inherited forms of a genetic trait); and human disturbance (Shaffer 1987, p. 71; Rieman *et al.* 1993, pp. 9–15; Burkey 1995, pp. 527, 528; Dunham *et al.* 1997, p. 1130; Frankham *et al.* 2002, pp. 310–324). Completely isolated fragments are the most severe form of fragmentation

because the isolation prevents fish from mating with other fish carrying different genes, thereby preventing new genes from entering the isolated population (Frankham *et al.* 2002, p. 314). Of 120 Rio Grande cutthroat trout conservation populations, 112 (93 percent, 80 percent of occupied miles) exist as isolated segments or have very little connectivity (Alves *et al.* 2007, p. 29).

Apart from the isolation (lack of gene flow) that fragmentation causes, the short length of the fragments and small population size that they support are also of concern for Rio Grande cutthroat trout. Seventy-one percent of Rio Grande cutthroat trout conservation populations occupy stream segments of 8.1 km (5 mi) or less (median 6.2 km (4.2 mi)) (Alves *et al.* 2007, p. 26). Several researchers have found that population viability of cutthroat trout is correlated with stream length (Hilderbrand and Kershner 2000, p. 515; Young *et al.* 2005, p. 2405; Cowley 2007, DOI: 10.1002/aqc.845). Stream length is important because trout need a variety of habitats to complete their life cycle (i.e., spawning habitat, rearing habitat, adult habitat, refugial habitat) (Rieman and McIntyre 1995, p. 293; Horan *et al.* 2000, p. 1251; Harig and Fausch 2002, p. 546; Young *et al.* 2005, p. 2406). The shorter the stream, the more likely it is that one or more of the Rio Grande cutthroat trout's required habitats is either missing, or inadequate for completion of the species life cycle (Hilderbrand and Kershner 2000, p. 513). This is particularly true in high-elevation streams which are narrower and shallower than larger, lower elevation, streams. The longer a stream is, the more complexity it encompasses and the higher the probability that no particular habitat type limits the population.

Hilderbrand and Kershner (2000, p. 515) estimated 8.3 km (5.1 mi) were required to maintain a population of 2,500 cutthroat trout when fish abundance was high (0.3 fish/m (0.09 fish/ft)). Adding a 10 percent loss rate, to account for emigration and mortality, increased the length up to 9.3 km (5.8 mi) in order to maintain 2,500 fish. For abundances of 0.2 fish/m (0.06 fish/ft) and 0.1 fish/m (0.03 fish/ft), the corresponding length increased to 12.5 km (7.8 mi) and 25 km (15.5 mi), respectively (assuming no losses) (Hilderbrand and Kershner 2000, p. 15). Young *et al.* (2005, p. 2405) found that to maintain a population of 2,500 cutthroat trout, 8.8 km (5.5 mi) of stream were needed. Cowley (2007 DOI: 10.1002/aqc.845) determined that in stream widths of approximately 2 m (6.6 ft) (average width of most Rio Grande cutthroat trout streams), a stream length of 11 km (6.8 mi) would be needed to support a population of 2,750 fish. Because the majority (71 percent) of Rio Grande cutthroat trout conservation populations occur in short stream fragments of 8.1 km (5 mi) or less, these studies indicate that stream fragmentation (resulting in short stream lengths) pose a threat to Rio Grande cutthroat trout conservation populations.

Longer streams support larger populations (Harig and Fausch 2002, p. 546; Young *et al.* 2005, p. 2405). Population size is a major determinant of species persistence (Reed *et al.* 2003, p. 23). Population persistence decreases as population size decreases (Rieman and McIntyre 1993, p. 15). Long-term persistence of a population depends on having a sufficient number of individuals to avoid inbreeding depression, which decreases population viability, and to maintain genetic variation (Franklin 1980, pp. 135–148; Frankham *et al.* 2002, pp. 190–192; Reed 2005, pp. 563, 564). Genetic variability within a population is necessary for adaptability (Reed 2005, p. 564; Cowley 2007 DOI: 10.1002/aqc.845). Genetic variation will be lost through time in isolated populations and the loss occurs more quickly in small populations than in large populations (Rieman and Allendorf 2001, p. 761). When a population is greatly reduced in size (bottlenecked), genetic diversity is decreased (Frankham *et al.* 2002, p. 183)

In our previous status review (67 FR 39938), we concluded that a population size of 2,500 fish would ensure long-term persistence of Rio Grande cutthroat trout, i.e., would reduce the risks associated with small population size alone. Since that time other peer-reviewed literature has been published that allows us to further evaluate this number. Reed *et al.* (2003, p. 30), in a review of 102 vertebrate species, estimate that sufficient habitat should be present to allow for approximately 7,000 breeding age adults in order to ensure long-term species persistence. Cowley (2007 DOI: 10.1002/aqc.845) found that a population size of 2,500 Rio Grande cutthroat trout failed to meet the desired long-term effective population size (number of adults actually contributing offspring to the population) of at least 500. A minimum population size of 2,750 was sufficient if there was infrequent loss of year classes (all the individuals of a population of fishes born or hatched in the same year). He found that a larger population size was required as survival rate of young fish (one year or less) decreased. He concluded that managing for Rio Grande cutthroat trout population sizes in the range of 8,000 to 16,000 would be more likely to ensure population viability when there are low to intermediate survival rates of young fish. While any population number we might use to assess the status of the subspecies is unlikely to satisfy all interested parties, we believe 2,500 continues to be a reasonable standard by which to evaluate the populations. While the range of acceptable standards may range from 2,500 to 16,000, there is relative certainty that populations below 2,500 are likely at risk and may not be contributing to long-term persistence of the subspecies.

In 2007, fifteen of the 120 conservation populations had 2,500–7,000 Rio Grande cutthroat trout. The 120 conservation populations occur in 161 individual streams. Several conservation populations occupy multiple individual stream segments that are connected, thus the numbers of occupied streams segments is larger than the total number of conservation populations. Of those 161 individual streams, a minimum of 53 contain populations of under 500 reproducing adult fish. Because population estimates are unavailable for 38 streams, and most of the 38 are short segments (2007 database), the total number of populations with fewer than 500 reproducing adult fish is much likely greater than 53. Of the 99 conservation populations with quantitative estimates, 19 have an abundance of 0–0.03 fish/m (0–50 fish/mi) and 31 have an abundance of 0.03–0.09 fish/m (50–150 fish/mi). These low abundances indicate that on average, Rio Grande cutthroat trout need longer, rather than shorter, stream segments to ensure their long-term persistence because longer streams support larger numbers of fish (Hilderbrand and Kershner 2000, p. 515).

In 2002, we identified 13 Rio Grande cutthroat trout populations as secure (67 FR 39940). All 13 had populations over 2,500, contained no nonnative trout, and were protected from invasion by nonnative fish by a barrier. By 2007, 5 of these populations had fewer than 1,000 fish and 3 others had fewer than 2,000. One of the populations (approximately 13,000 fish in 2002) is thought to have been extirpated by low water effects (the stream either dried or froze). Brown trout were discovered above the barrier on one of the streams. The status of only 5 populations remained unchanged between 2002 and 2007.

A ''general health assessment'' was used by Alves *et al.* (2007, pp. 41–43)

to look at the health of individual populations. Sixty-eight populations (798 km (496 mi)) were judged to have a moderately high degree of health, 50 (264 km (164 mi)) moderately low, and 1 (3.2 km (2 mi)) ranked as having low health (Alves *et al.* 2007, p. 42). Four factors were considered in the assessment: isolation, temporal variability (a measure of variability in the physical environment which correlates with stream length), population size, and population production (a composite score based on habitat condition, presence of nonnatives, and disease) (Alves *et al.* 2007, pp. 82, 83, 89). These factors were weighted in the following order: isolation (0.5), stream length (0.7), population size (1.2), and population production (1.6). The first 3 factors have a range of 1 to 4, while the last, population production, has a range of 2 to 8 (Alves *et al.* 2007, p. 89), effectively doubling its importance beyond the greater weighting (1.6) assigned to it. Rationale for the weighting scheme is not provided. Many scoring systems could be devised to determine population health and it is unclear why isolation and stream length, two factors that have been discussed extensively in conservation biology and cutthroat trout conservation literature (e.g., Saunders *et al.* 1991, pp. 18–26; Dunham *et al.* 1997, p. 1130; Hilderbrand and Kershner 2000, p. 513; Frankham *et al.* 2002, Chapter 13; Young *et al.* 2005, p. 2405; Noss *et al.* 2006, Chapter 7) were assigned the lowest weights. This rating system is heavily biased towards production and does not provide a balanced assessment of population health. However, even with this unbalanced health assessment, only one stream ranked as having high health, Comanche Creek. A major restoration of Comanche Creek began in 2007, and while we fully expect it to be restocked with nonintrogressed Rio Grande cutthroat trout in the future, it has no Rio Grande cutthroat trout currently.

It has been argued that small, isolated populations have persisted for decades (Patten and Sloane 2007, p. 3). However, Rio Grande cutthroat trout populations have only been monitored and intensively managed during the last 50 years or less, and habitat conditions and stressors are very different from historic conditions. Consequently, long-term persistence cannot be appropriately assessed. In addition, as Hilderbrand and Kershner state (2000, p. 517), although some isolated populations may have persisted for centuries, these populations are probably exceptions. To assume all isolated populations will behave similarly may lead to insufficient protection (Hilderbrand and Kershner 2000, p. 517).

Based on the arguments presented above, we determined that stream length, population size, and absence of nonnative trout are the most important criteria by which to evaluate long-term population persistence. We have evaluated the status of Rio Grande cutthroat trout conservation populations primarily on stream length (9.6 km (6 mi) or greater), population size (more than 2,500 fish), and presence or absence of nonnative fish (Tables 1 and 2). All streams with a length of over 9.6 km (6 mi) were initially evaluated. Stream miles in Tables 1 and 2 include all miles in the conservation population when more than one stream is connected. Habitat condition and presence of a barrier are also presented in Tables 1 and 2 because these factors are also considered important in evaluating the status of the populations. Eight streams (4 in Colorado, 3 in New Mexico, one shared) currently have over 2,500 fish, are 9.6 km (6 mi) or longer, and have no nonnative fish present (Table 1). In addition, the main stem of these streams is greater than 1.5 m (5 ft) (although tributaries to the main stem may be less than this width) and all have abundances of 151 fish per mile or greater. Five of the streams, Cross, Medano, San Francisco, Canones, and El Rito creeks, were identified as secure in 2002. Although these eight streams meet the criteria, some have characteristics that are less than optimal (Table 1). For instance, habitat quality in Cross and Canones creeks is judged as ''Fair.'' In Canones Creek, the percentage of pools (9 percent) is low and it was found to be at risk by Santa Fe National Forest temperature standards (Ferrell 2006) (discussed in more detail in the ''Climate Change'' section below).

TABLE 1.—RIO GRANDE CONSERVATION POPULATIONS WITH UNALTERED (< 1%) GENETIC STATUS OCCURRING IN STREAM LENGTHS GREATER THAN 9.6 KM (6 MI), WITH GREATER THAN 2,500 FISH, AND NO NONNATIVE TROUT PRESENT

	Population size	Length in km (mi)	Habitat condition	Ownership	State	Barrier
San Francisco Creek	3,820	23.5 (14.6)	Excellent	USFS, Private	CO	Water diversion.
Torcido Creek	6,042	16.7 (10.4)	Good	Private	CO	Drying.
Medano Creek	5,795	33.6 (20.9)	Excellent	NPS, USFS	CO	None.
Cross Creek	3,675	12.9 (8.0)	Fair	BLM, USFS, Private	CO	None.
Costilla Creek	5,200	21.1 (13.1)	Excellent	Private	NM, CO	Temporary/Manmade.
Alamitos Creek	3,080	11.4 (7.1)	Good	USFS	NM	Partial/Water diversion.
El Rito Creek	4,401	10.3 (6.4)	Good	USFS	NM	Temporary/Manmade.
Canones Creek	3,683	9.7 (6.0)	Fair	USFS	NM	Waterfall.

Table 2 shows all the other Rio Grande cutthroat trout conservation populations in stream lengths greater than 9.6 km (6 mi). Six of the populations have more than 2,500 Rio Grande cutthroat trout, but all of these have nonnative brook trout present as well. In addition, 4 of these have habitat quality judged as fair and one is in a stream with a width less than 1.5 m (5 ft) wide, which puts it at risk for drying (as discussed below). Abundance (fish per mile) is provided in Table 2 because some of these have less than 150 fish per mile, and, as mentioned above, for populations with 0–50 or 50–150 fish per mile, a longer stream length would be needed to ensure long-term persistence. It should also be noted that Sangre de Cristo Creek has tested positive for whirling disease. For all of these reasons, although the Rio Grande cutthroat conservation populations presented in Table 2 occur in stream lengths greater than 9.6 km (6 mi), all appear at risk for one or more reasons. Two additional streams (Osier and Cascade) have strong populations 3,239 and 2,372, respectively, with no nonnative trout present. However, stream length for Osier Creek is only 5.9 km (3.7 mi) and for Cascade it is 4.7 km (2.9 mi). While these populations do currently contribute to the status of the subspecies range-wide, they are considered too short to ensure long-term

persistence as their shorter length makes them more vulnerable to extirpation from ash flow or other localized disturbance.

TABLE 2.—RIO GRANDE CONSERVATION POPULATIONS IN STREAM LENGTHS GREATER THAN 9.6 KM (6 MI), SORTED BY POPULATION SIZE. NONNATIVE SPECIES MAY BE PRESENT OR ABSENT. BRK = BROOK TROUT, BRN = BROWN TROUT, WS = WHITE SUCKER

Stream name	Population size	Abundance (fish per mile)	Length in km (mi)	Nonnatives present	Habitat condition	Width in feet	State	Barrier
Jacks Creek	4,849	> 400	18.5 (11.5)	BRK	Fair	< 5	CO	Drying.
Cabresto Creek	4,570	> 400	13.7 (8.5)	BRK	Fair	5 to 10	NM	Diversion.
Sangre de Cristo Creek	3,793	151 to 400	36.2 (22.5)	BRK	Fair	5 to 10	CO	Partial/Diversion.
South Carnero Creek	3,748	151 to 400	22.9 (14.2)	BRK, BRN, WS.	Fair	10 to 15	CO	None.
West Indian Creek	3,345	151 to 400	17.1 (10.6)	BRK	Excellent	5 to 10	CO	Manmade dam.
Trinchera Creek	2,941	151 to 400	14.5 (9.0)	BRK	Excellent	10 to 15	CO	None.
Polvadera Creek	2,045	151 to 400	12.1 (7.5)	None	Poor	< 5	NM	Waterfall.
Jacks Creek	1,504	151 to 400	11.3 (7.0)	None	Good	5 to 10	NM	Temporary/Manmade.
Jim Creek	1,283	151 to 400	10.0 (6.2)	BRK	Poor	5 to 10	CO	None.
Ute Creek	1,260	50 to 150	13.8 (8.6)	None	Good	5 to 10	NM	None.
Rio de Truchas	692	50 to 150	10.5 (6.5)	None	Fair	5 to 10	NM	Diversion.
Little Vermejo Creek	680	50 to 150	11.9 (7.4)	BRK	Excellent	5 to 10	NM	Temporary/Manmade.
Vallejos Creek	678	50 to 150	11.7 (7.3)	BRN	Good	10 to 15	CO	None.
Cave Creek	411	50 to 150	10.1 (6.3)	BRK, BRN, WS.	Fair	5 to 10	CO	None.
East Pass Creek	369	50 to 150	11.1 (6.9)	None	Fair	< 5	CO	Drying.
Middle Carnero Creek	344	< 50	11.3 (7.0)	WS	Fair	< 5	CO	Manmade dam.
Ricardo Creek	271	50 to 150	14.5 (9.0)	BRK	Good	5 to 10	CO	Temporary/Manmade.
Torsido Creek	250	50 to 150	10.3 (6.4)	BRK	Poor	< 5	CO	None.
Wagon Creek	246	151 to 500	20.9 (13.0)	BRK	Good	5 to 10	CO	Partial/Diversion.
McCrystal Creek	236	< 50	15.1 (9.4)	None	Good	5 to 10	NM	Temporary.
South Ponil Creek	202	< 50	15.3 (9.5)	None	Good	5 to 10	NM	Temporary/Manmade.
Rio de Oso	194	< 50	12.4 (7.7)	None	Fair	< 5	NM	None.
Capulin Creek	186	< 50	11.9 (7.4)	None	Excellent	5 to 10	NM	Drying.
North Fork Carnero Creek.	97	< 50	13.0 (8.1)	WS	Fair	< 5	CO	Manmade dam.
Cat Creek	Unknown	Unknown	15.1 (9.4)	None	Fair	< 5	CO	Drying.

Habitat fragmentation is a threat that can be partially alleviated by management activities. Three major watershed-scale projects have been initiated on both private and USFS lands and are in various phases of implementation. A joint project between Vermejo Park Ranch and the states of Colorado and New Mexico to restore the Costilla Creek watershed began in 2002 (Patten *et al.* 2007, pp 95–102). The restoration removed brook trout, brown trout, and introgressed cutthroat trout and reintroduced Rio Grande cutthroat trout into Costilla Creek, 2 tributaries, and 3 small lakes, totaling 22 km (13.6 miles) of stream and 9.5 ha (23.5 ac) of lake (project is discussed further in the ''Fisheries Management'' section below). As part of the larger Costilla Project, 34 km (21.1 mi) of Comanche Creek and selected tributaries were chemically treated with piscicides (chemicals that kill fish) in 2007. Most likely a second treatment will be required and will be completed in 2008 before Rio Grande cutthroat trout are stocked back into the watershed. A draft Candidate Conservation Agreement with Assurances with private landowners has been drafted so that the Costilla Creek project can be extended downstream. Successful implementation of this project would lead to the restoration of approximately 241 km (150 mi) and 25 lakes (Patten and Sloane 2007, p. 7). The Placer watershed in Colorado also underwent chemical treatment in 2007. This watershed has the potential for approximately 80.5 km (50 mi) of connected stream. If successful, the Costilla and Placer watersheds would represent substantial gains in the goal of creating connected stream systems for Rio Grande cutthroat trout.

While watershed restoration can reconnect streams and is the best method for addressing fragmentation, major restoration projects face many challenges including: negative public sentiment towards using piscicides in streams which slows or stops projects (Patten *et al.* 2007, p. 102), incomplete treatment which leaves nonnatives present, sabatoge of the treatment area (unauthorized introduction of nonnative trout) (Japhet *et al.* 2007, p. 17), subsequent barrier failure which allows nonnatives to reinvade a system (Japhet *et al.* 2007, p. 15), and inadvertent mistakes. While many stream segments have been restored and the Costilla and Placer watershed projects are in progress, no major watershed restorations have been completed.

The Service has evaluated the data presented by Alves *et al.* (2007) and supplemental information requested related to the database. Based on our knowledge of Rio Grande cutthroat trout populations that we previously classified as secure in 2002, and all of the information available to us we conclude:

(1) The majority of Rio Grande cutthroat trout populations (93 percent) are in isolated fragments less than 8 km (5 mi) long (71 percent);

(2) Populations are concentrated in high elevation (2,438 to 3,048 m (8,000 to 10,000 ft)) headwater streams that provide marginal habitat, especially in regards to the number and depth of pools critical for trout survival in times of environmental extremes;

(3) The drought in the early 2000s had resulted in adverse effects on several populations (discussed in more detail in the ''Climate Change'' section below);

(4) Eight of 13 populations we had identified as secure in 2002 would no

longer meet the criteria we used at that time (67 FR 39937); and

(5) Only eight populations currently meet our revised criteria for long-term persistence.

Although additional populations may have greater than 2,500 fish or are in streams longer than 9.6 km (6 mi), there are additional significant threats to those populations that put their long-term persistence in question. For these reasons, we find that Rio Grande cutthroat trout is threatened by fragmentation, isolation, and loss of habitat throughout its range. While watershed restoration may alleviate this threat in the future, insufficient progress has been made to alleviate the threat of fragmentation range-wide at this time.

Habitat Condition

Many Rio Grande cutthroat trout conservation populations currently occupy lands administered by Federal agencies. Of the total 1,110 km (690 mi) of occupied habitat, 698 km (434 mi) (63 percent) are under Federal jurisdiction, with the majority (59 percent) occurring within National Forests (Alves *et al.* 2007). Rio Grande cutthroat trout occupy 6.1 km (3.8 mi) of land administered by the BLM, 30.5 km (19 mi) managed by the National Park Service, and 397 km (247 mi) that are owned privately.

Land uses associated with each conservation population were identified in Alves *et al.* (2007, p. 49, Table 33), but the impact of the activities was not evaluated in relation to individual populations or the conservation of the subspecies. Non-angling recreation (e.g., camping, hiking, ATV use, etc.) occurs in 90 percent of the conservation populations, and angling occurs in 84 percent of the conservation populations. Livestock grazing occurs within the zone of influence (area around the stream in which activities influence stream habitat) of 87 percent of the conservation populations, roads in 58 percent, timber harvest in 19 percent, dewatering in 17 percent, and mining in 3 percent. Only 3 populations (3 percent) were judged as having no land use activities within a zone that would influence the stream habitat. Many populations have more than one land use occurring in the area.

An evaluation of habitat quality was conducted for currently occupied habitat (Alves *et al.* 2007, p. 20). The evaluation considered both natural habitat features and human disturbances, including land use practices. A stream ranked excellent if it had ample pool habitat, low sediment levels, optimal temperatures, and quality riparian habitat. Good habitat quality had some attributes that are less than ideal, and fair habitat has a greater number of attributes that are less than ideal. Poor habitat quality is found where most habitat attributes reflect inferior conditions. Approximately 224 km (139 mi) (20.2 percent of occupied habitat) received an excellent habitat rating. Good habitat conditions were found in 426 km (265 mi) of habitat (38.4 percent of occupied habitat), and fair habitat conditions were found in 335 km (208 mi) of habitat (30.1 percent of occupied habitat). Poor conditions were found in 35 km (22 mi) (3.2 percent of occupied habitat), and habitat conditions in 90 km (56 mi) (8.1 percent) were unknown (Alves 2007, p. 2). The majority of occupied habitat (58.6 percent) is considered in good or excellent condition (Alves *et al.* 2007, p. 20).

The Service also reviewed 19 detailed stream survey reports which were conducted by the Santa Fe and Carson national forests in the period 2001–2006. Although these surveys represent only about one quarter of the conservation populations in New Mexico (19 of 84 populations), both large (i.e., Pecos River, Rio de las Vacas, Comanche Creek) and small (i.e., Yerba, Manzanita creeks) streams are represented. Therefore, these surveys provide additional insight into the habitat condition on USFS lands. Of the 19 streams surveyed, the most consistent problem is lack of pool habitat. Of the 19 streams, 18 had less than the 30 percent pool habitat (range 1–21 percent) needed to be considered properly functioning trout streams. For eight of these streams, a target value of 30 percent pool habitat was not considered appropriate because they were 1st or 2nd order streams (i.e., headwater streams) which often have few pools naturally because they occur on high gradient slopes. But for four of these eight streams, the pool habitat ranged from 1–3 percent and the reports noted that even for headwater streams this was an insufficient number of pools.

In most streams (16 of 19) the average residual pool volume, which represents initial pool depth if the stream were to dry, met the USFS standard of 0.3 m (1 ft) or greater. However, the deepest average residual pool volume was only 0.67 m (2.2 ft) and the mean depth of pools for all 19 streams was 0.39 m (1.3 ft), indicating that the majority of pools are relatively shallow.

Pools are recognized as important overwintering habitat and also are holding areas for trout when streams dry. Not only are the number of pools consistently fewer than desirable, but they are also relatively shallow, and thus provide limited refugial habitat in times of stream freezing or drying. Lack of deep pools could affect year-class survival. As noted by Cowley (2007 DOI: 10.1002/acq.845) loss of a year class of fish would suggest that longer stream length is needed to provide adequate habitat for long-term population persistence. However, as mentioned above, the sample size (19 streams) is relatively small and it is not known if the results accurately represent Rio Grande cutthroat trout streams range-wide.

Livestock grazing occurs in the vicinity of 87 percent of the Rio Grande cutthroat trout populations (Alves 2007, p. 49). We recognize that improper grazing does cause adverse impacts (e.g., loss of cover, increased sedimentation, loss of riparian vegetation) to some individual populations of Rio Grande cutthroat trout, especially during drought conditions when the cattle tend to concentrate in riparian areas. While a few of the USFS stream surveys noted that impacts by cattle (or elk) were causing localized problems, grazing was not cited as causing damage throughout the length of any stream. Specific information on grazing impacts to Rio Grande cutthroat trout habitat on a range-wide basis is not available. We have no information that leads us to conclude that improper grazing is a significant threat to Rio Grande cutthroat trout range-wide.

Timber harvest and associated road building has also led to the deterioration of Rio Grande cutthroat trout habitat. However, timber harvest in the National Forests has declined appreciably in the last 20 years. As an example, on the two forests in New Mexico that have conservation populations, the Santa Fe National Forest and Carson National Forest, there has been a total of 3.2 ha (8 ac) clear cut since 1995 (Fink 2008 pp. 2, 3). The average amount of timber cut per year from 1984 to 1994 in these forests was 27.6 and 19 million board feet (MBF), respectively. From 1995 to 2005, the average amount cut per year was 3.5 and 0.09 MBF, respectively (Fink 2008, pp. 2, 3). While the effects of past logging practices may still be evident on the landscape in some locations, we conclude that timber harvest is not currently a threat to Rio Grande cutthroat trout populations.

Roads and off-road vehicles can have negative impacts on stream habitat primarily through increased sedimentation which degrades spawning habitat. Non-angling recreation (which includes hiking and camping as well as off-road vehicle use) is present near 90 percent of the

conservation populations. On November 9, 2005, the USFS published revised rules regarding travel management on their lands (70 FR 68264). One of the primary purposes of the rule is to protect natural resources. The final rule requires the designation of roads, trails, and areas that are open to motor vehicle use by class of vehicle and, if appropriate, time of year. Use of motor vehicles off designated routes will be prohibited (70 FR 68264). The Service has begun consultation on the Travel Management Plans proposed by National Forests in USFS Region 3 (Arizona and New Mexico) and protecting aquatic resources is an important component of these plans. While roads have been identified as an area of concern for some streams (e.g., Tio Grande, Rio Grande del Rancho, Martinez 2001, 2002), we conclude that roads are not a threat to Rio Grande cutthroat trout populations range-wide.

Management agencies are actively working towards improving habitat conditions for Rio Grande cutthroat trout. In addition to the travel management rule on USFS lands, several projects have been completed recently to address habitat degradation caused by roads. For example, grant money was obtained and used to inventory and identify 97 road improvement projects to reduce sediment input into Comanche Creek (Martinez 2006, p. 5). Six culverts were installed or realigned and ten sediment traps and energy dissipaters were installed below culvert spillways. Culverts that drained directly into Comanche Creek were removed. Abandoned logging roads were stabilized and unneeded roads were re-contoured to natural slope and re-vegetated (USFS 2006, pp.18–19). In 2006, on the Santa Fe National Forest, over 1,829 m (6,000 ft) of buck and pole fence was constructed to improve traffic control and enforce an off-road vehicle closure around Rio Cebolla. Approximately 17.7 km (11 mi) of stream and riparian habitat was protected by this project (USFS 2006, p. 12). On the Rio Grande National Forest, road-stream crossing inventories and assessments were conducted for all streams with conservation populations to determine if the culverts were barriers to fish (USFS 2006, p. 4). Most of the 120 conservation populations (90 percent) have one or more restoration, conservation, or management activities either completed or currently being implemented (Alves *et al.* 2007, p. 60).

Range-wide habitat quality is still difficult to accurately assess. Although an insufficient amount of pool habitat exists on the majority of streams sampled by the USFS in New Mexico, we cannot draw the same conclusion range-wide at this time because of lack of data. Alves *et al.* (2007 database) did not identify a lack of pools as a systematic problem. While land management practices have clearly improved and have less direct impact on Rio Grande cutthroat trout streams, some streams are still recovering from past land management practices. Therefore we conclude that there is insufficient information to indicate that habitat quality currently is a significant threat to Rio Grande cutthroat trout rangewide.

Nonnative Species

The introduction of nonnative trout is widely recognized as one of the leading causes of range reduction in cutthroat trout subspecies (Griffith 1988, pp. 134, 137; Lassuy 1995, p. 394; Henderson *et al.* 2000, pp. 584, 585; Dunham *et al.* 2002, p. 374; Peterson *et al.* 2004, p. 769). Dunham *et al.* (2004) provide an overview of the impact of nonnatives on headwater systems in North America. Since the late 1800s, fishery managers introduced nonnative salmonids (trout and salmon species) into lake and stream habitats of Rio Grande cutthroat trout. Nonnative rainbow, brook, brown trout and Yellowstone cutthroat trout have been introduced extensively throughout the range of Rio Grande cutthroat trout, and they compete (brook and brown trout) and hybridize (rainbow and other cutthroat subspecies) with Rio Grande cutthroat trout. Forty-six of 120 conservation populations (38 percent) have nonnative trout present (2007 database). When Rio Grande cutthroat trout occur in the same stream as nonnative trout, Rio Grande cutthroat trout typically occupy the colder, headwater reaches and the nonnative trout occupy areas downstream (Griffith 1988, p. 135; Dunham *et al.* 1999, p. 885).

Competition from nonnative trout, especially brook trout, is recognized as a threat to Rio Grande cutthroat trout (Behnke 2002, p. 147; Peterson *et al.* 2004, pp. 768, 769). When brook trout invade streams occupied by cutthroat trout, the native cutthroat trout decline or are displaced (Griffith 1988, p. 136; Harig *et al.* 2000, pp. 994, 998, 999; Dunham *et al.* 2002, p. 378; Peterson *et al.* 2004, p. 769; Young and Guenther-Gloss 2004, p. 193; Fausch *et al.* 2006, p. 6). Brook trout are the most common nonnative trout sympatric (co-occurring) with Rio Grande cutthroat trout populations in Colorado (2007 database). Brook trout reduce recruitment of cutthroat trout and reduce inter-annual survival of juveniles, leading to a reduction in population size (Peterson *et al.* 2004, p. 769). Experiments where brook trout were removed from cutthroat trout populations showed an increase in the survival of juvenile cutthroat trout (Peterson *et al.* 2004, p. 767). Paroz (2005, p. 22) found that mean density and relative weight of Rio Grande cutthroat trout were lower in populations sympatric with brook trout. Several Rio Grande cutthroat trout conservation populations have been identified as at risk and declining because of brook trout (Alves *et al.* 2002, pp. 1–4).

In New Mexico, brown trout is the most common nonnative trout present in Rio Grande cutthroat trout conservation populations (summarized from 2007 database). Not only are brown trout piscivores (feed on other fish), but they have also been shown to compete with Rio Grande cutthroat trout for resources such as food and space. Research has shown that Rio Grande cutthroat trout confined with brown trout grew significantly less, while the brown trout grew significantly more, than control fish (Shemai *et al.* 2007, pp. 315, 320, 321). A similar result was seen in experiments conducted with Bonneville cutthroat trout and brown trout (McHugh and Budy 2005, p. 2788). These results indicate that brown trout represent a threat to Rio Grande cutthroat trout from competition as well as predation (Paroz 2005, p. 34).

The primary threat to Rio Grande cutthroat trout from rainbow trout and other cutthroat trout subspecies is through hybridization and introgression (Rhymer and Simberloff 1996, pp. 83, 97). The genetic distinctiveness of Rio Grande cutthroat trout can be lost through hybridization (Allendorf *et al.* 2004, p. 1205). Of the 120 conservation populations, 95 (79 percent) range-wide have been tested and are less than 1 percent introgressed (Alves *et al.* 2007, p. 31). These nonintrogressed populations occupy 870 km (541 mi), or 78 percent, of the 1110 km (690 mi) occupied by conservation populations (Alves *et al.* 2007, p. 31). Another 161 km (100 mi) are occupied by populations that are 90–99 percent genetically pure, and 104 km (65 mi) are occupied by populations that have not been tested but are connected to nonintrogressed populations and have no record of stocking (Alves *et al.* 2007, p. 34).

To minimize the contact of nonnative trout with Rio Grande cutthroat trout, barriers have been constructed where natural barriers didn't already exist in order to prevent nonnatives from invading. Alves *et al.* (2007, pp. 35, 36)

rated the genetic risk to the 120 conservation populations. A combination of barrier condition or presence and distance to hybridizing species, determined if a population was at moderate or low risk (Alves *et al.* 2007, p. 80). Populations protected by a complete barrier fell into the no risk category. They determined that 80 had no risk of genetic mixing with nonnative trout, 32 were at moderate risk, and 4 were at low risk. As mentioned earlier, four populations that Alves *et al.* (2007, pp. 35, 36) consider conservation populations are sympatric with a hybridizing species, and, therefore, we consider them at high risk.

Since 2002, NMDGF and CDOW visited approximately 40 and 50 Rio Grande cutthroat trout conservation populations, respectively, to assess barrier presence and condition. Seven new barriers have been installed since 2002, and maintenance was done on at least eight (Japhet *et al.* 2007, pp. 24, 25; Patten *et al.* 2007, pp. 6, 11, 12, 16, 17, 53). Both agencies have also mechanically and chemically removed nonnative trout from Rio Grande cutthroat trout streams. NMDGF removed nonnatives from 11 streams, and CDOW removed them from two (Patten and Sloane 2007, p. 5; Japhet *et al.* 2007, p. 26).

Since 2002, CDOW and NMDGF have also proactively pursued genetic testing of Rio Grande cutthroat trout populations using the best technologies available. In many instances, the results confirmed previous assessments of genetic purity, while in other cases populations were either upgraded or downgraded (Japhet *et al.* 2007, pp. 46–47; Patten *et al.* 2007, pp. 43–45). Diagnostic markers for Yellowstone cutthroat trout were also identified, which has led to more refined testing and more confidence in the categorization of the populations. The most recent results were used in the 2007 database. Results of the testing can be found in peer-reviewed literature (e.g., Pritchard *et al.* 2007a, Pritchard *et al.* 2007b) and in reports to the States (e.g., Pritchard and Cowley 2005).

Approximately 38 percent of Rio Grande cutthroat trout conservation populations co-occur with nonnative trout (2007 database). Competition, predation, and hybridization with nonnative trout are considered an important source of stress that can depress Rio Grande cutthroat trout population numbers or, under the right circumstances, displace them (Fausch *et al.* 2006, pp. 9, 10). Although resource agencies remove nonnative trout through electrofishing when they co-occur with cutthroat trout subspecies, seldom if ever is complete removal possible (Patten *et al.* 2007, p. 104). Peterson *et al.* (2004, p. 769) show that over 90 percent of the brook trout population must be removed each year for 3 consecutive years to allow a large cohort of Colorado River cutthroat trout to survive from age 0 to age 2. This level of effort has not been documented for stream segments occupied by Rio Grande cutthroat trout populations (e.g., Japhet *et al.* 2007, p. 26).

The Service concludes that nonnative fish are a threat to Rio Grande cutthroat trout range-wide based on the following facts:

(1) Approximately 38 percent of the conservation populations have nonnative trout present;

(2) Nonnative fish are a documented threat to Rio Grande cutthroat trout populations;

(3) Mechanical removal cannot remove all of the nonnative fish;

(4) The level of effort required to reduce brook trout populations to levels sufficient for survival of young Rio Grande cutthroat trout is not currently being conducted; and,

(5) The number of streams that need regular treatment exceeds the capability of resource managers at their current staffing levels.

Drought

The relatively short-term drought of the early 2000s negatively impacted or extirpated 14 Rio Grande cutthroat trout populations in Colorado and New Mexico (Japhet *et al.* 2007, pp. 42–44; Patten *et al.* 2007, pp. 14–40). A fifteenth population is thought to have been extirpated in 2006 by complete freezing caused by low flow in the winter (Ferrell 2006, p. 11). The number of streams impacted may have been greater, because managers only survey a fraction of the 120 conservation populations in any given year.

We assume that small streams (1.5 m (5 ft) wide or less) are more susceptible to drying, increased water temperatures, and freezing than larger ones and that stream width is an indicator of risk. Decreased stream flow reduces the amount of habitat available for aquatic species, and water quality (e.g., temperature, dissolved oxygen) may become unacceptable in declining flow. Approximately 27 conservation populations are in streams that are 1.5 m (5 ft) or less in width throughout their entire length (2007 database). An additional 29 stream segments that are tributaries to the conservation populations are also less than 1.5 m (5 feet) in width (2007 database). Although not all small streams have equal risk, small headwater streams, especially those with an inadequate number of deep pools, are most likely to lose suitable habitat. Even if streams do not dry (or freeze) completely, stream length can be truncated during drought and many fish can perish, greatly reducing the population number (bottleneck) and reducing genetic diversity (Frankham *et al.* 2002, p. 183).

Because of the documented extirpation and population reductions of Rio Grande cutthroat trout caused by drought, the possibility of more widespread drought accompanying climate change, and the lack of a range-wide plan to address drought, we conclude that drought is a threat to Rio Grande cutthroat trout throughout its range (discussed in ''Climate Change'' section below).

Fire

Wildfires are a natural disturbance in forested watersheds. However, since the mid-1980s, wildfire frequency in western forests has nearly quadrupled compared to the average frequency during the period 1970–1986. The total area burned is more than six and a half times the previous level (Westerling *et al.* 2006, p. 941). In addition, the average length of the fire season during 1987–2003 was 78 days longer compared to that during 1970–1986 and the average time between fire discovery and control was 29.6 days longer (Westerling *et al.* 2006, p. 941). Westerling *et al.* (2006, p. 942) found that wildfire sensitivity was related to snowmelt timing with 56 percent of fires and 72 percent of burned area occurring in early snowmelt years. Early spring snowmelt is strongly associated with spring temperature (Stewart *et al.* 2004, p. 218; Westerling *et al.* 2006, p. 942). Westerling *et al.* (2006, p. 942) conclude that there are robust statistical associations between wildfire and climate in western forests and that increased fire activity over recent decades reflects responses to climate change (discussed further in the ''Climate Change'' section below).

In the Southwest, the fire season is followed by the monsoon season (July to August). Consequently, denuded watersheds are susceptible to heavy precipitation leading to severe floods and ash flows. Although fish may survive the fire, ash and debris flows that occur after a fire can eliminate populations of fish from a stream (Rinne 1996, p. 654; Brown *et al.* 2001, p. 142; USFS 2006, p. 32; Patten *et al.* 2007, p. 33), and the fire suppression activities (e.g., fire retardant, water removal, road construction) may also impact stream ecosystems (Buhl and Hamilton 2000, pp. 410–416; Backer *et al.* 2004, pp. 942,

943). Wildfires within the range of Rio Grande cutthroat trout have impacted or eliminated fish populations (Japhet *et al.* 2007, p. 20; Ferrell 2006, p. 32; Patten *et al.* 2007, pp. 33, 36), and the effects of large fires are recognized as a threat to greenback cutthroat (*Oncorhynchus clarki stomias*) populations in Colorado (Young and Guenther-Gloss 2004, p. 194). Imperiled fish populations can be rescued if ash flows are imminent, but a rescue and evacuation plan should be in place (e.g., Brooks 2004, pp. 1–15).

Dunham *et al.* (2007, p. 342) found significantly elevated stream temperatures for at least a decade after a stand-replacing wildfire because of the lack of stream shading. In addition, the authors suggest that longer term (over 20 years) increases in stream temperatures are likely in systems where debris flows or severe floods completely eliminate streamside vegetation and reorganize the channel. Rainbow trout were found to be resilient and recolonized the burned streams within 1 year of extirpation in spite of elevated water temperatures (Dunham *et al.* 2007, p. 343). Dunham *et al.* (2003a, pp. 188, 189) suggest that fire poses a greater threat to fish populations when habitat is fragmented. Moyle and Light (1996, p. 157) argue that habitat degradation favors nonnative fishes and that species with narrow habitat requirements are expected to be more sensitive to habitat alteration caused by fire than generalist species such as rainbow trout (Dunham *et al.* 2003a, p. 189).

Fire risk can be reduced through fuels reduction and prescribed burns. The National Forests in New Mexico have active programs to improve forest health. As an example, 28,314 ha (69,965 ac) have undergone fuel-reduction treatment, thereby improving watershed conditions associated with 100 km (62 miles) of stream, and an additional 58,912 ha (145,575 ac) are planned for treatment to improve conditions associated with an additional 128 km (79.5 mi) of stream (Ferrel 2002, p. 12). Such techniques have been found to reduce fire severity even under extreme weather conditions in low-elevation ponderosa pine forests (Schoennagel *et al.* 2004, p. 669). However, for mid-elevation, mixed-severity fire regimes, fuel-reduction treatments had virtually no effect on the 2002 Hayman Fire (Colorado), and extreme climate can override the influence of stand structure and fuels on fire behavior (Schoennagel *et al.* 2004, pp. 672, 673). Climate variation, not fuel levels, is seen as the dominant influence on fire frequency and severity in subalpine forests (Schoennagel *et al.* 2004, p. 666).

Wildfires that eliminate nonnative fish provide the opportunity to reclaim streams for Rio Grande cutthroat trout. The 1996 Dome Fire in the Jemez Mountains (Santa Fe National Forest) extirpated the fish residing in Capulin Canyon. In 2006, after 10 years of habitat recovery, 100 Rio Grande cutthroat trout from Canones Creek were stocked into Rio Capulin adding 11.2 km (7.0 mi) of occupied habitat in New Mexico (Patten *et al.* 2007, p. 94). In addition, ash flows after the 2004 Peppin Fire in the Capitan Wilderness (Lincoln National Forest) apparently eliminated all fish from Pine Lodge Creek and Copeland Creek (Patten *et al.* 2007, pp. 255–258), and there are plans to restore Rio Grande cutthroat trout into these streams. Restoration of Pine Lodge Creek would add approximately 4 km (2.5 mi) of habitat in the Pecos Headwaters GMU (Patten *et al.* 2007, p. 255).

Although we recognize that Rio Grande cutthroat trout evolved in a landscape that included fire, wildfire intensities and size are likely changing because of increased fuel loads and possibly climate change (see ''Climate Change'' section below). Wildfire today is much more of a threat than it was historically to Rio Grande cutthroat trout because of existing habitat loss, fragmentation, and climate change. These multiple stressors may overwhelm the subspecies' resilience to disturbance such as fire (Rieman *et al.* 2005, pp. 2, 3). Although fire may also provide opportunity for repatriation of Rio Grande cutthroat trout by eliminating nonnative fish, total elimination of nonnative fish from fire-affected streams is not guaranteed, and it may take many years for the habitat to become suitable. For these reasons, we conclude that wildfire is a significant threat to Rio Grande cutthroat trout throughout its range.

Summary of Factor A

In summary, Rio Grande cutthroat trout populations have been and continue to be impacted by habitat fragmentation and isolation, nonnative species interactions, drought, and fire. Rio Grande cutthroat trout conservation populations occupy a fraction of their historical habitat, they are confined primarily to small high-elevation streams with marginal habitat, they are highly fragmented, and the stream segments they occupy are short in length. All of these factors work to reduce gene flow between populations and reduce the ability of populations to recover from catastrophic events thus threatening their long-term persistence. Detailed habitat surveys, although not available range-wide, are uniformly consistent in documenting a lack of pools in streams occupied by Rio Grande cutthroat trout. Deep pools are considered a critically important element of Rio Grande cutthroat trout habitat. As discussed above, in order to ensure some level of population stability and contribute to the long-term persistence of the subspecies, populations should consist of more than 2,500 fish, occupy 9.6 km (6 mi) of stream or more, and have no nonnative trout present. Currently, only eight Rio Grande cutthroat trout populations meet these criteria. Nonnative trout co-occur with 38 percent of Rio Grande cutthroat trout conservation populations. Because of the documented negative impacts of nonnative trout on cutthroat trout discussed above, nonnatives are an ongoing threat to the security of Rio Grande cutthroat trout. Additionally, although drought and fire have impacted a limited number of populations since the last status review, negative impacts from these two factors may increase in response to climate change (as discussed in the ''Climate Change'' section below). Based on the best scientific and commercial information available to us, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range is a threat to the continued existence of Rio Grande cutthroat trout.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No commercial harvest occurs for Rio Grande cutthroat trout. Recreational angling occurs on approximately 84 percent of the populations (Alves *et al.* 2007, p. 49). Fishing regulations in New Mexico and Colorado appropriately manage recreational angling. For example, many of the streams with Rio Grande cutthroat trout are ''catch and release.'' Those that are not have a 2 (New Mexico) or 4 (Colorado) fish limit. Many of the streams with pure populations of Rio Grande cutthroat trout are remote and angling pressure is light. For these reasons, angling is not considered a threat to Rio Grande cutthroat trout.

Scientific collection of Rio Grande cutthroat trout for scientific or educational purposes is controlled by a strict permitting process that prevents excessive sampling. In addition, advancements in molecular technology have resulted in the need for only a small clipping from a fin to provide sufficient material to perform molecular

analysis of genetic purity. To test for whirling disease (see ''Disease'' section below for further discussion), usually 60 fish are collected and sacrificed. However, to minimize the collection of Rio Grande cutthroat trout during whirling disease testing, nonnative trout are collected preferentially over Rio Grande cutthroat trout, or sample sites are selected below a barrier that protects a population of Rio Grande cutthroat trout from nonnative trout. In some situations fewer than 60 Rio Grande cutthroat trout will be collected and sacrificed for testing. For these reasons, overutilization for scientific purposes is not considered a threat to Rio Grande cutthroat trout.

Summary of Factor B

Because no commercial harvest occurs for Rio Grande cutthroat trout, fishing regulations in New Mexico and Colorado minimize the impact of recreational angling, and scientific collection of Rio Grande cutthroat trout for scientific or educational purposes is controlled by a strict permitting process that prevents excessive sampling, we conclude that the best scientific and commercial information available to us indicates that Rio Grande cutthroat trout is not threatened by overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Disease

Whirling disease is of great concern to fishery managers in western States. Whirling disease is caused by the nonnative myxosporean parasite, *Myxobolus cerebralis.* This parasite was introduced to the United States from Europe in the 1950s and requires two separate hosts, a salmonid fish and an aquatic worm (*Tubifex tubifex*) to complete its life cycle. Spores of the parasite are released from infected fish when they die. The spores are ingested by *T. tubifix* where they undergo transformation in the gut to produce actinosporean triactionomyxons (TAMs). Trout are infected either by eating the worms (and TAMs) or through contact with water in which TAMs are present.

The myxosporean parasite became widely distributed in Colorado in the early 1990s through the stocking of millions of catchable size trout from infected hatcheries (Nehring 2007, p. 1). Up to 2001, it was estimated that whirling disease infection had negatively impacted recruitment of wild rainbow and brook trout fry (small recently emerged fish) in 560–600 km (350–400 mi) of stream in Colorado (Nehring 2007, p. 2). In 2006, the number of sites that tested positive for whirling disease was considerably higher than in any of the previous field seasons (Nehring 2007, p. 11). Whirling disease is also present in several streams in New Mexico (67 FR 39943, Patten and Sloane 2007, p. 11). Laboratory (DuBey *et al.* 2007, pp. 1411, 1412) and field (Thompson 1999, pp. 323–325) experiments have shown that Rio Grande cutthroat trout is very susceptible to whirling disease.

Among the four lineages (I, III, V, and VI) of *T. tubifix* known to occur in Colorado, New Mexico, and other states, lineage III is the only one susceptible to infection by *M. cerebralis* (DuBey and Caldwell 2004, p. 183; Nehring 2007, p. 11). Because *T. tubifix* is typically found in degraded habitat with higher levels of sediment and warmer temperatures, it had been hypothesized that Rio Grande cutthroat trout were provided some level of protection because they occur in high-elevation cold-water streams (67 FR 39943). Extensive sampling of tubificid worms in Colorado does not support this hypothesis. Nehring (2007) collected tubificid worm samples from over 100 sites in Colorado, including streams occupied by Rio Grande cutthroat trout. He stratified his results by 305 m (1,000 ft) elevation groups from 1829 m (6,000 ft) to 3657 m (12,000 ft) (e.g. 1829–2134 m (6,000–7000 ft), 2134–2438 m (7001–8,000 ft), etc.). Lineage III worms had the greatest abundance, outnumbering all of the other lineages combined, at all elevations. The number of sites with lineage III worms was approximately the same at all elevations from the 1829–2134 m (6,000–7,000 ft) band up to the 3048–3353 m (10,000–11,000 ft) band (Nehring 2007, p. 10) indicating that the high-elevation cold-water streams do not provide protection from lineage III worms.

One hundred and five conservation populations (88 percent) are judged to have very limited risk from whirling disease or other potential diseases because the pathogens are not known to exist in the watershed or a barrier blocks upstream fish movement (Alves *et al.* 2007, p. 38). Six populations are at minimal risk because they are greater than 10 km (6.2 mi) from the pathogen or they are protected by a barrier, but the barrier may be at risk of failure (Alves *et al.* 2007, p. 38). Eight populations were identified as being at moderate risk because whirling disease had been identified within 10 km of occupied habitat (Alves *et al.* 2007, p. 38). In 2006, it was discovered that whirling disease had infected brook trout and Rio Grande cutthroat trout in Placer Creek, Colorado, a conservation population, and in 2007 it was chemically treated to remove infected fish and nonnative brook trout.

In 2002, the Pecos, Cebolla, San Juan, Cimarron, Red, and Canones rivers in New Mexico were listed as being infected with whirling disease (67 FR 39943). By 2007, more than 80 streams and lakes had been tested for the disease (Patten and Sloane 2007, pp. 10–13). North Bonito Creek, Brazos River, and Los Pinos River were added to the list of streams testing positive for whirling disease. Canones and Jacks creeks, which had tested positive in 2000, tested negative in 2005, and 2003, respectively (Patten and Sloane 2007, pp. 10–13). Of the streams listed, Rio Cebolla, Pecos River and Cimarron River are occupied by Rio Grande cutthroat trout upstream above barriers.

NMDGF policies and regulations prohibit the stocking of any whirling disease positive fish in the State of New Mexico (Patten and Sloane 2007, p. 10). All private facilities must maintain a pathogen-free certification. The Seven Springs Hatchery, which is used for Rio Grande cutthroat trout broodstock, has tested negative on all occasions since it was refurbished (Patten and Sloane 2007, p. 10). In Colorado stocking of whirling disease positive fish in protected habitats, which include native cutthroat trout waters, is prohibited (Japhet *et al.* 2007, p. 12). Colorado and New Mexico have web sites, brochures, and information in their fishing regulations regarding whirling disease and what anglers can do to prevent its spread. In addition, both States have regulations regarding the stocking of fish by private landowners that are designed to eliminate the importation of whirling disease positive fish. It states clearly in the fishing regulations that it is illegal to stock fish in public waters without prior permission from a State agency.

Whirling disease remains a concern for Rio Grande cutthroat trout populations. One Rio Grande cutthroat trout conservation population was infected in Colorado, and restoration efforts were immediately implemented to address the issue. Although widespread increases in *M. cerebralis* have not been seen, additional infected sites have been documented. Because of the limited level of infection currently, whirling disease is not seen as a significant threat to populations range-wide. However, climate change and warmer stream temperature may facilitate the spread of whirling disease in the future (discussed in the ''Disease'' section in Factor E below).

Predation

Brown trout are piscivores and are the most likely predator on Rio Grande cutthroat trout. Additionally, brown trout have been found to have a significant negative impact on the condition of coexisting Rio Grande cutthroat trout through harassment (e.g., chasing) (Shemai 2004, pp. 315–323; McHugh and Budy 2005, p. 2788). It is probable that larger brown trout prey on young Rio Grande cutthroat trout and, unchecked, brown trout can depress population levels. Warmer water temperatures in the future may give brown trout a greater competitive advantage over Rio Grande cutthroat trout (discussed in the ''Climate Change'' section below). However, we have insufficient information at this time to conclude that predation by brown trout is currently a significant threat to Rio Grande cutthroat trout.

Summary of Factor C

One population of Rio Grande cutthroat trout has been infected with whirling disease since our 2002 status review and eight conservation populations are considered to be at moderate risk of infection. Although whirling disease is currently limited in distribution and effect, it has the potential to become a more widespread problem due to warmer waters that could result from climate change (discussed in the ''Climate Change'' section below). We have insufficient information to conclude that predation is a significant threat at this time. Therefore, we conclude that the best scientific and commercial information available to us indicates that, although the status of Rio Grande cutthroat trout has not yet been affected by disease, Rio Grande cutthroat trout is likely to be threatened by disease in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

The NMDGF and the CDOW have authority and responsibility for the management of Rio Grande cutthroat trout. Rio Grande cutthroat trout is designated as a species of special concern by the State of Colorado and of special management concern by the State of New Mexcio. The agencies' capabilities include the regulation of fishing, law enforcement, research, and conservation and educational activities relating to Rio Grande cutthroat trout. Policies regarding the stocking of nonnative fish (no nonnatives are stocked in Rio Grande cutthroat trout populations), minimization of exposure to whirling disease and other diseases, and broodstock management are in place in both States. In 2004, the ''Conservation Plan for Rio Grande Cutthroat trout in Colorado'' was approved by the Director of CDOW. The goal of the plan is to assure the long-term persistence of Rio Grande cutthroat trout throughout its historic range by preserving genetic integrity, reducing population fragmentation, and providing suitable habitat to support self-sustaining populations (Japhet *et al.* 2007, p. ii). New Mexico (2002) has an approved management plan currently being implemented that will ''facilitate long range cooperative, interagency conservation of Rio Grande cutthroat trout.''

Rio Grande cutthroat trout populations have been lost because of stream drying (Japhet *et al.* 2007 pp. 42–44), and other trout populations in the Southwest have been extirpated as the result of ash flows following fire (Brown *et al.* 2001 p. 142). Imperiled fish populations can be rescued from streams (Brooks 2004, pp. 1–15; Japhet *et al.* 2007, p. 20). In the face of widespread drought or fire (discussed in the ''Climate Change'' section below) it is expected that many streams would be affected at one time, as seen in the 2002 drought (Japhet *et al.* 2007, pp. 42–44; Patten *et al.* 2007, pp. 14–40). An emergency rescue and evacuation plan is not in place for Rio Grande cutthroat trout, nor do we anticipate that this strategy would be effective in eliminating the threat of stream drying or post-fire ash flows in the face of widespread drought.

In 2003, a range-wide conservation agreement was signed by CDOW, NMDGF, USFS, the Service, BLM, NPS, and Jicarilla Apache Nation. The purpose of the agreement is to facilitate cooperation and coordination among State, Federal, and tribal agencies in the conservation of Rio Grande cutthroat trout. The Conservation Team has met several times and the ''Range-wide Status of Rio Grande Cutthroat Trout (*Oncorhynchus clarki virginalis*): 2007'' is a product of the team's cooperative effort.

Regulatory Mechanisms Involving Land Management

Numerous State and Federal laws and regulations help to minimize adverse effects of land management activities on Rio Grande cutthroat trout. Federal laws that protect Rio Grande cutthroat trout and their habitats include the Clean Water Act (33 U.S.C. 1251 *et seq.*), Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*), National Forest Management Act (16 U.S.C. 1600 *et seq.*), Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*), Wilderness Act (16 U.S.C. 1131 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Approximately 59 percent of Rio Grande cutthroat trout habitat occurs on lands managed by Federal agencies. The majority of those lands are managed by the USFS. Rio Grande cutthroat trout occur over a large geographic area within the Rio Grande, Santa Fe, and Carson National Forests in Colorado and New Mexico. Rio Grande cutthroat trout is designated as a sensitive species on all USFS lands.

The Regional Forester's Sensitive Species List policy is applied to projects implemented under the 1982 National Forest Management Act Planning Rule. However, in 2005, USFS implemented a new planning rule (70 FR 1023, January 5, 2005), which directs land management plans to be more strategic and less prescriptive. Under the new rule, land management plans identify ecosystem-level desired conditions and provide management objectives and guidelines to move toward the desired conditions. The land management plans also will provide species-specific direction for special status species when the broader ecosystem-level desired conditions do not provide for their needs. However, the United States District Court in *Citizens for Better Forestry et al.* v. *U.S. Department of Agriculture* (N.D. Calif.) enjoined the Forest Service from implementation and utilization of the National Forest land management planning rule published on January 5, 2005 (70 FR 1023). Currently, the U.S. Department of Agriculture Office of General Counsel is reviewing this matter and will provide legal advice to USFS on how to proceed with forest planning. Therefore, efforts specific to forest planning are postponed until further direction is available (USFS 2008).

Threats to depletion of stream flow can be reduced by the U.S. Forest Service utilizing its authorities, if any, to further secure additional instream flows in Colorado. Rio Grande cutthroat trout conservation populations are protected by State instream flow water rights or USFS Reserve water rights along 620 km (385 mi) in 63 stream segments (approximately 70 percent of occupied habitat) within the Rio Grande basin in Colorado. Most of the remaining Rio Grande cutthroat trout conservation populations that are not associated with instream flow water rights are found on private property within the boundaries of the old Spanish Land Grants where natural resource stewardship is practiced. Regulatory controls of water quality in Colorado are implemented by the

Colorado Water Quality Control Division and Commission. Water quality standards are in place to protect the maintenance of aquatic life in coldwater environments, and special resource restrictions are also available to provide further site-specific protection to water quality (Japhet *et al.* 2007, p. 18).

Summary of Factor D

The NMDGFG, CDOW and USFS are actively managing Rio Grande cutthroat trout and its habitat. They also have authority for and are undertaking fisheries management, research, educational and law enforcement activities designed to improve the conservation status of the species. There is a range-wide conservation agreement that also involves the Service and other parties. Existing regulations, authorities, and policies address current threats to the species that are subject to regulatory control. However, climate change will have potential impact throughout the range of this species. At this time it is difficult to state how these effects will be addressed through existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Climate Change

In this section, we discuss the aspects of climate change that will most likely affect the habitat of Rio Grande cutthroat trout. We begin by presenting the evidence that indicates that climate change is occurring globally. We then discuss literature related to climate change that has been published for the Southwest and southern Rocky Mountains that documents changes either that have already occurred or that researchers predict will occur. Finally, we present data that have been collected for streams occupied by Rio Grande cutthroat trout that indicate that the effects of climate change could exacerbate the threats discussed above.

The Intergovernmental Panel on Climate Change (IPCC) is a scientific body set up by the World Meteorological Organization and the United Nations Environment Program in 1988. It was established because policymakers needed an objective source of information about the causes of climate change, its potential environmental and socio-economic consequences, and the adaptation and mitigation options to respond to it. The Service considers the IPCC an impartial and legitimate source of information on climate change. In 2007, the IPCC published its Fourth Assessment Report, which is considered the most comprehensive compendium of information on actual and projected global climate change currently available.

Although the extent of warming likely to occur is not known with certainty at this time, the IPCC (2007a, p. 5) has concluded that warming of the climate is unequivocal and continued greenhouse gas emissions at or above current rates would cause further warming (IPCC 2007a, p. 13). The IPCC also projects that there will very likely be an increase in the frequency of hot extremes, heat waves, and heavy precipitation (IPCC 2007a, p. 15). Warming in the Southwest is expected to be greatest in the summer (IPCC 2007b, p. 887). Annual mean precipitation is likely to decrease in the Southwest and the length of snow season and snow depth are very likely to decrease (IPCC 2007b, p. 887). Most models project a widespread decrease in snow depth in the Rocky Mountains and earlier snowmelt (IPCC 2007b, p. 891).

In consultation with leading scientists from the Southwest, the New Mexico Office of the State Engineer prepared a report for the Governor (State of New Mexico 2006) which made the following observations about the impact of climate change in New Mexico:

(1) Warming trends in the American Southwest exceed global averages by about percent (p. 5);

(2) Models suggest that even moderate increases in precipitation would not offset the negative impacts to the water supply caused by increased temperature (p. 5);

(3) Temperature increases in the Southwest are predicted to continue to be greater than the global average (p. 5);

(4) There will be a delay in the arrival of snow and acceleration of spring snow melt, leading to a rapid and earlier seasonal runoff (p. 6); and

(5) The intensity, frequency, and duration of drought may increase (p. 7).

By the late 21st century, one simulation predicts no sustained snowpack south of Santa Fe or in the Sangre de Cristo Mountains (State of New Mexico 2006, p. 13). Snow pack would remain in far northern New Mexico and southern Colorado but would be greatly reduced in mass, with a decrease in water mass between one-third and one-half (State of New Mexico 2006, p. 14).

Consistent with the outlook presented for New Mexico, Hoerling (2007, p. 35) states that, relative to 1990–2005, simulations indicate that a 25 percent decline in stream flow will occur from 2006–2030 and a 45 percent decline will occur from 2035–2060 in the Southwest. Seager *et al.* (2007, p. 1181) show that there is a broad consensus among climate models that the Southwest will get drier in the 21st century and that the transition to a more arid climate is already under way. Only one of 19 models has a trend toward a wetter climate in the Southwest (Seager *et al.* 2007, p. 1181). Stewart *et al.* (2004, p. 1152) show that timing of spring streamflow in the western United States during the last five decades has shifted so that the major peak now arrives 1 to 4 weeks earlier, resulting in less flow in the spring and summer. They conclude that almost everywhere in North America, a 10 to 50 percent decrease in spring-summer streamflow fractions will accentuate the seasonal summer dry period with important consequences for warm-season water supplies, ecosystems, and wildfire risks (Stewart *et al.* 2004, p. 1154). An increase in average mean air temperature of just over 1 °C (2.5 °F) in Arizona and just under 1 °C (1.8 °F) in New Mexico since 1976 has already been documented (Lenart 2007, p. 4). Udall (2007, p. 7) found that multiple independent data sets confirm widespread warming in the West. Long-term studies (25 plus years) of Mexican jays (*Aphelocoma ultramarina*) in Arizona and of yellow-bellied marmots (*Marmota flaviventris*) in the Rocky Mountains indicate changes in the timing of important life history events (e.g., breeding, emergence from hibernation) for both species related to warmer temperatures (Parmesan and Galbraith 2004, pp. 18, 19).

As we will discuss below, climate change is predicted to have four major effects on the cold water habitat occupied by Rio Grande cutthroat trout: (1) Increased water temperature; (2) decreased stream flow; (3) a change in the hydrograph (a graphical representation of the distribution of water discharge or runoff over a period of time); and (4) an increased occurrence of extreme events (fire, drought, and floods).

Increased Water Temperature

Water temperature influences the survival of salmonids in all stages of their life cycle. Alterations in the temperature regime from natural background conditions negatively affect population viability, when considered at the scale of the watershed or individual stream (McCullough 1999, p. 160). Salmonids are classified as coldwater fish with thermal preferences centered around 15 °C (59 °F) (Shuter and Meisner 1992, p. 8). High temperatures suppress appetite and growth, can influence behavioral interactions with other fish (Shrank *et al.* 2003, p. 100), or can be lethal

(McCullough 1999, p. 156). Salmonids inhabiting warm stream segments have higher probabilities of dying from stress (McCullough 1999, p. 156).

Eaton and Scheller (1996, p. 1111) state that the maximum temperature tolerance for cutthroat trout is 23.3 °C (74 °F), but Dunham *et al.* (2003b, p. 1042) state that Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) show signs of stress (decreased growth and appetite and increased mortality) when water temperature exceeds 22 °C (71.6 °F) for even a short time (less than 1 day). For Bonneville cutthroat trout, the 7-day upper incipient lethal temperature (temperature lethal to 50 percent of the fish) was 24.2 °C (75.6 °F) under constant thermal conditions (Johnstone and Rahel 2003, p. 96). However, when the temperature was cycled daily between 16–26 °C (60.8–78.8 °F) for 7 days, similar to what the trout would experience in high mountain streams, all trout survived (Johnstone and Rahel 2003, p. 97). Dickerson and Vineyard (1999, pp. 519, 520) found a similar result (cycling between 20 and 26 °C (68 and 78.8 °F)) for Lahontan cutthroat trout. Although trout may survive cyclic exposures to high temperatures, growth is slowed or stopped due to the high metabolic costs and reduced food intake (Dickerson and Vineyard 1999, p. 519; Johnstone and Rahel 2003, p. 98).

Although temperature preferences of Rio Grande cutthroat trout have not been researched specifically, their optimum growth temperature (appetite is high and maintenance requirements low) is most likely in the range of 13–15 °C (55.4–59 °F), similar to other cutthroat trout (Meeuwig *et al.* 2004, p. 213; Bear *et al.* 2007, p. 1118) and their upper incipient lethal limit is most likely near 23–24 °C (73.4–75.2 °F), as has been found for other subspecies of cutthroat trout (Wagner *et al.* 2001, p. 434; Johnstone and Rahel 2003, p. 97). Upper incipient lethal limit (temperature at which 50 percent of the fish can survive for 7 days) for rainbow trout ranges from 24–26 °C (75.2–78.8 °F), for brown trout 23–26 °C (73.4–78.8 °F), and for brook trout 24–25 °C (75.2–77 °F) (McCullough 1999, pp. 47, 48), which means these nonnative trout are better able to tolerate higher water temperatures than cutthroat trout.

The IPCC states that of all ecosystems, freshwater ecosystems will have the highest proportion of species threatened with extinction due to climate change (Kundzewicz *et al.* 2007, p. 192). Species with narrow temperature tolerances will likely experience the greatest effects from climate change, and it is anticipated that populations located at the margins of species' hydrologic and geographic distributions will be affected first (Meisner 1990a, p. 282). Climate change has already had or is predicted to have negative consequences on coldwater fisheries globally (Nakano *et al.* 1996, p. 711; Hari *et al.* 2006, p. 24), across North America (Meisner 1990a, pp. 287, 290; Regier and Meisner 1990, p. 11; Carpenter *et al.* 1992, p. 124; Eaton and Scheller 1996, p. 1111; O'Neal 2002, p. 3; Poff *et al.* 2002, p. iv; Chu *et al.* 2005, p. 303; Preston 2006, pp. 106, 107, 110, 111, 115; Reiman *et al.* 2007, pp. 1553, 1558), and in the Southwest and Rocky Mountains specifically (Keleher and Rahel 1996, p. 1; Rahel *et al.* 1996, pp. 1116, 1122; O'Neal 2002, pp. 43, 44; Preston 2006, pp. 101, 102, 113) through increases in ground and surface water temperature.

The magnitude of habitat loss due to increased water temperature depends on the climate change model used, the model used to predict the air temperature/water temperature relationship, and the timeframe. Keleher and Rahel (1996, p. 4) found that the distribution of salmonids in Wyoming streams was limited to areas where mean July air temperature did not exceed 22 °C (71.6 °F). They projected that for temperature increases of 1, 2, 3, 4, or 5 °C, there would be a corresponding loss of area suitable for salmonids of 16.2, 29.1, 38.5, 53.3, and 68.0 percent, respectively (Keleher and Rahel 1996, p. 4). Rahel *et al.* (1996) used three approaches to examine potential salmonid habitat loss due to warming in the North Platte river drainage of the Rocky Mountains. They found that there was a loss of 9 to 76 percent of coldwater habitat based on air temperature increases of 1 to 5 °C (Rahel *et al.* 1996, p. 1120). Other studies have predicted losses of 18–92 percent of suitable natal bull trout (*Salvelinus confluentus*) habitat (Rieman *et al.* 2007, p. 1558), and Preston (2006, p. 92), in a re-analysis of other studies, found a 20, 35, and 50 percent loss of coldwater habitat from the Rocky Mountains in 2025, 2050, and 2100, respectively.

In these studies, habitat loss occurs in the lower elevation stream reaches (or lower latitude streams) due to increased temperatures. As a result, salmonid populations will be restricted to increasingly higher elevations or to more northern latitudes (Meisner *et al.* 1988, p. 6; Regier and Meisner 1990, p. 11; Keleher and Rahel 1996, p. 2; Nakano *et al.* 1996, pp. 716, 717; Rahel *et al.* 1996, p. 1122; Poff *et al.* 2002, p. 7; Rieman *et al.* 2007, p. 1558). Consequently, coldwater species occupying the southern distributions of their range are seen as more susceptible to extirpation as a consequence of global climate change (Poff *et al.* 2002, p. 8; Rieman *et al.* 2007, pp. 1552, 1553). Rio Grande cutthroat trout are the southernmost subspecies of cutthroat trout (Behnke 2002, p. 143).

Rio Grande cutthroat trout primarily occupy high-elevation headwater tributaries. Dispersal to new habitats is unlikely because they currently occupy the uppermost available habitat. Warming of lower elevation stream segments may limit restoration opportunities in the future and provide a competitive advantage to brown, rainbow, and brook trout in locations where these nonnatives occur with Rio Grande cutthroat trout (De Staso and Rahel 1994, pp. 293, 294; Dunham *et al.* 2002, p. 380; Paroz 2005, p. vi; Bear *et al.* 2007, p. 1118; Shemai *et al.* 2007, p. 322).

The Santa Fe and Carson National Forests have monitored stream temperature data using thermographs (instruments that record temperature at designated intervals, e.g., once every 4 hours) (Eddy 2005, Martinez 2007). From 2001–2003, 47 thermograph stations were used to monitor 21 streams on the Santa Fe National Forest, representing 385 km (239 mi) of stream (Eddy 2005, p. 5). Seven of the 21 streams are currently occupied by Rio Grande cutthroat trout conservation populations; all 21 are believed to be historical habitat. Temperature data collected were compared with New Mexico Environment Department (NMED) standards for high quality coldwater fisheries and with Santa Fe National Forest standards, which are slightly more stringent than NMED but are more in line with standards for coldwater fisheries in the western States (Table 3) (Eddy 2005, p. 4). ''Properly functioning'' indicates that the water temperature of the stream is within the optimal range for feeding, physiology, and behavior for coldwater fish. ''At risk'' indicates that the water temperature is slightly warmer than optimal, and ''not properly functioning'' indicates that the water temperature is too warm to support a healthy coldwater fishery.

TABLE 3.—SANTA FE NATIONAL FOREST AND NMED

[Water quality temperature standards for high quality coldwater fisheries]

Water temperature standards	Properly functioning	At risk	Not properly functioning
Santa Fe National Forest 7-Day Average Maximum	≤64 °F (≤17.8 °C)	64 to 70 °F (17.8–21.1 °C)	>70 °F (>21.1 °C).
NMED 3-Day Average Maximum	<68 °F (<20 °C)	68 to <73.4 °F (20 to <23 °C)	≥73.4 °F (23 °C).

Using the Santa Fe National Forest standards, stream segments represented by 12 thermograph stations were properly functioning (67.3 km (41.8 mi)), stream segments represented by 20 stations were at risk (162.1 km (100.7 mi)), and stream segments represented by 15 stations were not properly functioning (154.7 km (96.1 mi)) (Eddy 2005, p. 5). Using NMED standards, stream segments represented by 23 stations (172.7 km (107.3 mi)) were properly functioning, stream segments represented by 12 stations (82.2 km (51.1 mi)) were at risk, and stream segments represented by 12 stations (129.1 km (80.2 mi)) were not properly functioning (Eddy 2005, p. 5). Only nine streams were properly functioning for their entire length, using both standards. Of these, only one is occupied by a Rio Grande cutthroat trout conservation population (Cave Creek) (Eddy 2005, p. 5). The Pecos River and Rio de las Vacas are properly functioning in occupied Rio Grande cutthroat trout habitat but have at risk (Pecos River) or not properly functioning sections (Rio de las Vacas) below occupied habitat (Eddy 2005, pp. 34, 35, 92). Canones, Polvadera, and Rio Cebolla were the other streams monitored that have conservation populations of Rio Grande cutthroat trout. These streams were identified as at risk or not properly functioning (Rio Cebolla) in occupied habitat (Eddy 2005, pp. 9, 19, 26).

Monitoring on the Carson National Forest indicated that Comanche Creek had several periods in which temperature standards were exceeded (Martinez 2007, pp. 3–22). Eight sites on Comanche Creek were monitored in 1998, 1999, and 2004. Temperatures were highest in 1998 and 1999, years of lower runoff. Temperatures in 1998 were very high, with 5 of the 8 sites recording temperatures from 26.6–29.5 °C (80–85 °F) (Martinez 2007, pp. 3–22). At the remaining three sites, temperatures reached 26.4 °C (79.5 °F). Thermographs went in on June 23 each year, and in 1998, maximum temperatures ranged from 22.9–24 °C (73.2–76 °F) at all eight sites on the first day the recorders were deployed, indicating that there were probably several days of warm temperatures that occurred before monitoring began (Martinez 2007, pp. 3–22). In total, of 14 streams occupied by Rio Grande cutthroat trout and monitored by thermographs on the Santa Fe and Carson National Forests, 8 streams were either at risk or not properly functioning because of high water temperature (NMED 2007, pp. 15–331; Eddy 2005, pp. 8–116; Martinez 2007, pp. 3–22). An additional conservation population in Colorado was also identified at risk from high water temperatures by Pritchard and Cowley (2006, p. 39). Because only a fraction of the streams occupied by Rio Grande cutthroat trout have been monitored, there are likely more that are at risk.

The thermograph data collected on the Santa Fe and Carson National Forests indicate that stream temperatures in several streams are already at risk or are considered ''not properly functioning'' for trout. Because air temperature and consequently water temperature are expected to increase with climate change, we would anticipate that more streams that are currently not properly functioning will become unsuitable for Rio Grande cutthroat trout, those currently at risk will enter the not properly functioning category, and more streams will fall into the at risk category for temperature. As a consequence, suitable habitat will decrease and fragmentation will increase.

In contrast to the potential negative impacts of water temperature increase on Rio Grande cutthroat trout, there could also be a potential benefit. Cold summer water temperatures (mean July temperature of less than 7.8 °C (46 °F)) have been found as a limiting factor to recruitment of cutthroat trout in high-elevation streams (Harig and Fausch 2002, p. 545; Coleman and Fausch 2007, pp. 1238–1240). Coleman and Fausch (2007, p. 1240) found that cold summer water temperatures in Colorado streams likely limited recruitment of cutthroat trout because of reduced survival of age-0 fish (fish less than 1 year old). Harig and Fausch (2002, p. 538) recorded summer water temperatures in 5 streams in New Mexico and 11 streams in Colorado from 1996 to 1999 (Harig and Fausch 2002, p. 540). None of the streams in New Mexico had July water temperatures below 7.8 °C (46 °F) (lowest July average was in the Pecos River, 9.2 °C (48.6 °F)). Three of four streams in Colorado that no longer had translocated fish present had summer averages below 7.8 °C (46 °F) (Harig and Fausch 2002, pp. 538, 539). The remaining 8 streams in Colorado had summer averages ≥8.3 °C (46.9 °F), indicating that cold summer water temperatures were most likely not limiting for these Rio Grande cutthroat trout populations (Harig and Fausch 2002, pp. 538, 539). Two of the four streams (Little Medano and Unknown Creek), which no longer had transplanted fish at the time of Harig and Fausch's research (1996–1998), dried in 2002 (Alves *et al.* 2007, pp. 43, 44), raising the possibility that insufficient refugial habitat may have been limiting, not low summer water temperatures.

Cold summer water temperatures have been identified as limiting in one stream: Deep Canyon, Colorado (Pritchard and Cowley 2006, p. 42). However, Alves *et al.* (2007 database) indicate that Deep Canyon has temperatures from 8 to 16 °C (46.4 to 60.8 °F) during spawning and incubation periods. Of the 14 Rio Grande cutthroat trout streams monitored with thermographs on the Santa Fe and Carson National Forests, two (Pecos and Mora rivers) were found to have July temperatures less than 7.8 °C (46 °F) (data summarized from Eddy 2005, Martinez 2007). The result for the Pecos River contrasts with the data Harig and Fausch (2002, p. 540) collected (9.2 °C (48.6 °F)) and likely reflects a difference in thermograph placement or year (e.g., temperature variability, amount of runoff).

In summary, we find that data collected thus far indicate that warm water temperatures have already reached the likely limits of suitability in some Rio Grande cutthroat trout streams and several others are at risk. Water temperatures are expected to increase in the future, affecting more streams and making lower elevation reaches either

marginal or unsuitable. This is particularly true for populations that are located in New Mexico and are at the southernmost extent of the range but could also be true for smaller streams in Colorado. Although cold water temperatures are limiting to some high-elevation salmonid populations, cold water limitation has not been convincingly demonstrated for any Rio Grande cutthroat trout population. Therefore, we view the negative impact of stream warming to outweigh any benefit that may occur from increased water temperature.

The studies cited above that forecast coldwater habitat loss, calculate the loss of habitat based on increases in temperature alone, assuming temperatures will rise above the thermal tolerance limits of coldwater species, thereby limiting the amount of suitable habitat available. The ancillary effects of increased temperature, such as increased habitat fragmentation (Rahel *et al.* 1996, pp. 1121, 1122; Rieman *et al.* 2007, pp. 1553, 1560, 1562), changes in invertebrate prey base (both species composition and availability) (Ries and Perry 1995, p. 204; O'Neal 2002, p. 4; IPCC 2002, p. 17; Harper and Peckarsky 2006, p. 618; Bradshaw and Holazpel 2008, p. 157), effects on spawning (Jager *et al.* 1999, p. 236), increased competitive interactions with nonnative trout (Meisner 1990b, p. 1068; De Staso and Rahel 1994, pp. 289, 294; O'Neal 2002, p. 33; Chu *et al.* 2005, p. 307; Sloat *et al.* 2005, p. 235), additional invasive species (IPCC 2002, p. 32), increased susceptibility to disease (Hari *et al.* 2006, p. 24), and effects on water quality (e.g., dissolved oxygen, nutrients, pH) (Meisner *et al.* 1988, p. 7), are not considered in calculating the potential habitat loss.

Of these factors, increased fragmentation, increased effects from nonnative fish, and increased disease risk are considered of particular importance to Rio Grande cutthroat trout and are discussed in more detail.

Fragmentation. Climate change is predicted to increase fragmentation of coldwater fish habitat (Nakano *et al.* 1996, p. 719; Rahel *et al.* 1996, p. 1122; Rieman *et al.* 2007, p. 1553). Currently, 112 of 120 (93 percent) conservation populations of Rio Grande cutthroat trout exist as fragments, with no well-connected populations (Alves *et al.* 2007, p. 29). Only one population has a moderate degree of connectivity (Comanche Creek) (2007 database). As noted above, Comanche Creek currently has very high water temperatures (Martinez 2007, pp. 3–22), and several of the small tributaries of upper Comanche Creek dried in 2006 (Patten *et al.* 2007, p. 76). Consequently, the one moderately well-connected population may already be at risk. Seven Rio Grande cutthroat trout conservation populations are considered weakly networked (occupied habitat consists of 2–3 connected streams, possible infrequent straying of adults may occur) (Alves *et al.* 2007, p. 77). Of these seven, six have connecting stream segments less than 5 feet in width (2007 database), and are therefore considered at risk from drying. Consequently, fragmentation of these weakly networked systems appears reasonably likely in the foreseeable future.

Nonnative Fish Interactions. Water temperature is a determining factor in the distribution of salmonids (Rahel and Hubert 1991, p. 326; Schrank *et al.* 2003, p. 100; Sloat *et al.* 2005, p. 225). Additionally, temperature regime is a key determinant of the outcome of competitive interactions in a fish community (MuCullough 1999, p. 156). Fish living within their optimum temperature range have improved performance relative to other species not within their optimum range (MuCullough 1999, p. 156). There is evidence that the reason cutthroat trout occupy headwater streams and rainbow, brook, and brown trout occupy downstream reaches is because of the influence of temperature on competitive abilities (Dunham *et al.* 2002, p. 380). DeStaso and Rahel (1994, pp. 293, 294) looked at competition between Colorado River cutthroat trout (*Oncorhynchus clarki pleuriticus*) and brook trout. They found that at warmer water temperatures (20 °C (68 °F)) brook trout was dominant, as evidenced by a higher level of interspecific aggression, more time spent at the optimal feeding position, and greater food consumption (DeStaso and Rahel 1994, pp. 293, 294). Brook trout also tolerated higher temperatures (DeStaso and Rahel 1994, p. 294).

As mentioned earlier, when brook trout co-occur with cutthroat trout, species interactions act to suppress cutthroat trout populations (Dunham *et al.* 2002, p. 378; Young and Guenther-Gloss 2004, p. 193; Peterson *et al.* 2004, pp. 765–769). Because brook trout tolerate higher temperatures, warmer stream temperatures would provide a competitive advantage to brook trout over Rio Grande cutthroat trout, exacerbating the problems that already exist for Rio Grande cutthroat trout populations.

In New Mexico, brown trout is the most common nonnative trout present in Rio Grande cutthroat trout conservation populations (summarized from 2007 database). Jager *et al.* (1999, p. 232) modeled the effects of an increase of 2 °C air temperature on brown trout distribution in the Sierra Nevada, California. They found that brown trout numbers would increase in upstream cooler reaches, and decrease downstream through starvation of juvenile and adult fish (Jager *et al.* 1999, p. 235). This is consistent with observations in Switzerland. In Switzerland in 1987, after a long period of essentially stable river water temperatures, water temperatures took an abrupt and significant increase to a higher mean level, which was attributed to a corresponding increase in air temperature (Hari *et al.* 2006, pp. 10, 21). Suitable habitat for brown trout, a trout species native to the area, moved upstream, and downstream portions became unsuitable (Hari *et al.* 2006, pp. 10, 21).

McHugh and Budy (2005, p. 2791) hypothesized that cold incubation temperatures might explain why brown trout did not form self-sustaining populations at high elevations in Logan River, Utah, where upstream water temperatures were not too cold for adult brown trout. Because brown trout have a higher optimal growth temperature (between 13–18 °C) than cutthroat trout (12–13 °C), and because cold incubation temperatures may currently be limiting brown trout range expansion upstream, it is anticipated that warmer water temperatures will make additional upstream habitat suitable for brown trout, reducing the area where Rio Grande cutthroat trout are now dominant.

When cutthroat trout co-occur with rainbow trout, cutthroat trout typically occupy the upper colder reaches and rainbow trout occupy the lower, warmer stream reaches (Sloat *et al.* 2005, p. 235; Robinson 2007, p. 80). As identified by Alves *et al.* (2007, p. 35), rainbow trout occupy the same stream reaches as four conservation populations of Rio Grande cutthroat trout. Rainbow trout have a higher thermal tolerance than do cutthroat trout (Bear *et al.* 2007, pp. 1115, 1116). Because rainbow trout are able to tolerate higher temperatures than Rio Grande cutthroat trout, we expect that warming stream temperatures will give rainbow trout a competitive advantage over Rio Grande cutthroat trout. Monitoring and maintenance of barriers will continue to be essential, to prevent hybridization and competition.

White sucker is native to the middle elevations of the Pecos and Canadian river drainages in New Mexico, but it has been introduced widely throughout the State and is sympatric with at least two populations of Rio Grande cutthroat trout (Sublette *et al.* 1990, p. 199; 2007

database). White sucker has a preferred water temperature of 22.4–27.1 °C (72.3–80.8 °F) (Sublette *et al.* 1990, p. 198). Sublette *et al.* (1990, p.199) note that white sucker is highly fecund (able to reproduce) and often dominates a body of water. Comanche Creek (elevation approximately 2900 m (9500 ft)) has an abundant white sucker population, most likely due to the warm water temperatures discussed above. In 2007, over 20,000 white sucker were removed from Comanche Creek during a Rio Grande cutthroat trout restoration project (Patten 2007). Before the restoration, fish biomass was dominated by white sucker, and an inverse relationship was found between Rio Grande cutthroat trout density and white sucker density (Patten *et al.* 2007, pp. 17, 18). Because both white sucker and Rio Grande cutthroat trout feed on aquatic insects, there is the potential for high numbers of white sucker to negatively impact food availability for Rio Grande cutthroat trout. We would anticipate the warmer stream temperatures would lead to more stream habitat becoming suitable for white sucker with potential negative impacts on Rio Grande cutthroat trout populations.

Disease. As mentioned earlier (see the ''Disease and Predation'' section in Factor C above) it had been thought that Rio Grande cutthroat trout were provided some level of protection against whirling disease because tubificid worms are most abundant in warm, degraded habitats and Rio Grande cutthroat trout occur in high-elevation, coldwater streams (67 FR 39943). However, Nehring (2007, p. 10) found equal abundance of lineage III tubificid worms in elevations from 1,829 m (6,000 ft) to 3,657 m (12,000 ft). Thus, it is clear that elevation does not provide protection from exposure to the disease.

El-Matubouli *et al.* (1999) found that temperatures from 10–15 °C (50–59 °F) were optimum for development and maturation of the parasite inside the tubificid worm. Blazer *et al.* (2003, p. 24) found that the greatest production of TAMs occurred at temperatures from 13–17 °C (55.4–62.6 °F). Although the effect of temperature on survival of the tubificid worms was not statistically detectable, DuBey *et al.* (2005, p. 341) found that survival was consistently higher at 17 °C (62.6 °F) than at 5 °C (41 °F). Schisler *et al.* (2000, p. 862) found that multiple stressors on rainbow trout, especially the combination of *M. cerebralis* infection and temperature, increased mortality drastically. At 12.5 °C (54.5 °F) mean mortality of rainbow trout exposed to *M. cerebralis* was 41.7 percent. Mean mortality of rainbow trout exposed to *M. cerebralis* and held at a temperature of 17 °C (62.6 °F) was 60 percent (Schisler 2000, p. 861). Water temperature often exceeds 17 °C (62.6 °F) in July and August in Rio Grande cutthroat trout streams that have been monitored (Eddy 2005, Martinez 2007).

Thompson *et al.* (1999, p. 318) found that as water temperature increased from May to July, rainbow and cutthroat trout infected with *M. cerebralis* suffered high rates of mortality even though they had survived well in the winter. In a field study of the effects of water temperature, discharge, substrate size, nutrient concentration, primary productivity, and relative abundance of *T. tubifix,* de la Hoz Franco and Budy (2004, p. 1183) found that prevalence of *M. cerebralis* in trout increased with water temperature. Across sites where cutthroat trout were present, the lowest prevalence of infection occurred in the headwaters where average daily water temperature was 9.2 °C (48.6 °F), whereas the highest levels of infection occurred at a low elevation site where the temperature was the highest (>12 °C (53.6 °F)) (de la Hoz Franco and Budy 2004, p. 1186).

While water temperature in some streams may warm to the point (>20 °C (68 °F)) of inhibiting the production of TAMs (Blazer *et al.* 2003, p. 24), it is anticipated that the overall increases in water temperature will be favorable for *T. tubifix* and TAM production. From these studies we conclude that elevation does not provide protection to Rio Grande cutthroat trout populations and that increasing water temperature would increase the production of TAMs and the survival of tubificid worms (up to about 20 °C (68 °F)), and increased water temperature would increase mortality of infected Rio Grande cutthroat trout.

In summary, stream warming will most likely decrease the amount of suitable habitat available for Rio Grande cutthroat trout. Warmer stream temperatures may in the foreseeable future make currently occupied reaches of stream more stressful or unsuitable. Suitable habitat is likely to be reduced, primarily at the downstream end of stream reaches and in small tributaries, leading to increased fragmentation, shorter occupied segments, and increased risk of extirpation. Warmer water temperatures will allow nonnative fishes to expand their range and give them a competitive advantage over Rio Grande cutthroat trout. Stress from warm water temperatures increases susceptibility to and mortality from disease. Although whirling disease positive sites are currently still limited within the range of Rio Grande cutthroat trout, managers will need to continue to monitor the disease closely. Increased water temperatures would increase the threat posed by whirling disease.

Decreased Stream Flow

Current models suggest a decrease in precipitation in the Southwest (Seager *et al.* 2007, p. 1181; Kundzewicz *et al.* 2007, p. 183), which would lead to reduced stream flows and a reduced amount of habitat for Rio Grande cutthroat trout. Stream flow is also predicted to decrease in the Southwest even if precipitation were to increase moderately (Nash and Gleick 1993, p. ix; State of New Mexico 2005, p. 6; Hoerling 2007, p. 35). Winter and spring warming causes an increased fraction of precipitation to fall as rain, resulting in a reduced snow pack, an earlier snowmelt, and decreased summer runoff (Christensen *et al.* 2004, p. 4; Stewart *et al.* 2005, p. 1137; Regonda *et al.* 2005, p. 373). Earlier snowmelt and warmer air temperatures lead to a longer dry season, which affects stream flow. Warmer air temperatures lead to increased evaporation, increased evapotranspiration, and decreased soil moisture. These three factors would lead to decreased stream flow even if precipitation increased moderately.

The effect of decreased stream flow is that streams become smaller, thereby reducing the amount of habitat available for aquatic species (Lake 2000, p. 577). A smaller stream is affected more by air temperature than a larger one, exacerbating the effects of warm (and cold) air temperature (Smith and Lavis 1975, p. 229). Small headwater streams, such as those occupied by Rio Grande cutthroat trout, and intermittent streams may dry completely. Seventy-one percent of Rio Grande cutthroat trout streams are less than 8 km (5 mi) in length (Alves *et al.* 2007, p. 26). Because stream length is one indicator of population viability (Harig *et al.* 2000, p. 997; Hilderbrand and Kershner 2000, p. 515; Young *et al.* 2005, p. 2405; Cowley 2007 10.1002/aqc.845), further shortening of Rio Grande cutthroat trout streams due to drying is expected to have a negative impact on populations.

In fact, fourteen Rio Grande cutthroat trout streams with conservation populations became intermittent, and had populations negatively impacted or lost because of the 2002 drought (Japhet *et al.* 2007, pp. 42–44; Patten *et al.* 2007, pp. 14, 31, 32, 34, 39, 76). The number of streams impacted was most likely higher, because managers only survey a fraction of the 120 conservation populations in any given year. Approximately 27 conservation

populations are in streams that are 1.5 m (5 ft) or less in width throughout their entire length (2007 database). An additional 29 stream segments that are tributaries to the conservation populations are also less than 1.5 m (5 ft) in width (2007 database), which indicates that fragmentation of existing connected populations could increase. We recognize that not all streams less than 1.5 m (5 ft) wide have an equal probability of drying. Some are likely spring fed or are narrow and deep, thus decreasing the likelihood of drying. However, because of the high number of Rio Grande cutthroat trout streams less than 8 km (5 mi) in length (71 percent of conservation populations) and less than 1.5 m (5 ft) wide, the risk of drying is considered high.

Insight into the effects that climate change may have on headwater streams is provided by research done at the Experimental Lakes Area in northwestern Ontario (Schindler *et al.* 1996). The experimental area was set up in 1968, and precipitation, evaporation, air temperature, wind velocity, and other meteorological and hydrological parameters were monitored continuously throughout the 1970 to 1990 study period (Schindler *et al.* 1996, p. 1005). During this period, the area experienced gradual air temperature warming (1.6 °C (2.9 °F)) and decreased precipitation (as measured by a decline of over 50 percent in annual runoff) (Schindler *et al.* 1996, p. 1004). Whether these changes can be attributed to climate change or local variation is unknown, but they are consistent with changes that are predicted under global climate change scenarios. In the early 1970s, two streams in the area were perennial and one stream was dry for less than 10 days per year. By the late 1980s all three streams were dry for 120–160 days during the summer (Schindler *et al.* 1996, p. 1006). Because northern latitude ecosystems mimic higher elevation systems in southern latitudes, the effects seen on these streams likely represent what may happen at high-elevation streams in New Mexico and Colorado, within the range of Rio Grande cutthroat trout.

In summary, stream drying has already had a negative impact on several Rio Grande cutthroat trout populations; 71 percent of Rio Grande cutthroat trout conservation populations are in stream fragments 8 km (5 mi) or less in length, and many of the populations are in streams less than 1.5 m (5 ft) wide. Further, the increased risk of stream drying as a result of climate change, leading to shorter stream segments and increased fragmentation, is seen as high. A rangewide emergency rescue and evacuation plan does not exist for Rio Grande cutthroat trout and would likely not be effective. If widespread drought were to occur, affecting many streams at the same time, it is unclear if sufficient facilities or donor streams exist to accept the rescued fish, or if the effort would take place according to a carefully conceived, well-organized plan.

Change in Hydrograph

Changes in air temperature and precipitation will likely lead to changes in the magnitude, frequency, timing, and duration of runoff (Poff *et al.* 2002, p. 4). Stewart *et al.* (2004, p. 1152) show that spring streamflow during the last five decades has shifted so that the major peak now arrives 1 to 4 weeks earlier, resulting in declining fractions of flow in the spring and summer. The life history of salmonids is closely tied to the flow regime, runoff in particular (Fausch *et al.* 2001, p. 1440). A change in timing or magnitude of floods can scour the streambed, destroy eggs, or displace recently emerged fry downstream (Erman *et al.* 1988, p. 2199; Montgomery *et al.* 1999, p. 378; Fausch *et al.* 2001, p. 1440). The environmental cues for spawning of Rio Grande cutthroat trout are not known with certainty, but they are most likely tied to increasing water temperature, increasing day length, and possibly flow, as it has been noted that they spawn when runoff from snowmelt has peaked and is beginning to decrease (Behnke 2002, p. 141; Pritchard and Cowley 2006, p. 25). Consequently, a change in the timing of runoff from spring to winter could disrupt spawning cues because peak flow would occur when the days are still short in length and water temperatures cold.

Increased winter temperatures cause more precipitation to fall as rain instead of snow (Regonda *et al.* 2005, p. 373). Snow covering small streams provides valuable insulation that protects aquatic life (Needham and Jones 1959, p. 470; Gard 1963, p. 197). Gard (1963, p. 196) measured temperatures above, within, and below the snow at Sagehen Creek, California, a small Sierra Nevada mountain stream. He found that although there was a 35.4 °C (63.8 °F) diurnal air temperature variation, within the snow the temperature variation was only 1.3 °C (2.3 °F) and the water temperature in the stream below varied by only 0.3 °C (0.55 °F). Stream freezing, which is more likely absent insulating snow cover, has been suggested as the cause of the extirpation of one Rio Grande cutthroat trout population (Ferrell 2006, p. 11). Anchor ice (ice frozen on the stream bed) and frazil ice (ice crystal suspended in the water) can also have negative impacts on trout (Needham and Jones 1959, p. 465). High-elevation streams are rarely visited in winter; consequently, it is difficult to document the extent to which freezing may impact populations. However, the combination of reduced stream flow and reduced snow pack could lead to an increased probability of stream freezing in small headwater Rio Grande cutthroat trout streams.

Earlier snowmelt, which leads to less flow in the spring and summer, could either benefit Rio Grande cutthroat trout or be detrimental. The benefit could come because the young-of-year would have a longer growing season before winter. However, as discussed above, a longer season of lower flows would lead to increased stream temperatures and increased probability of intermittency and drying.

In summary, it is difficult to project how changes in the hydrograph as a result of climate change will affect Rio Grande cutthroat trout populations. If growing season is increased, water temperatures remain suitable, and the stream does not dry, a beneficial effect could occur. If spawning cues are disrupted or egg and fry success is reduced because of winter floods or unseasonal extreme floods, a negative impact would occur. In addition, stream freezing may reduce suitable over-winter habitat or reduce population size in susceptible streams.

Extreme Events

An increase in extreme events such as drought, fires, and floods is predicted to occur because of climate change (IPCC 2007a, p. 15). It is anticipated that an increase in extreme events will most likely affect populations living at the edge of their physiological tolerances. The predicted increases in extreme temperature and precipitation events may lead to dramatic changes in the distribution of species or to their extirpation or extinction (Parmesan and Matthews 2006, p. 344).

Drought. The relatively short-term drought of the early 2000s had a negative impact on or extirpated 14 Rio Grande cutthroat trout populations in Colorado and New Mexico (Japhet *et al.* 2007, pp. 42–44; Patten *et al.* 2007, pp. 14–40). A fifteenth population is thought to have been extirpated in 2006 by complete freezing caused by low flow in the winter (Ferrell 2006, p. 11). As discussed above, in the ''Decreased Stream Flow'' section, it is anticipated that a prolonged, intense drought would affect many Rio Grande cutthroat trout populations, in particular those less

than 1.5 m (5 ft) wide and less than 8 km (5 mi) long because of their small size.

Most Rio Grande cutthroat trout populations are currently protected from downstream populations of nonnative trout by barriers. Downstream reaches are larger streams that historically could have provided refugia for populations threatened by stream drying. If Rio Grande cutthroat trout disperse downstream now, they are lost from their conservation population once they pass over the barrier because they will not be able to pass back over the barrier moving the upstream direction. In the future, downstream water temperatures may be too warm to be suitable for Rio Grande cutthroat trout. In addition to stream drying, there is a clear association between severe droughts and large fires in the Southwest (Swetnam and Baisan 1994, pp. 11, 24, 28), as discussed below.

Fire. Since the mid-1980s, wildfire frequency in western forests has nearly quadrupled compared to the average of the period 1970–1986. The total area burned is more than six and a half times the previous level (Westerling *et al.* 2006, p. 941). In addition, the average length of the fire season during 1987–2003 was 78 days longer compared to 1970–1986 and the average time between fire discovery and control increased from 7.5 days to 37.1 days for the same timeframes (Westerling *et al.* 2006, p. 941). McKenzie *et al.* (2004, p. 893) suggest, based on models, that the length of the fire season will likely increase further and that fires in the western United States will be more frequent and more severe. In particular, they found that fire in New Mexico appears to be acutely sensitive to summer climate and temperature changes and may respond dramatically to climate warming.

Changes in relative humidity, especially drying over the western United States, are also projected to increase the number of days of high fire danger (Brown *et al.* 2004, p. 365). High-elevation, subalpine forests in the Rocky Mountains typically experience infrequent (i.e., one to many centuries), high severity crown fires (Schoennagel *et al.* 2004, p. 664). These fires usually occur in association with extremely dry regional climate patterns (Swetnam and Baisan 1994, p. 28; Schoennagel *et al.* 2004, p. 664). Short drying periods do not create the conditions appropriate for fire in these typically cool, humid forests. Schoennagel *et al.* (2004, p. 665, 666) conclude that recent increases in the area burned in subalpine forests are not attributable to fire suppression but that variation in climate exerts the largest influence on the size, timing, and severity of the fires. In contrast, low-elevation, ponderosa pine forests in the Rocky Mountains were historically characterized by frequent, low-severity fires (Schoennagel *et al.* 2004, p. 669). Fire suppression has significantly increased ladder fuels (fuels that allow fire to climb from the forest floor to the tops of trees) and tree densities leading to unprecedented high-severity fires in these ecosystems (Schoennagel *et al.* 2004, p. 669). Rio Grande cutthroat trout streams occur in both forest types.

As discussed in the ''Fire'' section in Factor A above, because of the observed and predicted increase in fire season length; the predicted increase in frequency and severity of fires; the observation that fuel treatment is only effective in low-elevation, ponderosa pine forests; the expectation of an increase in the frequency of hot extremes, heat waves, and heavy precipitation (IPCC 2007a, p. 15); and the fact that most Rio Grande cutthroat trout streams occur within a forested landscape, we conclude that wildfire associated with climate change will exacerbate habitat loss to Rio Grande cutthroat trout populations across their range.

Floods. The life history of salmonids is tied to the timing of floods (Fausch *et al.* 2001, p. 1440). A change in timing or magnitude of floods can scour the streambed, destroy eggs, or displace recently emerged fry downstream (Erman *et al.* 1988, p. 2199; Montgomery *et al.* 1999, p. 378; Fausch *et al.* 2001, p. 1440). Floods that occur after intense wildfires that have denuded the watershed are also a threat. As described above, in the ''Fire'' section under Factor A, several streams in the Southwest have had populations of trout extirpated as a result of ash flows which occurred after fire (Rinne 1996, p. 654; Brown *et al.* 2001, p. 142; Patten *et al.* 2007, p. 33). Consequently, an increase in rain or snow events, intense precipitation that is unseasonable, or precipitation that occurs after fire could extirpate affected Rio Grande cutthroat trout populations.

In summary, extreme events, especially widespread fire and drought, will likely affect Rio Grande cutthroat trout populations in the foreseeable future through population extirpation, extreme population reduction, or habitat reduction. Several Rio Grande cutthroat trout populations have already been impacted by drought. Fire has thus far primarily affected nonnative trout streams within the range of Rio Grande cutthroat trout, but there is no safeguard for Rio Grande cutthroat trout streams. The impact of a change in the timing of runoff may be significant but is more difficult to predict.

Climate Change Summary

The extent to which climate change will affect Rio Grande cutthroat trout is not known with certainty at this time. Preliminary projections point to a possible rangewide negative impact through increased water temperatures, decreased stream flow, a change in hydrograph, and an increased occurrence of extreme events, which will all tend to exacerbate the threats to the Rio Grande cutthroat trout and its habitat discussed under Factors A and C above. Although the extent that the global climate will change in the future is not known, even a minimal increase in temperature will lead to increased habitat unsuitability and will exacerbate most other known threats to the subspecies.

Fisheries Management

Future management of Rio Grande cutthroat trout will depend in part on the use of hatchery-reared fish. Although hatcheries can produce many fish in a short period of time, the use of hatchery fish is not without risks (Busack and Currens 1995, pp. 73–78). Two recent papers have explored the risks of captive propagation used to supplement species that are declining in the wild (Araki *et al.* 2007, Frankham 2007). Araki *et al.* (2007, p. 102) found that there was approximately a 40 percent decline in reproductive capabilities per captive-reared generation when steelhead trout (*Oncorhynchus mykiss*) were moved to natural environments. Frankham (2007, p. 2) notes that characteristics selected for under captive breeding conditions are overwhelmingly disadvantageous in the natural environment. Minimizing the number of generations in captivity or making the captive environment similar to the wild environment are effective means for minimizing genetic adaptation to captivity (Frankham 2007, pp. 4, 5).

The history of brood stock management in New Mexico has been marked by many challenges (Cowley and Pritchard 2003, pp. 12, 13). The most recent challenges came from whirling disease infection at Seven Springs Hatchery and the discovery that the brood stock was introgressed with Yellowstone cutthroat trout (Patten *et al.* 2007, p. 42). The hatchery was refurbished to eliminate *M. cerebralis* and the brood stock program was restarted in 2005 (Patten *et al.* 2007, p. 42). A recently revised brood stock management plan was completed for

New Mexico (Cowley and Pritchard 2003).

Although the intent of fisheries management is positive, fisheries management may result in unanticipated outcomes. For example, Costilla Creek restoration efforts were unfortunately marred by the introduction of rainbow trout into the recently reclaimed stream (Patten *et al.* 2007, p. 101, Appendices VIII-X). The rainbow trout came from Seven Springs Hatchery, even though this hatchery is designated as a Rio Grande cutthroat trout facility (NMDGF 2002, p. 28; Pattten *et al.* 2007, p. 379). It is unclear why Seven Springs Hatchery was holding rainbow trout. Through a coordinated effort, managers believe they captured most, if not all, of the rainbow trout that were stocked into Costilla Creek along with Rio Grande cutthroat trout (Patten *et al.* 2007, pp. 18, 102). While electrofishing to recover the rainbow trout, two brook trout were also caught, indicating that the lower barrier was compromised, not all the fish were killed during treatment, or that an angler had released the fish above the barrier. In addition, because the stocked Rio Grande cutthroat trout came from Seven Springs Hatchery before the introgression with Yellowstone cutthroat trout was discovered, the Rio Grande cutthroat trout that were stocked were slightly introgressed (Patten *et al.* 2007, p. 102). For these reasons, relying on hatchery-reared Rio Grande cutthroat trout does not provide certainty that repatriation will be successful.

Fisheries managers have worked very hard in the last several years to monitor populations, check and maintain barriers, test the genetic purity of populations, test streams for whirling disease, fund research, and reintroduce populations into appropriate streams (Patten *et al.* 2007, pp. 4–19; Japhet *et al.* 2007, pp. 22–27). New populations have been established in Costilla, South Ponil, Leandro, and Capulin creeks in New Mexico and in Big Springs, East Costilla, and West Costilla creeks in Colorado. Populations were restarted in Cat Creek and Little Medano Creek, Colorado, after being lost to the drought (Japhet *et al.* 2007, pp. 42–44). In addition, major restoration projections have gone through environmental review and are in progress on Placer Creek, Comanche Creek, and Costilla Creek. Completion of these projects will contribute to the long-term persistence of Rio Grande cutthroat trout. The USFS, BLM, and NPS have been active partners in project implementation and have completed many miles of detailed stream surveys, which adds greatly to our knowledge of habitat condition.

New Mexico Tribes and Pueblos have recently taken initiatives to restore Rio Grande cutthroat trout on their homelands. The Mescalero Apache Tribe began inventorying their streams to determine presence, and has reopened the Mescalero Tribal Fish Hatchery. The Tribe hopes to establish a Rio Grande cutthroat trout brood stock and raise Rio Grande cutthroat trout to support native fish restoration projects on Tribal lands. Santa Clara Pueblo received a Tribal Wildlife grant for nearly $200,000 for Rio Grande cutthroat trout restoration. The Pueblo is in the initial phases of project planning for restoring the Santa Clara Creek watershed. Nambe Pueblo has also expressed an interest in Rio Grande cutthroat trout restoration and is working in collaboration with USFS, the Service, Southwest Tribal Fisheries Commission (SWTFC), and NMDGF to formulate a restoration plan to restore Rio Grande cutthroat trout in the Nambe River watershed. The Jicarilla Apache Nation has also been involved in Rio Grande cutthroat trout restoration and plans to expand their restoration efforts to additional creeks on the reservation in the near future. The SWTFC, an organization composed of southwestern Native American tribes, has developed a Memorandum of Understanding with NMDGF to acquire Rio Grande cutthroat trout eggs for juvenile and adult production in support of tribal restoration Rio Grande cutthroat trout projects. Currently, the Memorandum is still awaiting approval by both participants. If successful, these actions would provide further conservation for Rio Grande cutthroat trout.

The Santa Fe National Forest, led by their fisheries biologist, has been very proactive about public education. They estimate that up until 2006 their ''Respect the Rio'' program directly reached over 9,300 people (Ferrell 2006, p. 16). They developed the Rio Grande Cutthroat Trout Life Cycle Game, which has traveled to classrooms, Earth Day events, and Kids' Fishing Day celebrations (Ferrell 2006, p. 15). The game has also been translated into Spanish to reach students who speak English as a second language. It is estimated that over 1,000 children and adults have played the game.

In New Mexico, a Rio Grande cutthroat trout Working Group meets monthly to discuss Rio Grande cutthroat trout conservation, projects, and volunteer opportunities, and to coordinate and communicate efforts among the participants. Regular members are NMDGF, the Service, Trout Unlimited, New Mexico Trout, and the USFS. The members are committed to Rio Grande cutthroat trout conservation.

One obstacle to fisheries managers in New Mexico has been the difficult process of approval for chemical treatment of streams. In August 2004, the New Mexico Game Commission voted to prohibit the use of piscicides in New Mexico (Patten *et al.* 2007, p. 102). This decision effectively terminated a project on Animas Creek, Gila National Forest, and has made stream restoration project approval difficult. Another obstacle to successful stream renovation is the stocking of nonnative trout by anglers into streams that have been treated to remove them (Japhet *et al.* 2007, p. 17). Although education and regulation may help, there is no known way to stop this illegal activity.

Summary of Factor E

Fisheries management is integral to the conservation of Rio Grande cutthroat trout. Although there are some risks associated with fisheries management, we conclude that the benefits outweigh the risks. We also conclude that the best scientific and commercial information available to us indicates that the threats facing Rio Grande cutthroat trout will be exacerbated by climate change. Continued management actions to connect fragmented populations are essential. However, at this time, it is not clear that management actions can outpace some of the projected effects of climate change.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by Rio Grande cutthroat trout. We have reviewed information supplied to us by State and Federal agencies, peer-reviewed literature, comments from private citizens, and other unpublished documents. The information summarized in this status review includes substantial information that was not available at the time of our 2002 finding (67 FR 39936). On the basis of this review, we find that listing of Rio Grande cutthroat trout as threatened or endangered is warranted, due to a combination of population fragmentation, isolation, small population size, nonnative trout, drought, and fire. We anticipate these threats will be compounded by the projected effects of climate change. However, listing of the Rio Grande cutthroat trout is precluded at this time by pending proposals for other species with higher listing priorities and actions.

In the context of the Act, the term ''threatened species'' means any species (or subspecies or, for vertebrates, distinct population segments) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term ''endangered species'' means any species that is in danger of extinction throughout all or a significant portion of its range. The Act does not indicate threshold levels of historic population size at which, as the population of a species declines, listing as either ''threatened'' or ''endangered'' becomes warranted. Instead, the principal considerations in the determination of whether or not a species warrants listing as a threatened or an endangered species under the Act are the threats that now confront the species and the probability that the species will persist into ''the foreseeable future.'' The Act does not define the term ''foreseeable future.'' However, we consider the ''foreseeable future'' to be 20 to 30 years, which equates to approximately 4 to 10 Rio Grande cutthroat trout generations, depending on the productivity of the environment. We find that this is both reasonable and appropriate for the present status review because it is long enough to take into account multi-generational dynamics of life-history and ecological adaptation, yet short enough to incorporate social and political change that affects species management.

Evidence shows that populations of Rio Grande cutthroat trout have been greatly reduced over the last 200 years. The range of Rio Grande cutthroat trout has contracted northward and populations are primarily restricted to high-elevation headwater streams. We attribute the decline in the distribution of Rio Grande cutthroat trout to habitat degradation and the introduction of nonnative sport fish into Rio Grande cutthroat trout habitat that began in the late 1800s. The wide distribution of rainbow trout and nonnative cutthroat trout have compromised Rio Grande cutthroat trout populations through competition, hybridization, and predation. These introduced fish have expanded and colonized new habitat and formed naturally reproducing populations that occupy the former, and in some cases current, range of Rio Grande cutthroat trout.

We find that populations we considered secure in 2002 suffered severe to moderate population declines. We considered 13 populations secure in 2002, and now we find that only 8 populations (5 identified in 2002, 3 new populations) would meet our definition of long-term persistence (over 2,500 fish, 9.6 km (6 mi) of occupied habitat, no nonnatives present). Although 97 additional conservation populations exist, they all are affected by one or more threats (e.g., small population size, short stream length, poor habitat quality, nonnative trout) that we consider significant enough to threaten their long-term survival. The overarching threat that magnifies the problems for each individual population is fragmentation. Over 90 percent of Rio Grande cutthroat trout populations exist in stream fragments. Consequently, recolonization of streams cannot occur after a natural disaster occurs and populations are much more susceptible to extirpation.

Because of the increases in air temperature that have already been documented in the Southwest, and other changes that have been documented in hydrology, fire patterns, and the life history of animals in the region, there is evidence that the effects of climate change are already occurring in the range of Rio Grande cutthroat trout. Every aspect of climate change we examined will likely have a negative effect on Rio Grande cutthroat trout. Rio Grande cutthroat trout populations are currently surviving with multiple stressors. Adding the effects of climate change on these populations may exacerbate the existing threats and stressors on the species.

There is documented commitment of agency personnel, tribes, and private landowners to continue conservation efforts for Rio Grande cutthroat trout. This is evidenced by the lists of accomplishments the States and agencies have provided to us. Both State and Federal agencies have been actively involved in Rio Grande cutthroat trout management. Several habitat restoration projects are in progress and several others are planned. It is too early to determine the level of success of current large watershed projects as they have not been fully completed and evaluated.

Listing Priority Number

In accordance with guidance we published on September 21, 1983, we assign a Listing Priority Number (LPN) to each candidate species (48 FR 43098). Such a priority ranking guidance system is required under section 4(h)(3) of the Act (16 U.S.C. 1533(h)(3)). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low); immediacy of threats (imminent or non-imminent); and taxonomic status of the species, in order of priority (monotypic genus (i.e., a species that is the sole member of a genus), species, subspecies, distinct population segment, or significant portion of the range). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Many of the threats to this subspecies could result in complete loss of a given population at any time (e.g., fire, disease, nonnative introgression). However, because there are many known conservation populations and because many populations are being actively managed, the threats to this subspecies as a whole are considered moderate.

An increase in average mean air temperature of just over 1 °C (2.5 °F) in Arizona and just under 1 °C (1.8 °F) in New Mexico since 1976 (Parmesan and Galbraith 2004, pp. 18, 19; State of New Mexico 2006, p. 5; Lenart 2007, p. 4) suggest that climate change is already occurring in the Southwest. Coldwater species like Rio Grande cutthroat trout are expected to be among the most sensitive species to climate change. Water temperatures in some Rio Grande cutthroat trout streams are already elevated beyond recommended temperatures for coldwater trout. At least 14 Rio Grande cutthroat trout streams either dried up or had populations negatively affected by the 2002 drought. Rio Grande cutthroat trout populations already face multiple stresses such as nonnative trout, fragmented habitat, and limited habitat. The additional effects of climate change are expected to cause population extirpations and population bottlenecks. Consequently, threats to this species are considered imminent. Therefore, based on the moderate magnitude and immediacy of threats, we have given this subspecies an LPN of 9.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status

of a species from threatened to endangered; annual determinations on prior ''warranted but precluded'' petition findings as required under section 4(b)(3)(C)(i) of the Act; proposed and final rules designating critical habitat; and litigation-related, administrative, and program management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12-month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to $305,000 for another species that is wide-ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species; we expect to also be able to do this in FY 2008.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding whether, when making a 12-month petition finding, we would prepare and issue a listing proposal or make a ''warranted but precluded'' finding for a given species. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise.''

In FY 2008, expeditious progress is that amount of work that can be achieved with $8,206,940, which is the amount of money that Congress appropriated for the Listing Program at this time (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $8,206,940 for listing activities (that is, the portion of the Listing Program funding not related to critical habitat designations for species that already are listed) will be used to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and program management functions; and high-priority listing actions. The allocations for each specific listing action are identified in the Service's FY 2008 Draft Allocation Table (part of our administrative record). We are working on completing our allocation at this time. More funds are available in FY 2008 than in previous years to work on listing actions that are not the subject of court orders or court-approved settlement agreements.

We currently have more than 120 species with an LPN of 2. Therefore, we further rank the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprise a list of approximately 40 candidate species (''Top 40''). These 40 candidate species have the highest priority to receive funding to work on a proposed listing determination. To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources are also a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since the listing of the species already affords the protection of the Act and implementing regulations. We assigned the Rio Grande cutthroat trout an LPN of 9, based on our finding that the subspecies faces

threats of moderate magnitude that are imminent.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (We note that we do not discuss specific actions taken on progress towards removing species from the Lists because that work is conducted using appropriations for our Recovery program, a separately budgeted component of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our ''precluded'' finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Our expeditious progress in FY 2007 in the Listing Program, up to the date of making this finding for the Rio Grande cutthroat trout, included preparing and publishing the following determinations:

FY 2007 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/11/2006	Withdrawal of the Proposed Rule to List the Cow Head Tui Chub (*Gila biocolor vaccaceps*) as Endangered.	Final withdrawal, Threats eliminated.	71 FR 59700–59711.
10/11/2006	Revised 12-Month Finding for the Beaver Cave Beetle (*Pseudanophthalmus major*).	Notice of 12-month petition finding, Not warranted.	71 FR 59711–59714.
11/14/2006	12-Month Finding on a Petition to List the Island Marble Butterfly (*Euchloe ausonides insulanus*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	71 FR 66292–66298.
11/14/2006	90-Day Finding for a Petition to List the Kennebec River Population of Anadromous Atlantic Salmon as Part of the Endangered Gulf Of Maine Distinct Population Segment.	Notice of 90-day petition finding, Substantial.	71 FR 66298–66301.
11/21/2006	90-Day Finding on a Petition To List the Columbian Sharp-Tailed Grouse as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 67318–67325.
12/5/2006	90-Day Finding on a Petition To List the Tricolored Blackbird as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 70483–70492.
12/6/2006	12-Month Finding on a Petition To List the Cerulean Warbler (*Dendroica cerulea*) as Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	71 FR 70717–70733.
12/6/2006	90-Day Finding on a Petition To List the Upper Tidal Potomac River Population of the Northern Water Snake (*Nerodia sipedon*) as an Endangered Distinct Population Segment.	Notice of 90-day Petition Finding, Not substantial.	71 FR 70715–70717.
12/14/2006	90-Day Finding on a Petition to Remove the Uinta Basin Hookless Cactus From the List of Endangered and Threatened Plants; 90-Day Finding on a Petition To List the Pariette Cactus as Threatened or Endangered.	Notice of 5-year Review, Initiation. Notice of 90-day petition finding, Not substantial. Notice of 90-day petition finding, Substantial.	71 FR 75215–75220.
12/19/2006	Withdrawal of Proposed Rule to List *Penstemon grahamii* (Graham's beardtongue) as Threatened With Critical Habitat.	Notice of withdrawal, More abundant than believed, or diminished threats.	71 FR 76023–76035.
12/19/2006	90-Day Finding on Petitions to List the Mono Basin Area Population of the Greater Sage-Grouse as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 76057–76079.
1/9/2007	12-Month Petition Finding and Proposed Rule To List the Polar Bear (*Ursus maritimus*) as Threatened Throughout Its Range; Proposed Rule.	Notice of 12-month petition finding, Warranted. Proposed Listing, Threatened	72 FR 1063–1099.
1/10/2007	Endangered and Threatened Wildlife and Plants; Clarification of Significant Portion of the Range for the Contiguous United States Distinct Population Segment of the Canada Lynx.	Clarification of findings	72 FR 1186–1189.
1/12/2007	Withdrawal of Proposed Rule To List *Lepidium papilliferum* (Slickspot Peppergrass).	Notice of withdrawal, More abundant than believed, or diminished threats.	72 FR 1621–1644.
2/2/2007	12-Month Finding on a Petition To List the American Eel as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	72 FR 4967–4997.
2/13/2007	90-Day Finding on a Petition To List the Jollyville Plateau Salamander as Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 6699–6703.
2/13/2007	90-Day Finding on a Petition To List the San Felipe Gambusia as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 6703–6707.
2/14/2007	90-Day Finding on A Petition to List *Astragalus debequaeus* (DeBeque milkvetch) as Threatened or Endangered.	Notice 90-day petition finding, Not substantial.	72 FR 6998–7005.
2/21/2007	90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered and Initiation of a 5-Year Review.	Notice of 5-year Review, Initiation. Notice of 90-day petition finding, Not substantial.	72 FR 7843–7852.
3/8/2007	90-Day Finding on a Petition To List the Monongahela River Basin Population of the Longnose Sucker as Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 10477–10480.
3/29/2007	90-Day Finding on a Petition To List the Siskiyou Mountains Salamander and Scott Bar Salamander as Threatened or Endangered.	Notice 90-day petition finding, Substantial.	72 FR 14750–14759.

FY 2007 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
4/24/2007	Revised 12-Month Finding for Upper Missouri River Distinct Population Segment of Fluvial Arctic Grayling.	Notice of 12-month petition finding, Not warranted.	72 FR 20305–20314.
5/2/2007	12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (*Euphilotes pallescens* ssp. *arenamontana*) as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	72 FR 24253–24263.
5/22/2007	Status of the Rio Grande Cutthroat Trout	Notice of Review	72 FR 28664–28665.
5/30/2007	90-Day Finding on a Petition To List the Mt. Charleston Blue Butterfly as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 29933–29941.
6/5/2007	12-Month Finding on a Petition To List the Wolverine as Threatened or Endangered.	Notice of Review	72 FR 31048–31049.
6/6/2007	90-Day Finding on a Petition To List the Yellow-Billed Loon as Threatened or Endangered.	Notice 90-day Petition Finding, Substantial.	72 FR 31256–31264.
6/13/2007	12-Month Finding for a Petition To List the Colorado River Cutthroat Trout as Threatened or Endangered.	Notice 12-month petition finding, Not warranted.	72 FR 32589–32605.
6/25/2007	12-Month Finding on a Petition To List the Sierra Nevada Distinct Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*).	Notice amended 12-month petition finding, Warranted but precluded.	72 FR 34657–34661.
7/5/2007	12-Month Finding on a Petition To List the Casey's June Beetle (*Dinacoma caseyi*) as Endangered With Critical Habitat.	Notice 12-month petition finding, Warranted but precluded.	72 FR 36635–36646.
8/15/2007	90-Day Finding on a Petition To List the Yellowstone National Park Bison Herd as Endangered.	Notice 90-day Petition Finding, Not substantial.	72 FR 45717–45722.
08/16/2007	90-Day Finding on a Petition To List *Astragalus anserinus* (Goose Creek milk-vetch) as Threatened or Endangered.	Notice 90-day Petition Finding, Substantial.	72 FR 46023–46030.
8/28/2007	12-Month Finding on a Petition To List the Gunnison's Prairie Dog as Threatened or Endangered.	Notice of Review	72 FR 49245–49246.
9/11/2007	90-Day Finding on a Petition To List Kenk's Amphipod, Virginia Well Amphipod, and the Copepod *Acanthocyclops columbiensis* as Endangered.	Notice 90-day Petition Finding, Not substantial.	72 FR 51766–51770.
9/18/2007	12-month Finding on a Petition To List *Sclerocactus brevispinus* (Pariette cactus) as an Endangered or Threatened Species; Taxonomic Change From *Sclerocactus glaucus* to *Sclerocactus brevispinus, S. glaucus,* and *S. wetlandicus*.	Notice 12-month petition finding for uplisting, Warranted but precluded.	72 FR 53211–53222.

In FY 2007, we provided funds to work on proposed listing determinations for the following high-priority species: 3 southeastern aquatic species (Georgia pigtoe, interrupted rocksnail, and rough hornsnail), 2 Oahu plants *(Doryopteris takeuchii, Melicope hiiakae),* 31 Kauai species (Kauai creeper, *Drosophila attigua, Astelia waialealae, Canavalia napaliensis, Chamaesyce eleanoriae, Chamaesyce remyi* var. *kauaiensis, Chamaesyce remyi* var. *remyi, Charpentiera densiflora, Cyanea eleeleensis, Cyanea kuhihewa, Cyrtandra oenobarba, Dubautia imbricata* ssp. *imbricata, Dubautia plantaginea* ssp. *magnifolia, Dubautia waialealae, Geranium kauaiense, Keysseria erici, Keysseria helenae, Labordia helleri, Labordia pumila, Lysimachia daphnoides, Melicope degeneri, Melicope paniculata, Melicope puberula, Myrsine mezii, Pittosporum napaliense, Platydesma rostrata, Pritchardia hardyi, Psychotria grandiflora, Psychotria hobdyi, Schiedea attenuata, Stenogyne kealiae*), 4 Hawaiian damselflies *(Megalagrion nesiotes, Megalagrion leptodemas, Megalagrion oceanicum, Megalagrion pacificum),* and one Hawaiian plant (*Phyllostegia hispida* (no common name)). In FY 2008, we are continuing to work on these listing proposals (we are now including an additional 17 species in the Kauai species proposed listing determination package). In addition, we are continuing to work on several other determinations listed below, which we funded in FY 2007 and are scheduled to complete in FY 2008.

ACTIONS FUNDED IN FY 2007 THAT HAVE YET TO BE COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement:	
Western sage grouse	90-day petition finding (remand).
Actions with Statutory Deadlines:	
Polar bear	Final listing determination.
Ozark chinquapin	90-day petition finding.
Tucson shovel-nosed snake	90-day petition finding.
Gopher tortoise—Florida population	90-day petition finding.
Sacramento valley tiger beetle	90-day petition finding.
Eagle lake trout	90-day petition finding.
Smooth billed ani	90-day petition finding.
Mojave ground squirrel	90-day petition finding.
Gopher Tortoise—eastern population	90-day petition finding.
Bay Springs salamander	90-day petition finding.
Tehachapi slender salamander	90-day petition finding.

ACTIONS FUNDED IN FY 2007 THAT HAVE YET TO BE COMPLETED—Continued

Species	Action
Evening primrose	90-day petition finding.
Northern leopard frog	90-day petition finding.
Cactus ferruginous pygmy owl	90-day petition finding.

Our expeditious progress so far in FY 2008 in the Listing Program, includes preparing and publishing the following:

FY 2008 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/09/2007	90-Day Finding on a Petition To List the Black-Footed Albatross (Phoebastria nigripes) as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	72 FR 57278–57283.
10/09/2007	90-Day Finding on a Petition To List the Giant Palouse Earthworm as Threatened or Endangered.	Notice of 90-day Petition Finding, Not Substantial.	72 FR 57273–57276.
10/23/2007	90-Day Finding on a Petition To List the Mountain Whitefish (Prosopium williamsoni) in the Big Lost River, ID, as Threatened or Endangered.	Notice of 90-day Petition Finding, Not Substantial.	72 FR 59983–59989.
10/23/2007	90-Day Finding on a Petition To List the Summer-Run Kokanee Population in Issaquah Creek, WA, as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	72 FR 59979–59983.
11/08/2007	Response to Court on Significant Portion of the Range, and Evaluation of Distinct Population Segments, for the Queen Charlotte Goshawk.	Response to Court	72 FR 63123–63140.
12/13/2007	12-Month Finding on a Petition To List the Jollyville Plateau Salamander (Eurycea tonkawae) as Endangered With Critical Habitat.	Notice of 12-month Petition Finding, Warranted but Precluded.	72 FR 71039–71054.
1/08/2008	90-Day Finding on a Petition To List the Pygmy Rabbit (Brachylagus idahoensis) as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	73 FR 1312–1313.
1/10/2008	90-Day Finding on Petition To List the Amargosa River Population of the Mojave Fringe-Toed Lizard (Uma scoparia) as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	73 FR 1855–1861.
1/24/2008	12-Month Finding on a Petition To List the Siskiyou Mountains Salamander (Plethodon stormi) and Scott Bar Salamander (Plethodon asupak) as Threatened or Endangered.	Notice of 12-month Petition Finding, Not Warranted.	73 FR 4379–4418.
2/05/2008	12-Month Finding on a Petition To List the Gunnison's Prairie Dog as Threatened or Endangered.	Notice of 12-month Petition Finding, Warranted.	73 FR 6660–6684.
2/07/2008	12-Month Finding on a Petition To List the Bonneville Cutthroat Trout (Oncorhynchus clarki utah) as Threatened or Endangered.	Notice of Review	73 FR 7236–7237.
2/19/2008	Listing Phyllostegia hispida (No Common Name) as Endangered Throughout Its Range.	Proposed Listing, Endangered	73 FR 9078–9085.
2/26/2008	Initiation of Status Review for the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or Endangered.	Notice of Review	73 FR 10218–10219.
3/11/2008	12-Month Finding on a Petition To List the North American Wolverine as Endangered or Threatened.	Notice of 12-month Petition Finding, Not Warranted.	73 FR 12929–12941.
3/20/2008	90-Day Finding on a Petition To List the U.S. Population of Coaster Brook Trout (Salvelinus fontinalis) as Endangered.	Notice of 90-day Petition Finding, Substantial.	73 FR 14950–14955.

Our expeditious progress also includes work on listing actions, which we are funding in FY 2008. These actions are listed below. We are conducting work on those actions in the top section of the table under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high priority listing actions, which include at least one or more species with an LPN of 2, available staff resources, and, when appropriate, species with a lower priority if they overlap geographically or have the same threats as the species with the high priority.

ACTIONS FUNDED IN FY 2008 THAT HAVE YET TO BE COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement:	
Bonneville cutthroat trout	12-month petition finding (remand).
Mexican garter snake	12-month petition finding (remand).
Actions with Statutory Deadlines:	
Polar bear	Final listing determination.

ACTIONS FUNDED IN FY 2008 THAT HAVE YET TO BE COMPLETED—Continued

Species	Action
Phyllostegia hispida	Final listing.
Yellow-billed loon	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mount Charleston blue butterfly	12-month petition finding.
Goose Creek milk-vetch	12-month petition finding.
Mojave fringe-toed lizard	12-month petition finding.
White-tailed prairie dog	12-month petition finding.
Pygmy rabbit (rangewide)	12-month petition finding.
Delta smelt (uplisting)	90-day petition finding.
Mono Basin sage grouse (vol. remand)	90-day petition finding.
Ashy storm petrel	90-day petition finding.
Longfin smelt—San Fran. Bay population	90-day petition finding.
Black-tailed prairie dog	90-day petition finding.
Lynx (include New Mexico in listing)	90-day petition finding.
Wyoming pocket gopher	90-day petition finding.
Llanero coqui	90-day petition finding.
Least chub	90-day petition finding.
American pika	90-day petition finding.
Dusky tree vole	90-day petition finding.
Sacramento Mts. checkerspot butterfly	90-day petition finding.
Kokanee—Lake Sammamish population	90-day petition finding.
206 species	90-day petition finding.
475 Southwestern species	90-day petition finding.
High Priority Listing Actions:	
48 Kauai species [1]	Proposed listing.
21 Kauai species	Proposed listing.
11 packages of high-priority candidate species	Proposed listing.
Flatwoods salamander (taxonomic revision)	Proposed listing.

[1] Funds used for this listing action were also provided in FY 2007.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

We will list the Rio Grande cutthroat trout as threatened or endangered when funding is available for discretionary listing actions. We intend any listing action for the Rio Grande cutthroat trout to be as accurate as possible. Therefore, we will continue to accept additional information and comments on the status of and threats to this subspecies from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. If an emergency situation develops with this subspecies that warrants an emergency listing, we will act immediately to provide additional protection.

References Cited

A complete list of all references cited in this document is available from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this notice is the staff of the Albuquerque Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 30, 2008.

Kenneth Stansell,

Director, Fish and Wildlife Service.

[FR Doc. E8–10182 Filed 5–13–08; 8:45 am]

BILLING CODE 4310–55–P



Federal Register

Wednesday,
May 14, 2008

Part III

Department of Agriculture

Office of Energy Policy and New Uses

7 CFR Part 2902

Designation of Biobased Items for Federal Procurement; Final Rule

DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA30

Designation of Biobased Items for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Final Rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending the guidelines for designating biobased products for Federal procurement, to add nine sections to designate items, including subcategories, within which biobased products will be afforded Federal procurement preference. USDA also is establishing minimum biobased content for each of these items and subcategories.

In addition, USDA is amending the guidelines by providing exemptions to the Department of Defense and the National Aeronautic and Space Administration from the preferred procurement requirements. USDA is also making minor technical amendments to several sections of the guidelines to update information on the applicable Web site citation and to provide additional information on products that may overlap with products designated for preferred procurement under the U.S. Environmental Protection Agency's Comprehensive Procurement Guideline for Products Containing Recovered Materials.

DATES: This rule is effective June 13, 2008.

FOR FURTHER INFORMATION CONTACT: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815 Washington, DC 20250–3815; e-mail: *mduncan@oce.usda.gov*; phone (202) 401–0461. Information regarding the Federal Procurement of Biobased Products (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov*.

SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Changes
IV. Discussion of Comments
V. Regulatory Information
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act (RFA)
C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
D. Executive Order 12988: Civil Justice Reform
E. Executive Order 13132: Federalism
F. Unfunded Mandates Reform Act of 1995
G. Executive Order 12372: Intergovernmental Review of Federal Programs
H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
I. Paperwork Reduction Act
J. Government Paperwork Elimination Act Compliance

I. Authority

These items, including their subcategories, are designated under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

As part of the Federal Procurement of Biobased Products, USDA published on August 17, 2006, two proposed rules in the **Federal Register** (FR) for the purposes of designating a total of 20 items for the preferred procurement of biobased products by Federal agencies (referred hereafter in this FR notice as the ''preferred procurement program''). One of the proposed rules, RIN 0503–AA30, can be found at 71 FR 47566. The other proposed rule, RIN 0503–AA31, can be found at 71 FR 47590. This FR notice addresses the RIN 0503–AA30 proposed rule. The other proposed rule is addressed in a separate FR notice. These two rulemakings are referred to in the preamble and on the BioPreferred Web site as Round 2 (RIN 0503–AA30) and Round 3 (RIN 0503–AA31).

The Round 2 proposed rule proposed designating the following items for the preferred procurement program: Adhesive and mastic removers; plastic insulating foam for residential and commercial construction; [1] hand cleaners and sanitizers; composite panels; fluid-filled transformers; disposable containers; [2] fertilizers; metalworking fluids; [3] sorbents; and graffiti and grease remover products.

Today's final rule designates the following nine items, including subcategories, within which biobased products will be afforded Federal procurement preference: Adhesive and mastic removers; plastic insulating foam for residential and commercial construction; hand cleaners and sanitizers, including hand cleaners and hand sanitizers as subcategories; composite panels, including plastic lumber composite panels, acoustical composite panels, interior panels, structural interior panels, and structural wall panels as subcategories; fluid-filled transformers, including synthetic ester-based transformer fluids and vegetable oil-based transformer fluids as subcategories; disposable containers; fertilizers; sorbents; and graffiti and grease removers. USDA has determined that each of these items meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: To improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

When USDA designates by rulemaking an item (a generic grouping of products) for preferred procurement under the BioPreferred Program, manufacturers of all products under the umbrella of that item that meet the requirements to qualify for preferred procurement can claim that status for their products. To qualify for preferred procurement, a product must be within a designated item and must contain at least the minimum biobased content established for the designated item. When the designation of specific items is finalized, USDA will invite the manufacturers of these qualifying products to post information on the product, contacts, and performance testing on its BioPreferred Web site, *http://www.biopreferred.gov*. Procuring agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated item. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items, including their

[1] At proposal, this item was identified as ''insulating foam for wall construction.'' Based on comments received, and as explained in this preamble, USDA has renamed this item as ''plastic insulating foam for residential and commercial construction.''

[2] At proposal, this item was identified as ''biodegradable containers.'' Based on comments received, and as explained in this preamble, USDA has renamed this item as ''disposable containers.''

[3] Based on comments received, and on additional data obtained, USDA has combined the proposed ''metalworking fluids'' item with the ''cutting, drilling, and tapping oils'' item that was proposed for designation on October 11, 2006 (71 FR 59862). The combined item is designated as ''metalworking fluids'' and is included in the Round 4 final rulemaking.

subcategories, where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more.

Subcategorization. Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are groups of products within the item that meet different markets and uses and/or different performance specifications. For example, within the item ''hand cleaners and sanitizers,'' some products are required to meet performance specifications for sanitizing, while other products do not need to meet these specifications. Where such subgroups, or subcategories, exist, USDA intends to create subcategories. Thus, for example, for the item ''hand cleaners and sanitizers,'' USDA has determined it is reasonable to create a ''hand cleaner'' subcategory and a ''hand sanitizer'' subcategory. Sanitizing specifications would be applicable to the latter subcategory, but not the former. In sum, USDA looks at the products within each item to evaluate whether there are groups of products within the item that meet different performance specifications and, where USDA finds this type of difference, it intends to create subcategories.

For some items, however, USDA may not have sufficient information at the time of proposal to create subcategories within an item. For example, USDA may know that there are different performance specifications that de-icing products are required to meet, but it has only information on one type of de-icing product. In such instances, USDA may either designate the item without creating subcategories (i.e., defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the item until additional information is obtained on products within these other subcategories.

Within today's rulemaking, USDA has created subcategories within three items. These items are: Hand cleaners and sanitizers (i.e., hand cleaners, hand sanitizers); composite panels (i.e., plastic lumber composite panels, acoustical composite panels, interior panels, structural interior panels, and structural wall panels); and fluid-filled transformers (i.e., synthetic ester-based fluids and vegetable oil-based fluids).

Minimum Biobased Contents. The minimum biobased contents being established with today's rulemaking are based on products for which USDA has biobased content test data. In addition to considering the biobased content test data for each item, USDA also considers other factors when establishing the minimum biobased content. These other factors include: Public comments received on the proposed minimum biobased contents; product performance information to justify the inclusion of products at lower levels of biobased content; and the range, groupings, and breaks in the biobased content test data array. Consideration of this information allows USDA to establish minimum biobased contents on a broad set of factors to assist the Federal procurement community in its decision to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, in some cases, USDA has been able to obtain biobased content data for a single product within a designated item. As USDA obtains additional data on the biobased contents for products within these nine designated items and their subcategories, USDA will evaluate whether the minimum biobased content for a designated item or subcategory will be revised.

USDA anticipates that the minimum biobased content of an item or subcategory that is based on a single product is more likely to change as additional products in those items and subcategories are identified and tested. In today's rulemaking, the synthetic ester-based subcategory under the fluid-filled transformers designated item and the acoustical composite panels subcategory under the composite panels designated item are based on a single tested product.

For all items and subcategories where additional information indicates that it is appropriate to revise a minimum biobased content established under today's rulemaking, USDA will propose the change in a notice in the **Federal Register** to allow public comment on the proposed revised minimum biobased content. USDA will then consider the public comments and issue a final rulemaking on the minimum biobased content.

Biodegradability. Many of the products within items being designated for the preferred procurement program are designed to be disposed of after a single use and/or used in environmentally sensitive applications. USDA believes that biodegradability is an important feature that should be considered when purchasing, using, and disposing of these products.

In simple terms, biodegradability measures the ability of microorganisms present in the disposal environment to completely consume the biobased carbon product within a reasonable time frame and in the specified environment.

Composting is one such environment under which biodegradability occurs. In that composting environment, the explanation of the environment, the degree of microbial utilization (biodegradation), and the time frame within which it occurs are specified through established standards. Composting is but one environment under which biodegradability occurs. For example, non-floating biodegradable plastics can also biodegrade in a marine environment.

For some designated items and subcategories, USDA is requiring biodegradability as a prerequisite for receiving preferred procurement status under the BioPreferred Program. For most items and subcategories, however, USDA has decided not to require biodegradability as a prerequisite for receiving preferred procurement status. For products within a designated item for which USDA will require biodegradability, USDA will specify the appropriate ASTM standards.

USDA believes that the relationship between the performance and the biodegradability of products within an item (or subcategory) must be considered before biodegradability is included as a prerequisite for a designated item. For some designated items, product performance is the critical factor in a purchaser's decision as to which product to purchase. Within other designated items, especially those designed for one-time use, disposal considerations may be equally important as performance considerations.

Where USDA judges product performance to be the key decision-making factor for purchasers, USDA will not require biodegradability as a prerequisite for designation of items to participation in the preferred procurement program. In those cases where disposal considerations are believed to be as important as performance, however, USDA will require biodegradability for products within the designated item (or subcategory) if there are established biodegradability standards.

In this rulemaking, products that fall within the disposable containers designated item are required to meet biodegradability standards to receive preferred procurement under the BioPreferred Program. For the remaining items in this rulemaking, USDA believes that the product performance

considerations outweigh biodegradability. USDA does, however, encourage procuring agencies to purchase biodegradable products in any case where they meet the agencies' performance needs.

USDA will continue to gather additional information on the relationship between performance and biodegradability of products within designated items and may add biodegradability as a prerequisite for other items at a later date. USDA will also make information regarding biodegradability of items available on the BioPreferred Web site.

Preference compliance date. Because USDA has identified only one manufacturer of products within the synthetic ester-based fluid-filled transformers subcategory, the preference compliance date is deferred until USDA identifies two or more manufacturers of products in this subcategory. When it identifies two or more manufacturers, USDA will publish a document in the **Federal Register** announcing that Federal agencies will have one year from the date of publication of that announcement to give procurement preference to biobased synthetic ester-based fluid-filled transformers.

USDA notes that although only one product from the acoustical composite panels subcategory has been tested for biobased content, nine manufacturers of products in this subcategory have been identified. Thus, USDA is not deferring the preference compliance date for this subcategory.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products. Some of the products that are biobased items designated for preferred procurement may also be items the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for Products Containing Recovered Materials. Where that occurs, an EPA-designated recovered content product (also known as ''recycled content products'' or ''EPA-designated products'') has priority in Federal procurement over the qualifying biobased product as identified in 7 CFR 2902.2. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to provide additional product and performance information to Federal agencies to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. As this information becomes available, USDA will place it on the BioPreferred Web site with its catalog of qualifying biobased products.

In cases where USDA believes an overlap with EPA-designated recovered content products may occur, manufacturers are being asked to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains petroleum-based components and whether the product contains recovered materials. Federal agencies may also ask manufacturers for information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the Building for Environmental and Economic Sustainability (BEES) analysis or ASTM Standard D7075 for evaluating and reporting on environmental performance of biobased products). Such information will permit agencies to determine whether or not an overlap occurs.

Section 6002 of RCRA requires a procuring agency procuring an item designated by EPA generally to procure such items composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

Where a biobased item is used for the same purposes and to meet the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because ''lubricating oils containing re-refined oil'' has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, ''lubricating oils containing re-refined oil,'' assuming such oil is available. If, on the other hand, that biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to cost, availability, and performance.

This final rule designates five items for preferred procurement for which there may be overlap with EPA-designated recovered content products. These items are: (1) Plastic insulating foam for residential and commercial construction, (2) composite panels, (3) disposable containers, (4) sorbents, and (5) fertilizer. Depending on how they are to be used, qualifying biobased products under these five items may overlap, respectively, with building insulation; laminated paperboard and structural fiberboard, shower and restroom dividers, or signage; paper and paper products; sorbents; and fertilizer made from recovered organic material. EPA provides recovered materials content recommendations for these five recovered content products in various Recovered Materials Advisory Notices (RMAN), including RMAN I, RMAN II, RMAN III, and RMAN V. The RMAN recommendations for each of these CPG products can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

Future designations. In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within designated items. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing and for the BEES analytical tool. Based on these results, USDA will then propose new items for designation for preferred procurement.

As stated in the preamble to the first six items designated for preferred procurement (71 FR 13686, March 16, 2006), USDA plans to identify approximately 10 items in each future rulemaking. USDA has developed a preliminary list of items for future designation. This list is available on the BioPreferred Web site. While this list presents an initial prioritization of items for designation, USDA cannot identify with any certainty which items will be presented in each of the future rulemakings. Items may be added or dropped and the information necessary to designate an item may take more time to obtain than an item lower on the prioritization list.

Exemptions. In an earlier item designation rule (71 FR 13686), USDA created exemptions from the preferred procurement program's requirements for procurements involving combat or combat-related missions and for

spacecraft systems and launch support equipment. Since publication of that final rule in the **Federal Register**, and in response to comments from the Department of Defense (DoD) and NASA (see General Comments, below), USDA has decided to create ''blanket'' exemptions for all items used in products or systems designed or procured for combat or combat-related missions and for spacecraft systems and launch support equipment, which will apply to all items designated for the procurement preference. Accordingly, in order to avoid repetition, this final rule removes all the exemption references contained in individual item designations and adds the identical language, as a blanket exemption, to the Guidelines, in subpart A.

III. Summary of Changes

As the result of comments received on the proposed rule (see Section IV), USDA made changes to the rule, which are summarized below.

Items combined. The proposed ''metalworking fluids'' item has been combined with the ''cutting, drilling, and tapping oils'' item that was proposed for designation on October 11, 2006 (71 FR 59862). The combined item is now known as ''metalworking fluids'' and includes three subcategories: straight oils; high performance soluble, semi-synthetic, and synthetic metalworking fluids; and general purpose soluble, semi-synthetic, and synthetic metalworking fluids. The ''metalworking fluids'' item is now included in the Round 4 final rulemaking replacing the proposed ''cutting, drilling, and tapping oils'' item.

Item names. The names for two of the remaining nine items were revised. ''Insulating foam for wall construction'' is now ''plastic insulating foam for residential and commercial construction.'' ''Biodegradable containers'' is now ''disposable containers.''

Item definitions. The definitions for six of the remaining nine items were modified to varying degrees. These six items are: Adhesive and mastic removers; plastic insulating foam for residential and commercial construction; hand cleaners and sanitizers; composite panels; disposable containers; and fertilizers. Some definitions were modified and/or added in order to address the addition of subcategories (as discussed in the following paragraph).

Subcategories. Subcategories were created for three items to reflect the different use applications where information was available. Hand cleaners and sanitizers were subcategorized into (1) hand cleaners and (2) hand sanitizers. Composite panels were subcategorized into (1) plastic lumber composite panels, (2) acoustical composite panels, (3) interior panels, (4) structural interior panels, and (5) structural wall panels. Fluid-filled transformers were subcategorized into (1) synthetic ester-based fluid-filled transformers and (2) vegetable oil-based fluid-filled transformers.

Minimum biobased contents. Several of the proposed minimum biobased contents for the designated items have changed for the final rule in response to public comments and in consideration of available product performance information. As a result of the comments received regarding the proposed minimum biobased contents and the availability of additional biobased content tests for several items, USDA re-evaluated the proposed minimum biobased contents of all of the items.

Items for which the minimum biobased content was changed from the proposed level are presented here and the rationale for the changes is discussed in the section of this preamble presenting the item-specific comments and responses.

For plastic insulating foam, the proposed minimum biobased content of 8 percent was changed to 7 percent.

For the proposed hand cleaner item the proposed minimum biobased content of 18 percent was changed to 64 percent for the hand cleaners subcategory and 73 percent for the hand sanitizers subcategory.

For the proposed composite panels item the proposed minimum biobased content of 26 percent was changed for each of the newly established subcategories. In this final rule, minimum biobased contents were set for each subcategory, as follows: Plastic lumber composite panels—23 percent, acoustical composite panels—37 percent, interior panels—55 percent, structural interior panels—89 percent, and structural wall panels—94 percent.

For the proposed fluid-filled transformers item the proposed minimum biobased content of 66 percent was retained for the synthetic ester-based subcategory and the minimum biobased content for the vegetable oil-based subcategory was set at 95 percent.

For the proposed biodegradable containers item (now disposable containers), the proposed minimum biobased content of 96 percent was changed to 72 percent.

For sorbents, the proposed minimum biobased content of 52 percent was changed to 89 percent.

For graffiti and grease removers, the proposed minimum biobased content of 21 percent was changed to 34 percent.

Preference compliance date. For the synthetic ester-based fluid-filled transformers subcategory, the preference compliance date is deferred until USDA identifies two or more manufacturers in this subcategory. When it identifies two or more manufacturers in this subcategory, USDA will publish a document in the **Federal Register** announcing that Federal agencies will have one year from the date of publication of that announcement to give procurement preference to biobased synthetic ester-based fluid-filled transformers.

Overlap with EPA CPG products. For composite panels, potential overlap with EPA CPG products was added to the final rule. Then, for all items that may overlap with EPA CPG products (plastic insulating foam for residential and commercial construction; composite panels; disposable containers; sorbents; and fertilizer), a note was added to facilitate finding information on the EPA CPG products.

Biodegradability. For disposable containers, a biodegradability requirement was added.

Exemptions. Exemptions from the preferred procurement requirements were added for all items, including their subcategories, used in certain applications within DoD and NASA. For DoD, exemptions were provided for ''products or systems designed or procured for combat or combat-related missions.'' For NASA, exemptions were provided for ''spacecraft systems and launch support equipment.'' These exemptions were added in the Guidelines for the procurement program (subpart A) rather than under each item designation. At proposal, this exemption was proposed only for the fluid filled transformer item. Additional discussion of this decision is presented in the responses to comments later in this Preamble.

IV. Discussion of Comments

USDA solicited comments on the proposed rule for 60 days ending on October 16, 2006. USDA received comments from 29 commenters by that date. The comments were from individual manufacturers, trade organizations, private groups, and Federal agencies.

The comments contained in this **Federal Register** (FR) notice address general and specific comments related to Round 2 items. In addition to the

information provided in the responses to public comments presented in this preamble, USDA has prepared a technical support document titled ''Technical Support for Final Rule—Round 2 Designated Items,'' which contains documentation of USDA's efforts to research and respond to public comments. The technical support document is available on the BioPreferred Web site. The technical support document can be located by clicking on the Proposed and Final Regulations link on the left side of the BioPreferred Web site's home page (*http://www.biopreferred.gov*). Click on Supporting Documentation under Round 2 Designation under Final Rules. This will bring you to the link to the technical support document.

Several of the commenters expressed appreciation for USDA's effort in designating items for preferred procurement. While these comments are not presented within this preamble, USDA thanks the commenters for such comments.

Following the comments and responses, USDA discusses the amendments being made to various sections of 7 CFR part 2902 regarding reference to the Web site and the provision of additional information on products that may overlap with products designated for preferred procurement under EPA's CPG program.

General Comments

Reporting of Biobased Purchases

Comment: One commenter suggested that USDA consider the method that is least burdensome to Federal agencies when the agencies are required, per Executive Order 13101, to estimate their purchases of products placed on the USDA Biobased Products List and report on their estimated purchases of such products to the Secretary of Agriculture.

Response: Under FSRIA, the Office of Federal Procurement Policy (OFPP) reports to Congress biennially about Federal agency progress in implementing the section 9002 purchasing requirements. Under E.O. 13423, the Federal Environmental Executive reports to the President biennially about Federal agency progress in implementing the purchasing requirements of the E.O., including the purchase of biobased products. OFPP and the Office of the Federal Environmental Executive (OFEE) jointly send a data questionnaire to the agencies to gather information for these reports. As a member of the inter-agency Reporting Workgroup that makes recommendations to OFPP and OFEE about reporting mechanisms, USDA will work with the other members to recommend the least burdensome mechanisms for tracking and reporting on purchases of the designated biobased items.

Warranties

Comment: Two commenters expressed concern about a biobased product's effects on warranties. One commenter stated that USDA should consider creating a fact sheet about warranty myths and realities, including the type of questions buyers should ask Original Equipment Manufacturers (OEMs) and contractors to make sure that the warranty issue is real and not just an excuse to avoid purchasing a biobased product.

The second commenter recommended that USDA fully address the effect of biobased product usage on equipment warranties (i.e., such use as might void equipment warranties) prior to final item designation.

Response: USDA shares the commenters' concerns about the potential effect of biobased products on warranties. As noted in the response to a similar comment on the first designated item rule (see 71 FR 13702), USDA is working with manufacturers on the issue of maintenance warranties as time and resources allow. USDA is contacting manufacturers, industry associations, and service professionals to request information about warranty issues. About 200 different contacts have been made, but the results have been inconclusive. Many of the contacts have been reluctant to discuss warranty issues related to either their products or to biobased components. Additional information on the results of USDA's information gathering efforts are available on the BioPreferred Web site.

At this time, USDA does not have sufficient information to determine whether or not the manufacturers of biobased products will state that the use of these products will void maintenance warranties. This does not mean that the use of such products will void warranties, only that USDA does not currently have such information. As additional information becomes available on warranties, USDA will make such information available on the BioPreferred Web site.

Because it is difficult for USDA to fully address the warranty concern for each product within each item designated for preferred procurement, USDA continues to encourage manufacturers of biobased products to test their products against all relevant standards, including those that would affect warranties, and to work with OEMs to ensure that the biobased products will not void maintenance warranties when used. Whenever manufacturers of biobased products find that existing performance standards for maintenance warranties are not relevant or appropriate for biobased products, USDA is willing to assist them in working with the appropriate OEMs to develop tests that are relevant and appropriate for the end uses in which biobased products are intended. If, in spite of these efforts, there is insufficient information regarding the performance of a biobased product and its effect on equipment maintenance warranties, USDA notes that the procurement agent would not be required to buy such a product.

Industry and Agency Meeting/Forum

Comment: One commenter suggested that USDA consider sponsoring an industry and government forum or meeting to discuss program implementation issues. Topics identified by the commenter included how best to identify and communicate performance standard information and warranty issues associated with biobased products and original equipment manufacturers.

Response: USDA agrees with the commenter that a forum-type meeting to address implementation issues, including those identified by the commenter, has merit and will consider hosting such a forum as time and resources allow.

Supporting Documentation—Performance Standards

Comment: Two commenters stated that the background information for the proposed designated items did not distinguish between test methods and performance standards. One commenter stated that the entry in the column ''Standard Title'' under Performance Standards (as found in the Supporting Documentation on the BioPreferred Web site) does not appear to have much to do with performance. The commenter pointed, as an example, to the OSHA Hazard Communication Standard as not providing information as to whether the biobased adhesive or grease remover will work as intended. The second commenter stated that most of the ''performance standards'' listed by USDA are not really performance standards but are rather ''test methods.'' This commenter noted that while some test methods listed are relevant to meeting performance standards for some applications, others are not. The second commenter recommended that test methods be differentiated from performance standards.

The second commenter also stated that end users are well aware of these performance standards because the operating manuals for their equipment will list the standards and that end-users will want to know from a manufacturer if its product meets that performance standard. For products that do not have recognized performance standards, such as glass cleaners, the commenter stated that users may have to try a sample to determine if the product meets their needs. The commenter also stated that in other cases, such as carpets or insulation, specifications for purchase will be set by designers, architects, and/or engineers based on a specific project's needs, and manufacturers would have to show the buyers that they can meet the specification. For these reasons, the commenter recommended that, rather than providing a list of test methods, USDA should offer manufacturers the opportunity to provide as much performance data as possible on the BioPreferred Web site when they list their products. By doing so, the commenter continued, information will be provided to potential buyers and users so that they can compare the performance data with the particular performance requirements they need for the product.

Response: USDA agrees with the commenters that many of the standards listed under ''Standard Title'' in the background information are test methods and not performance standards. USDA further agrees that such distinctions should be made in the background document. USDA believes that it is necessary to continue to report both test methods and performance standards because it is very important that consistent test methods are used when measuring the performance of a product. USDA will, therefore, update the background information on the BioPreferred Web site to reflect the distinction between test methods and performance standards. Further, as additional information on performance standards is obtained, USDA will update the BioPreferred Web site to include such information. The results of the effort to distinguish between test methods and performance standards for the designated items in this final rule can be found in Chapter 1.0 of the document ''Technical Support for Final Rule—Round 2 Designated Items,'' which is available on the BioPreferred Web site.

USDA also agrees that manufacturers need to provide as much information as possible on the performance of their products, especially as measured against recognized performance standards. USDA is working with manufacturers to make this information available by posting on the BioPreferred Web site links to the manufacturer's Web site for additional information on biobased product performance.

Reduced Greenhouse Gases

Comment: Three commenters recommended that USDA continue to emphasize the potential of biobased products to reduce greenhouse gas emissions as part of the preferred procurement program.

Response: USDA agrees with the commenters that the potential for biobased products to reduce greenhouse gas emissions is an important attribute of which purchasers and others need to be aware. USDA will continue to identify this potential in preambles and in the background information on the BioPreferred Web site. USDA welcomes the commenters, and others, to provide USDA with ''cradle-to-grave'' studies that demonstrate this potential attribute. USDA would then consider putting such results on the BioPreferred Web site.

Biobased Materials—Prequalify

Comment: Three commenters recommended that USDA develop a program for prequalifying the biobased material that will form the basis of biobased products. The commenters point out that biobased products are made from biobased materials. According to the commenters, testing and qualifying biobased materials will greatly accelerate the designation process for preferred procurement—if a product is made from a prequalifed biobased material, it is then a simple matter for the manufacturer of the bioproduct to provide information to USDA on its biobased composition and, if verification of manufacturer supplied compositional information is needed, the ASTM biobased content test can always be conducted as needed.

The commenters also suggested making prequalified biobased materials part of the ''U.S.D.A. Certified'' labeling program. When part of the labeling program, manufacturers would be able, according to the commenter, to contact biomaterial suppliers for information on the performance and other characteristics to determine the most appropriate biomaterials for their particular application. According to the commenters, this would expedite the development of biobased products consistent with the Congressional intent of FSRIA.

Response: USDA agrees that there is merit in the concept of prequalifying biobased materials that are used to manufacture biobased products for preferred procurement. However, as noted in a response to public comments on the first six items designated for preferred procurement (71 FR 13702), section 9002 of FSRIA requires USDA to designated ''products'' for preferred procurement. Section 9001 of FSRIA defines ''biobased products'' as ''a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials * * * or forestry materials.'' Based on this definition, USDA does not believe it has the authority to consider ''biobased material used in the manufacture of biobased products'' to be ''products.'' USDA is, however, gathering information on biobased intermediate feedstocks and developing a list of these materials. USDA will provide this information on the BioPreferred Web site. USDA also notes that NIST currently includes soybeans, corn, wheat, rice, cotton, canola, potatoes, and wool as feedstocks when conducting the BEES life cycle analysis for biobased products.

USDA has considered the commenter's recommendation to make prequalified biobased materials part of the ''U.S.D.A. Certified'' labeling program in developing the proposed rule for that program.

Recycled vs. Biobased Products

Comment: Three commenters agreed with USDA that additional information should be sought first from manufacturers prior to procurement decisions where recycled content and biobased materials products are both being considered for the same application. Two of the commenters went on to recommend that USDA's Preferential Procurement Guidelines for Biobased Products be upgraded to include the proposal in this rulemaking for handling the ''overlap'' between the recycled content and biobased content programs.

Response: While USDA appreciates the commenters' suggestion on revising the Guidelines to reflect the overlap potential between biobased products and products with recycled content, USDA will continue to discuss such overlap within each of the designated item rulemakings on an item-by-item basis.

Mature Markets

Comment: Three commenters urged USDA to not exclude natural fiber and other biobased products with mature markets in 1972. The commenters felt

that by doing so petroleum plastic blends (such as in leaf collection bags) would get an unfair advantage over entirely natural fiber biobased products (e.g., a Kraft paper leaf collection bag made from 100 percent plant matter).

Response: USDA extensively addressed the issue of mature markets in the final rule for the Guidelines for Designating Biobased Products for Federal Procurement (70 FR 1792). In that notice, USDA explained the rationale for excluding products that had mature markets in 1972 from the preferred procurement program—''The intent of section 9002, as described in the conference report accompanying FSRIA, is to stimulate the production of new biobased products and to energize emerging markets for those products. Given that, USDA finds that it is entirely appropriate for the guidelines to exclude products having mature markets from the program.'' (see 70 FR 1802). This was finalized in paragraph 2902.5(c)(2). USDA reiterated its position in the final rule for the first six items designated for preferred procurement and explained further on its reasons for excluding mature market products (see 71 FR 13701).

For the reasons stated in these two FR notices, the USDA will continue to exclude mature market products as they are identified within items designated for preferred procurement.

In addition, in its response to comments on the first six items proposed for designation for preferred procurement, USDA stated: ''As USDA designates additional items for preferred procurement, USDA will make determinations of whether mature markets existed in 1972 and, if so, identify those materials that do not qualify as biobased material. Unless a material is specifically identified as a material not qualifying as a biobased feedstock, such as cotton fiber has been for bedding, bed linens, and towels, the material may be used in any designated item and will be considered a qualifying biobased feedstock.'' (see 71 FR 13702). None of the 20 items proposed for preferred procurement in the two proposed rules were identified as having mature markets for which preferred procurement would not be given. Therefore, the specific example of Kraft paper leaf collection bags made from 100 percent plant matter provided by the commenters would qualify for preferred procurement under this program.

Sustainability Guidelines for Biopolymers

Comment: One commenter noted that biobased products are not automatically better for the environment than the items they replace, depending upon the way the feedstock is grown, how the product is manufactured, and how the product is handled at the end of its life.

The commenter further noted that a group of non-government organizations are working with companies interested in manufacturing and using biobased products to develop sustainability guidelines for biopolymers and urged the federal government to engage in this process and consider how it can in future rulemakings encourage the biopolymer industry to move toward truly sustainable products.

Response: USDA agrees with the commenter that biobased products are not necessarily better for the environment than the items that they replace. This emphasizes the need for life-cycle analyses (LCAs), which is the type of information generated under the BEES analysis. USDA welcomes additional information on biobased products, including aspects concerning sustainability, and urges the commenter and the non-governmental organizations to provide the results of their sustainability guidelines to USDA and other Federal agencies. USDA will then consider posting validated information on the BioPreferred Web site as additional information available to Federal purchasing agencies.

Life-Cycle Analysis (LCA)

Comment: One commenter commended USDA for considering LCAs and the use of the BEES as a tool for LCA and urged USDA to be cautious in its endorsement of Green Seal, stating that some Green Seal standards are several years old and were not developed using a true consensus based approach.

Response: USDA appreciates the commenter's recognition of the use of BEES as a tool for LCA. With regard to Green Seal standards, it is USDA's intent to provide information on all standards that are being used for products within items being proposed for designation. The identification of such standards, however, does not represent an endorsement on the part of USDA of any standard, including any Green Seal standard. Because the programs provide information that many prospective purchasers of biobased products may find useful, however, USDA will continue to identify and post information concerning these programs on the BioPreferred Web site.

For the designated items in this final rule, USDA identified two relevant Green Seal standards. These are GS–34, Cleaning/Degreasing Agents, and GS–41, Hand Cleaners and Hand Soaps Used for Industrial and Institutional Cleaners. These two GS standards are relevant, respectively, to graffiti and grease removers and to hand cleaners and sanitizers. These standards can be accessed through the Green Seal Web site at *http://www.greenseal.org/certification/standards.cfm*

Leadership in Energy and Environmental Design (LEED)

Comment: One commenter requested that USDA remove references to the LEED green building rating system in the final rule because, according to the commenter, (1) the LEED system was not developed using an LCA, (2) the organization that developed it (US Green Building Council) recognizes that the rapidly renewable credit is flawed and is not supportable, based on an LCA, and (3) there are other green building rating systems (such as Green Globes, which is being examined by several U.S. Federal agencies) that already incorporate aspects of life-cycle assessment. However, if USDA retains the reference, the commenter recommended that USDA indicate the lack of an LCA approach in LEED, and that USGBC has proposed to its membership that the rapidly renewable credit be removed.

The commenter further suggested that USDA discuss and incorporate Green Globes into the rule, based on the fact that it already incorporates aspects of LCA.

Response: USDA appreciates the information provided by the commenter on the LEED. USDA's identification of the LEED rating system does not represent an endorsement of LEED, but simply acknowledges its existence and use. USDA will consider further clarification of LEED if and when it is referenced in future rulemakings for the BioPreferred Program, as well as considering mentioning Green Globes, where appropriate.

Exemptions

Comment: One commenter requested that the rule reflect exemptions for all items used in products and systems designed or procured for combat or combat-related missions and that this exemption be extended to all services and products contracted for combat or combat-related missions. The commenter pointed out that USDA has stated that it is inappropriate to apply the preferred procurement requirement unless the DoD has documented that such products can meet the performance requirements for such equipment and are available in sufficient supply to meet domestic and overseas deployment

needs. According to the commenter, their experiences to date have reinforced that it is not practical at this time to conduct the testing and evaluation necessary for such performance documentation for all products used in combat.

Response: USDA has discussed, at length, with DoD the need for exempting from preferred procurement items whose products are used in combat or combat-related situations. USDA has also had similar discussions with NASA regarding products used in space and critical mission areas. These discussions have included whether there is a need for exemptions and, if so, whether exemptions should be on an item-by-item basis or whether a ''blanket'' exemption should be implemented for these two agencies. As a result of these discussions, USDA is exempting from preferred procurement all items used in products or systems designed or procured for combat or combat-related missions and for spacecraft systems and launch support equipment. The exemption is stated in the Guidelines (subpart A) rather than under each item designation. USDA believes it is inappropriate to apply the biobased purchasing requirement to DoD tactical equipment and NASA mission-critical equipment at this time. However, USDA reserves the right to withdraw such exemptions, on an item-by-item basis, as biobased products are demonstrated to meet all of the performance requirements of these applications.

Comment: One commenter stated that the proposed exemptions for critical applications are unnecessary given the provisions of the Guidelines, noting that no product, biobased or not, should be used in any critical application if it does not meet performance requirements. The commenter is concerned that proposing an exemption that limits the use of biobased products to ''more conventional applications'' implies that biobased products are inferior in their performance characteristics to the incumbent product. According to the commenter, not only is this not the case, but it sends the wrong message regarding the potential benefits of and uses for biobased products.

Response: USDA agrees with the commenter that providing exemptions could imply that biobased products are inferior to non-biobased products. USDA can only emphasize that these exemptions are not intended to convey such meaning. USDA points out, however, that the statute does allow agencies the ability to not purchase a biobased product if it does not meet applicable performance standards. Because so many biobased products are in their infancy, more effort is required on the part of their manufacturers to demonstrate that the biobased products perform as well as their non-biobased counterparts, whether in conventional or non-conventional applications.

USDA also agrees that all Federal agencies have the same ''off ramps'' available to them in determining whether or not to purchase biobased products within a designated item. USDA has received repeated requests from both DoD and NASA for exemptions. DoD is particularly concerned about the use of biobased products in combat or combat-related situations and NASA about the use of any biobased product in critical mission areas. USDA has reached agreement with these agencies to provide ''blanket'' exemptions for both NASA and DoD. Providing this blanket exemption will allow these agencies the flexibility to choose how they utilize their resources in evaluating various biobased products and determining which products meet their critical requirements.

USDA recognizes that such blanket exemptions could discourage manufacturers from developing biobased products for these two ''markets.'' However, if manufacturers of biobased products can demonstrate to the satisfaction of these two agencies that biobased products can meet all of their concerns, USDA would reconsider such exemptions on an item-by-item basis.

Item Designations

Comment: Two commenters requested that USDA not designate items for preferred procurement where the products within the item contain nanoparticles because of the many outstanding public and environmental health issues surrounding the use of nanotechnology. According to the commenters, there are no manufacturing standards, labeling regulations, or safety guidelines for nanoparticle use and the effect of nanoparticles on health and the environment are not yet *understood.*

Response: At this time, the statute for designating biobased products for preferred procurement does not address the issue of products made with nanoparticles. Congress would need to change the statute in order for USDA to consider it within the BioPreferred program. Therefore, USDA does not address the issue in this rulemaking.

USDA points out that EPA is conducting several major activities with respect to nanotechnology including, but not limited to, initiating the development of a voluntary pilot program for the evaluation of nanomaterials and reviewing nanomaterial new chemical submissions in the Office of Pollution Prevention and Toxics. For additional information on the work EPA is pursuing with regard to nanomaterials, access the Web site *http://www.epa.gov/oppt/nano/.*

Environmental and Health information

Comment: One commenter stated that providing agencies with tables summarizing BEES analyses does not satisfy the statutory requirement that USDA provide agencies with information on the public health and environmental benefits of biobased products. According to the commenter, the summary tables included in the preamble to the proposed products designation rule do not provide useful information to agencies, because the information is not provided in the context of comparisons with non-biobased products. The commenter, therefore, recommended that USDA provide narrative information and comparative reference points on the environmental and public health benefits of the designated products by placing this information in the technical background documents or in case studies on the BioPreferred Web site. The commenter then provided examples of information that could help agencies make a ''best value'' determination.

Another commenter provided a list of some of the benefits associated with using soy in industrial products.

Response: The BEES analysis provides a factual review of environmental and health effects of products. The results of the BEES analysis allow the comparison of similar products that have undergone the analysis. For example, one can compare the relative environmental and health effects between two biobased disposable containers. In addition, the BEES analysis provides information on the carbon cycle, which is being acknowledged as an increasingly important environmental effect. Thus, the BEES analysis provides important and relevant information on the environmental and health effects of biobased products.

USDA agrees with the commenter that providing additional information on manufacturers' claims regarding the public health and environmental effects of their biobased products on the BioPreferred Web site is useful, and has begun posting such information. As more information on the public health and environmental effects of biobased products is obtained, USDA will continue to post such information. If the

information is anecdotal, it will be so indicated.

USDA also agrees that quantitative, science-based, comparative reference points on the environmental and public health benefits of the designated products would be useful. USDA, therefore, encourages procurement officials to request this information from manufacturers of biobased products and from manufactures of nonbiobased products to facilitate the comparison of products. Until then, BEES results for both biobased and traditional products, covering a handful of proposed and designated items, are available through the free BEES 4.0 tool published by NIST in May 2007 (*http://www.bfrl.nist.gov/oae/bees.html*).

USDA thanks the other commenter for its information on using soy in industrial products and will post such information, as appropriate, on the BioPreferred Web site.

Purchasing Analysis

Comment: One commenter stated that biobased products should be fully tested to determine if they meet performance specifications before requiring Federal agency purchase. According to the commenter, there are many products in the marketplace that do not work as advertised. Because there are numerous industry and other recognized standard-setting groups that are responsible for setting standards for products used in various applications, the commenter felt that it would be prudent for Federal agencies to purchase biobased products that have been determined by an outside organization to meet minimal performance standards.

Two commenters stated that USDA needs to make available information on the availability, economic and technical feasibility, environmental and public health benefits, and life-cycle costs for each of the designated items and the name of each of the product's manufacturer in order to enable Federal agencies to determine whether they are buying a product that will perform as intended at a reasonable cost and to prevent an incorrect assessment of a product's attributes, which may led to unintended consequences.

One of the commenters recognized that to provide complete information is a challenge given that a biobased product market is still in its infancy. However, the commenter believes that it is ill-advised to proceed with designating products for which ''information on the availability, relative price, performance, and environmental and public health benefits of individual products within each of these 10 items is not presented'' (71 FR 47568).

Response: In designating items for preferred procurement, USDA is responsible for designating those items which are or can be produced with biobased products and to provide, in part, information on their performance. Further, USDA is responsible for considering the technological feasibility of using products within such items. Finally, the statute allows a Federal agency not to purchase a product if, in part, it fails to meet the reasonable performance standards of the procuring agency. USDA believes that its process for designating items meets the intent and requirements of the authorizing statute and results in items that generally meet performance standards applicable to products within those items.

USDA does not believe it is reasonable, nor statutorily required, to conduct full testing of every product within every item (or even the full testing of a single product within every item) in order to list an item for preferred procurement. To grant the commenter's request that biobased products be fully tested would result in an essentially insurmountable obstacle to implementing the program. USDA has improved the process for making available information on products within items proposed and promulgated for designation. USDA is continually working to upgrade the amount and quality of such information, which can be found on the BioPreferred Web site.

As stated in the final **Federal Register** notice for the first set of designated items, USDA reached an agreement with manufacturers not to publish their names in the **Federal Register** when designating items. This agreement was reached to encourage manufacturers to submit products for testing to support the designation of an item. Once an item has been designated, the manufacturers of products within the designated item may elect to post their names and other contact information on the BioPreferred Web site.

USDA has linked the BioPreferred Web site to Defense Standardization Program and GSA-related standards lists used as guidance when procuring products, which can be accessed through the ''Selling to the Federal Government'' link on the BioPreferred Web site. To access the DoD list, go to the BioPreferred Web site and click on the ''Selling to Federal Government'' tab and look for the DoD Specifications link. To access the GSA-related standards list, click on the GSA Schedule Suppliers link under ''Selling to the Federal Government.'' Once at the GSA Web site, search for ''Global Supply Standards'' and then follow the appropriate links. Instructions on accessing these lists from the BioPreferred Web site will also be included in all future **Federal Register** notices for USDA's designated item rules. Further, USDA also will invite and actively encourage manufacturers of qualifying products within a designated item to post, on USDA's password-protected Web site, performance standards by which a qualifying product's performance has been evaluated.

Minimum Biobased Content

Four commenters felt that USDA was proposing minimum biobased contents that were too low for many of the products. These, and other, commenters also provided specific comments on the proposed minimum biobased contents for specific items. Those specific comments are addressed later in the preamble under Item Specific Comments. Here, USDA is responding to the comments that more generally address the procedure USDA uses in proposing minimum biobased contents.

Approach Used

Comment: Several commenters were concerned about the approach USDA used to determine minimum biobased contents. One commenter recommended that, rather than setting the threshold level below the lowest percentage observed in the lowest end product in the survey, USDA reward the top half or top two thirds of the respondents, at least where the spread is more than 20 percentage points. Two other commenters recommended that USDA consider a minimum threshold of 50 percent biobased content given that products with biobased contents above 50 percent are available in all categories.

Response: In response to these public comments and ongoing discussions with other Federal agencies, and because several additional biobased content test results were obtained after proposal, USDA re-evaluated the proposed minimum biobased contents for each of the proposed items. In re-evaluating the minimum biobased contents, USDA considered factors including the number of, and the distribution of, the test data points as well as the product manufacturer's claims related to performance, biodegradability, and range of applicability.

In those cases where all of the products' biobased contents were within a narrow range and no data were available to distinguish significant performance differences among the products, USDA set the minimum biobased content at the level that would allow preferred procurement for all of

the products for which data were available.

For items where the products' biobased contents showed a wider range and included one or more significant breaks in the range, USDA reviewed the product information to determine if there were performance or applicability differences among the products that could be used for creating subcategories based on the groups of products that have similar biobased contents. For example, if the biobased contents of half of the products within an item were in the 30 to 50 percent range and the other half were in the 80 to 95 percent range, USDA considered whether the product information supported the creation of two subcategories. Information that was considered to be supportive of subcategorization were claims of product features such as ''special applications,'' ''high temperature applications,'' or ''single-use versus multiple-use.'' In those cases where the biobased content and other product information supported subcategorization, USDA has created subcategories in this final rule.

In other cases, USDA has considered subcategorization for an item based upon initial performance information, but USDA does not currently have sufficient data to justify creating subcategories. Where that is the case, USDA has generally set the minimum biobased content based on the group of products with the higher biobased contents. For these items, USDA will continue to gather data on products within the item and will create subcategories in a future rulemaking if sufficient data are obtained.

For some items, there was a significant range in the reported biobased contents but the data points were evenly spread over the entire range. In those cases, if there were no data to distinguish the features of any grouping or subset of the products, USDA has generally set the minimum biobased content based on the product with the lowest biobased content in order to allow procuring agencies the widest selection of products from which to select those that best meet their needs. As additional product performance information becomes available and as additional products within these items become available with higher biobased contents, USDA will consider increasing the minimum biobased content or creating subcategories where performance characteristics or application use justify subcategorizing.

As a result of the re-evaluation, many of the proposed minimum biobased contents have been revised for the final rule. These revisions will be presented and discussed in the item specific sections later in this preamble. For two items, USDA reviewed the biobased content data but did not find sufficient justification through specific public comments, performance information, or additional biobased content data points for revising the proposed minimum biobased content level. For the adhesive and mastic removers item, 12 biobased content test results were available (44, 61, 73, 79, 81, 83, 83, 84, 85, 89, 89, 95, and 99). There was a significant break in the data points between the product with 44 percent biobased content and the product with the next higher value of 61 percent. USDA could find no justification, based on the products' performance information, to either subcategorize this item or to set the minimum biobased content at a level based on the 44 percent biobased content product. Information available for the remaining 11 products did not support the creation of subcategories or provide any rationale for setting the minimum biobased content at any specific point with the range. Also, the proposed minimum biobased content for this item was 58 percent and no public comments or additional data were received to support changing the proposed level. As a result, the proposed minimum biobased content of 58 percent was retained for the final rule.

For the fertilizers item, the proposed minimum biobased content was 71 percent. There is a significant break in the tested biobased content levels, with three products at or below 26 percent and 10 products at or above 74 percent. USDA has retained the proposed 71 percent minimum biobased content for the final rule because no justification was found to subcategorize the item, no public comments or additional data were received, and USDA knows of no unique performance claims that are offered by the three products with biobased contents below this level.

USDA also notes that as additional biobased content data become available for designated items, the minimum biobased content will be re-evaluated periodically and revised as appropriate, based on all available data.

One commenter is concerned, in part, about proposing a minimum biobased content at a level lower than the lowest tested biobased content. This does occur, but it occurs because of the test method used to determine a product's biobased content. The test method has a ''margin of error'' associated with it. This margin of error is a plus or minus three percentage points. For example, if Product A has a tested biobased content of 75 percent, its actually biobased content could be from 72 to 78 percent. Thus, it is statistically appropriate to reduce the tested biobased content 3 percentage points in order to ensure that the product on which the item's minimum biobased content was based still be qualified if re-tested.

Comment: Two commenters stated that, if the lower biobased content products cannot prove they offer better performance properties or meet certain application requirements, USDA should recommend higher biobased content products to stimulate product innovations that contain higher biobased levels. The commenters then stated that this holds particularly true for: Hand cleaners and sanitizers, composite panels, graffiti and grease removers, metalworking fluids, glass cleaners, food grade greases, and biodegradable cutlery. Given the lack of information on exceptional performance properties of the lower biobased content products in these categories, the commenters recommended establishing a minimum biobased content at 50 percent for these products.

Response: As discussed in the previous response, USDA has re-evaluated the proposed minimum biobased contents for all of the proposed items and has revised the minimum biobased contents for several items. In its re-evaluation, USDA considered product performance information to justify the inclusion of products at lower levels of biobased content in addition to considering the range, groupings, and breaks in the biobased content test data array.

With regard to the items specifically identified by the commenter, USDA has created subcategories for three of the items (hand cleaners and sanitizers, composite panels, and metalworking fluids [4]), which has resulted in establishing higher biobased contents for some of the newly created subcategories. In addition, based on the re-evaluation of the data, the minimum biobased contents were also raised for graffiti and grease removers in this final rulemaking and for the disposable cutlery and glass cleaners items in the Round 3 final rulemaking. USDA does not believe, however, that setting the minimum biobased contents for items at a predetermined level (such as 50 percent) is appropriate without consideration of performance and applicability, as well as other factors, on an item-by-item basis. Please see the Item Specific Comments section of the preamble for discussion on all of these

[4] This item is now included in the Round 4 final rulemaking.

items and their minimum biobased content.

Effect of Lower vs. Higher Biobased Contents

Comment: Several commenters expressed concern about the effect of ''lower rather than higher'' biobased contents. Two commenters believe that setting the biobased content too low for many of the 20 designated items in Rounds 2 and 3 will undermine motivation to produce products with higher levels of biobased content. Similarly, a third commenter stated that it believes higher biobased contents would encourage development by the private sector of higher biobased content products, which in turn would have a multiplier effect on biobased input use even larger than the government purchases themselves.

Response: For the reasons stated in response to other comments in this FR notice, USDA believes the procedure it uses meets the goals of the statute and opens the door for more biobased products to be purchased by Federal agencies. In response to comments, USDA re-evaluated the proposed minimum biobased content for all items in this regulation. This re-evaluation resulted in a revised minimum biobased content for several items based upon product performance information and the range, groupings, and breaks of biobased content data.

Designating biobased products for preferred procurement will increase the demand for such products and will encourage more manufacturers to develop biobased products. As items are designated for preferred procurement, it is then the Federal agencies' responsibility to purchase those biobased products with the highest biobased contents that meet their performance specifications. Therefore, to sell more of their biobased products under the preferred procurement program, manufacturers will be motivated to develop products with higher biobased contents than their competitors.

USDA agrees that setting higher minimum biobased content requirements would provide a higher target for manufacturers and may result in manufacturers developing higher biobased content products. However, USDA believes that to do so without regard to the current status of development of biobased products would delay the purchase of many biobased products. USDA believes its responsibility is to implement a preferred procurement program on the basis of products currently available in the marketplace and then to depend upon the statutory requirement for purchasing agencies to buy those qualifying products with the highest biobased contents available that meet their performance requirements at a reasonable cost. In setting the minimum biobased content, USDA also seeks to avoid situations where the minimum biobased content is set at such a high level that it can currently be met by only one manufacturer's product(s), thus creating a ''single provider'' situation which would delay implementation of the program for these products.

USDA believes the approach it is taking in setting minimum biobased contents is appropriate. In instances where performance requirements vary significantly for products within an item and where sufficient data are available, USDA has created subcategories with different minimum biobased content requirements within a single designated item. Discussions of these changes are included in the section of this preamble that presents comments and response related to specific designated items.

Meeting the Goals of the Statute

Comment: Two commenters stated that the goals of the preferred procurement program (increasing demand for biobased products; spurring rural economic development through value-added agricultural products; and enhancing the nation's energy security by substituting biobased products for products derived from imported oil and natural gas) would be better met by substantially increasing the minimum biobased content level for many of the 20 items proposed for designation in the two **Federal Register** notices. A third commenter referred to section 9002(e) of FSRIA as the basis for USDA setting minimum biobased contents at the highest level practicable.

Response: USDA believes there are various ways to achieve the goals of the BioPreferred Program, including the commenters' suggestion of ''substantially increasing the minimum biobased content level'' for many of the items. Because many biobased products are in their infancy, however, USDA believes that the best way to make inroads in their purchase by Federal agencies and to increase market interest in the production of biobased products, including those manufacturers who may otherwise not be interested, is to set minimum biobased contents that reflect the array of biobased content data and product performance characteristics to meet the needs of the Federal procurement community. For this final rule, USDA re-evaluated each of the item's minimum biobased contents considering the biobased content data and performance characteristics and subcategorized and revised several items' minimum biobased contents, as appropriate. The minimum biobased contents established by this rule allow the purchasing agencies to select biobased products with higher biobased contents in conformance with paragraph (c) of section 9002, which states that procuring agencies shall ''give preference to such items composed of the highest percentage of biobased products practicable * * *.'' that meet the performance, price, and availability requirements of the statute. USDA will continue to provide information on the full range of biobased contents found among products within designated items, which will assist procuring agencies in purchasing those products that have the highest biobased content.

Information

Comment: Two commenters suggested that USDA make available more information on the biobased content for each product tested, rather than providing a range of biobased contents. The commenters stated, as an example, if the biobased content of ten of the 30 biobased fertilizers ranged from 74 to 100 percent and if nine of these tested at 100 percent, USDA should consider setting the minimum content close to 100 percent rather then near the lowest biobased content tested product.

Response: USDA posts on the BioPreferred Web site all of the biobased content data received. This information can be accessed by going to the BioPreferred Web site (*http://www.biopreferred.gov*) and then clicking on the ''Proposed and Final Regulations'' link and then the supporting documentation link for the applicable round of designations. USDA's goal is to provide enough specific information on biobased contents in preambles so that reviewers will have sufficient data to adequately comment on a proposed minimum biobased content. If readers feel that they need more detailed information, they can access all of the data as indicated above.

Subcategorization

Comment: One commenter stated that USDA should consider the precedence in EPA's recycled content products program for setting several content levels based on different applications and apply that principle to some of the items being proposed for designation for which USDA's data indicate that multiple minimum biobased contents are appropriate.

Response: USDA agrees with the commenter that each designated item

should be examined to determine whether or not it is reasonable to create subcategories within an item. As discussed in the Background section of this preamble, USDA intends to create subcategories in those items where there are groups of products within the item that meet different markets, uses, and/or performance specifications. For some items, however, USDA may not have sufficient information at the time of proposal to create subcategories within an item. In such instances, USDA may either designate the item without creating subcategories (i.e., defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the item until additional information is obtained on products within these other subcategories.

Where USDA has sufficient information on products within an item to justify creating subcategories, USDA will do so. With regard to the 20 items proposed for designation under Rounds 2 and 3, USDA has re-evaluated individual items when requested by the commenters and has created subcategories for six items (hand cleaners and sanitizers; composite panels; fluid-filled transformers; metalworking fluids; [5] greases; and carpet and upholstery cleaners).

Overlap With EPA's Comprehensive Procurement Guideline (CPG)

Comment: One commenter, in considering the potential for overlap between biobased products and recycled content products, noted the decision-making process and the information to be provided to assist in making the purchase decision and concluded that there may be less overlap between CPG items and designated biobased items than there appears to be at first glance.

Response: USDA agrees with the commenter that there may be the appearance of an overlap in many cases where, after all of the required performance characteristics of the products are evaluated, an actual overlap does not exist. Federal agencies should evaluate the performance needs of the products when deciding whether there is an actual overlap between the preferred procurement programs.

For the items within this rulemaking, USDA has identified products within insulating foam, composite panels, disposable containers, sorbents, and fertilizer as potentially overlapping with EPA-designated recovered content products. Where their products compete directly with EPA-designated recovered content products, the Federal agency must purchase the recovered content product.

In some cases, however, there may be factors that would give purchase preference to the biobased product. For example, a disposable container may be required to be biodegradable. If the EPA-designated recovered content product is not biodegradable, preference would be given to the biobased container, subject to cost, availability, and performance. Similarly, a biobased sorbent may be given preference over an EPA-designated recycled content sorbent if the biobased content product addresses a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet.

Finally, there may be instances where products within these items may be able to meet both sets of procurement preferences. For example, almost all of the biobased sorbents are produced from waste streams of paper, corn processing, or fabric processing, which could be considered recycled. Composite panels made with embedded fibers may be made with recycled plastic materials. For these and other such products, there may be no conflict between these two programs as the product may satisfy both.

BEES Analytical Tool

Comment: One commenter stated that the BEES scores may be difficult for many users to grasp and suggested that USDA consider additional or alternative approaches (e.g., graphical representation) for presenting the information. The commenter also suggested that users may find the actual impact values easier to understand than the scaled values used for scoring (e.g., grams of CO_2 equivalents per functional unit of product (global warming), grams of N equivalents per functional unit (eutrophication), etc.). The commenter believes that some users may also find the actual impact values useful in compiling environmental impact data for reporting under OMB scorecards, GPRA results, EMS reports, etc. The commenter provided an example table of how such information could be presented.

Response: USDA agrees with the commenter that the BEES impact values are useful. The BEES impact values for the designated items in this final rule can be found in Appendix A of the document ''Technical Support for Final Rule—Round 2 Designated Items,'' which is available on the BioPreferred Web site. USDA will provide the BEES impact values in all future proposed rulemakings for designated items.

With regard to alternative presentations of the data, USDA has discussed with the commenter various methods of supplementing the tabular display with a graphical representation of BEES environmental performance score results. USDA will add a graphical presentation of these BEES results in subsequent proposed rulemakings. A graphical presentation of the BEES environmental performance scores for the designated items in this final rule can be found in Appendix B of the document ''Technical Support for Final Rule—Round 2 Designated Items,'' which is available on the BioPreferred Web site.

Compostability

Comment: One commenter requested that USDA emphasize the compostability of products within item designations for biodegradable films, containers, and cutlery in order to better qualify with the Federal Trade Commission's (FTC) Guides on Environmental Labeling. The commenter believes that consumers may mistakenly think that biodegradable products should be landfilled rather than recovered and recycled via composting. The commenter stated that by labeling these items as compostable, USDA is providing direction on the proper disposal and recovery for disposable biobased products.

Response: Although USDA is not requiring films or cutlery to be biodegradable in order to receive preferred procurement, USDA agrees with the commenter that biodegradable products within these (and other) items need to be composted rather than landfilled in order for the products to biodegrade. USDA points out that these products need to be composted in commercial composting facilities in order to be exposed to the proper temperature and moisture requirements for composting. Composting these products in a ''backyard'' compost pile will not necessarily result in the complete biodegradation of the product. Finally, all container products identified have been indicated by their manufacturers as meeting compostability requirements.

Terminology

Comment: One commenter recommended that USDA clarify the use of the terms ''biobased,'' ''biodegradable,'' and ''compostability'' within the biobased preferred procurement program. According to the commenter, these terms are at times used interchangeably, creating a

[5] This item is now included in the Round 4 final rulemaking.

confusing picture of what the program is intended to cover. The commenter also inquired as to why some of the items proposed for preferred procurement were designated as ''biodegradable'' and others were not.

Response: USDA agrees that there can be confusion with regard to the three terms mentioned by the commenter. A ''biobased'' product is a product that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials or forestry materials. A biobased product may or may not be biodegradable and/or compostable. As noted earlier in the preamble, ''biodegradability,'' in simple terms, measures the ability of microorganisms present in the disposal environment to completely consume the biobased carbon product within a reasonable time frame and in the specified environment, with composting being one such environment under which biodegradability occurs. ''Compostable'' generally means a product is capable of biological decomposition under controlled aerobic conditions, such as found in a compost pile or compost bin, by microorganisms or soil invertebrates. As noted in a previous response to a comment on compostability, however, some designated products may not fully degrade (i.e., biodegrade) in a ''backyard'' compost pile.

Of the twenty items proposed for designation for preferred procurement under Rounds 2 and 3, three items—films, containers, and cutlery—were designated as ''biodegradable.'' In the final rule, USDA has revised these item descriptions to eliminate the term ''biodegradable'' from the item being designated and has instead made biodegradability, where appropriate, a requirement for a biobased product to receive preferred procurement. To illustrate, USDA proposed ''biodegradable containers'' as an item for preferred procurement. This would have meant that only biodegradable containers currently being purchased would be considered for replacement by biobased biodegradable containers under the preferred procurement program. This is not what USDA intended. The item that should have been proposed was ''disposable containers'' so that all disposable containers would be considered for replacement under the preferred procurement program with biobased biodegradable containers.

This same situation also existed for the other two items—biodegradable films and biodegradable cutlery. For those two items, the item designation should have been for nondurable films and disposal cutlery, respectively. USDA has modified the item designations as indicated and has included a biodegradable criterion only for the biobased versions of containers. As explained in a separate **Federal Register** notice for Round 3 designated items, USDA is not making biodegradability a requirement for films or for cutlery.

USDA notes that not all biobased containers are biodegradable or are not known whether or not they are biodegradable because they have not yet been tested for biodegradability. All of the container products listed on the BioPreferred Web site, however, have been verified by their manufacturer as being biodegradable. Further, USDA will only post on the BioPreferred Web site information on biobased container products that are biodegradable.

Biodegradability Requirements

Comment: One commenter stated that the biodegradability requirements for the three items (cutlery, films, and containers) should be identical, and should (1) meet ASTM D6400 ''Specification for Compostable Plastics'', (2) meet European Norm 13432, or (3) be approved by the BPI. The commenter provided suggested wording.

Response: Notwithstanding the fact that USDA is not requiring films to be biodegradable (as explained in a separate **Federal Register** notice for Round 3 designated items), USDA agrees with the commenter that the requirements for all three items should have been the same, including referring to ASTM D6400 for cutlery rather than ASTM D5338. Because ASTM D6400 may not be applicable to all biobased products to demonstrate biodegradability, manufacturers may claim biodegradability using other acceptable methods. In addition, if a product is disposed of in a marine environment, the applicable ASTM method is ASTM D7081.

General Comments

Comment: One commenter requested that USDA clarify the relationship between biobased products and recycled content products to assist in the purchase decision. The commenter made the following three recommendations:

1. On page 47567 of the FR notice, bottom of left column, the commenter recommended inserting the following sentences before the sentence beginning with ''Where a biobased item * * *,'': ''Section 6002 of RCRA requires a procuring agency procuring an item designated by EPA generally to procure such items composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.''

2. On page 47567 of the FR notice, the bottom of left column reads: ''Where a biobased item is used for the same purposes and to meet the same requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product.'' The commenter requested that USDA clarify the type of requirements and whose they are. For example, the commenter suggested that the words ''Federal agency performance'' (or something similar) could be inserted before ''requirements.''

3. On page 47567 of the FR notice, at the top of middle column, the commenter recommended inserting ''a Federal agency's'' before ''certain'' and inserting ''performance'' before ''requirements'' to ensure that the reader understands which and whose requirements USDA is referring to.

Response: USDA agrees that the recommended revisions add clarity to the discussion of the relationship between the two preferred procurement programs. These suggestions have been incorporated into the preamble of this final rule and will be incorporated into future rulemaking packages.

Comment: One commenter suggested that the first sentence in the preamble under ''Overlap with EPA Comprehensive Procurement Guideline program for recovered content products'' be changed to read ''Some of the products that are bio-based items designated for preferred procurement may also be items EPA has designated under the Environmental * * *.''

Response: USDA agrees that this editorial change provides additional clarity to the sentence. This suggested change has been incorporated into the preamble of this final rule and will be incorporated into future rulemaking packages.

Comment: One commenter recommended that USDA consider an item designation for ''engineered wood products,'' pointing out that there are many other biobased products in addition to composite panels.

Response: USDA appreciates the comment, and understands that composite panels are but one of a larger category of engineered wood products. USDA is already considering specific engineered wood products for future designation for preferred products.

Comment: One commenter recommended that USDA re-evaluate the BEES weighting standards because it is concerned that applying weighting factors to the proposed designated products consistently can lead to counter-intuitive conclusions and believes that, in some situations, a differentiation of weighting factors needs to be considered. The commenter was also concerned about how the BEES weighting factors were selected, as they seem to be the same for all products. Finally, the commenter is concerned about the utility of the BEES analysis results, which seem to be unaffected by such a broad range of unit prices (e.g., $17.64 and $132 for fertilizers; $89.06 and $983 for glass cleaners). The commenter then recommended that more information about the supporting analysis be disclosed before items are designated for procurement.

Response: The BEES analytical tool, including its factors and their weightings, was developed by a scientific board and, as such, it is beyond USDA's ability to modify the tool. It is true that the BEES weighting factors are the same for all products. USDA does not agree, however, that differentiation of weighting factors is desirable. Weighting factors indicate the relative ''importance'' of the BEES impact categories (e.g., global warming) to the Nation, which should not be confused with the relative ''performance'' of specific products with respect to those impact categories. Product performance is captured by the life-cycle data underlying each product's BEES results, and will vary with differences in raw material feedstocks and cultivation practices and in life-cycle energy and water use. A single product's poor performance with respect to global warming, which will worsen its BEES global warming score, does not necessarily imply that global warming should be more important to the Nation as a result.

The broad range of unit prices for some items, pointed out by the commenter, simply indicates that biobased alternatives for some can be produced using different biobased feedstocks and manufacturing processes, leading to different unit prices. The fact that the two examples noted by the commenter show a wide range in unit prices is, in the opinion of the USDA, exactly the type of useful information the BEES provides. It would be extremely difficult to disclose more information about the sample products without revealing specific manufacturers' names and proprietary information. USDA points out that the BEES analytical tool provides information and that it is up to the purchasing agency to decide how to use that information. For more information on the BEES analytical tool, users should access the BEES Web site at *http://www.bfrl.nist.gov/oae/software/bees.html*.

Labeling Program

Comment: One commenter recommended that USDA either reserve the label for higher-content products or require manufacturers to specify the biobased content of the product on the label. According to the commenter, this will encourage the purchase of products with higher biobased contents, which would be consistent with Congress' intent. The commenter was especially concerned about composite panels.

Response: USDA thanks the commenter for its comment. USDA has considered this comment in developing the proposed rule for the voluntary labeling program.

Item Specific Comments

Adhesive and Mastic Removers

Comment: One commenter recommended that adhesive removers be grouped with graffiti and grease removers based on formulation and functionality. The commenter stated that products designed to remove asbestos, carpet and tile mastics can be formulated differently from products designed to remove glue, tape, gums and other adhesive materials. Further, products designed to remove adhesive can also be formulated to remove greases and tars, graffiti paints, magic permanent marker ink, and crayon. To reflect various formulations in the marketplace, the commenter suggested that the designated item could be graffiti, adhesive and grease removers with the following revised definition: Industrial solvent products formulated to remove automotive, industrial, or kitchen soils and oils, including grease, paint, and other coatings, from hard surfaces or to remove adhesive materials, including glue, tape, and gum, from various surface types.

Response: USDA appreciates the commenter's suggestion. After reviewing the product information upon which this item was based, USDA believes that the products are formulated to remove a range of both adhesives and mastics. It is true that these, or similar, products may also perform the function of a grease or graffiti remover. USDA has already established a ''graffiti and grease removers'' item, and the manufacturers of products that are capable of performing multiple functions may market their products under either, or both, designated items as long as the products meet the required minimum biobased contents for the items. Because the products USDA evaluated as adhesive and mastic removers are marketed as such, USDA believes it is appropriate to maintain the item name as proposed. The definition was not changed as the result of this comment, but it has been slightly modified in two ways. First, the definition was changed to read ''solvent products'' rather than ''industrial cleaning solvent products'' in order to reflect the broader nature of products than can be included in this item. Second, and as discussed in the response to the following comment, the word ''ceramic'' was removed from the definition.

Comment: One commenter recommended that this designated item be revised to focus just on mastic removers (see previous comment) and recommended the following definition for mastic removers: Industrial cleaning solvent products formulated for use in removing asbestos, carpet, and tile mastics. The commenter also recommended that the qualifier ''ceramic'' tile be dropped in the definition of mastic remover because mastics are used to lay down tiles made of a variety of materials.

Response: As noted in the previous response, USDA is retaining this item designation to include both adhesive and mastic removers. However, USDA agrees with the commenter that the word ''ceramic'' should be dropped from the definition as it is unnecessarily limiting. Therefore, USDA has removed the word ''ceramic'' from the definition.

Plastic Insulating Foam for Residential and Commercial Construction (Formerly Insulating Foam for Wall Construction)

Comment: One commenter proposed the following definition for this item: Foam insulating products designed to provide a sealed thermal barrier for residential or commercial building construction applications, including walls, ceilings, attics and crawl spaces. The commenter recommended this definition because biobased spray foam can and is used in more than just walls, including floors and ceilings.

Response: USDA agrees that the various applications referenced by the commenter should be included in the item designation. The definition of this

item was intended to be broad so that products such as those identified by the commenter would be included. The definition of the item was also intended to reflect the products that were evaluated for the item. Upon review of the products that were evaluated, USDA has determined that the item definition needs to be revised to specifically apply to plastic insulating spray foam products. This revision aligns the definition more appropriately to the products that were evaluated. At proposal, one rigid panel product with 65 percent biobased content was considered to be a product in this item. However, because information was available for only a single rigid panel product, USDA has decided to limit the current designation to spray foam products and to attempt to gather sufficient data to designate rigid foam insulating panels as a subcategory of this item at a later date. Therefore, the one rigid foam product was removed from the data set for this item.

In addition, USDA has determined that the name of this designated item needed to be revised. First, the proposed item's name gives the impression of a much more narrow range of products (i.e., wall construction) than appropriate. Second, the item's name should help the user understand that products within this item are plastic insulating foam products. Therefore, USDA has changed the name of this designated item in the final rule from ''Insulating Foam for Wall Construction'' to ''Plastic Insulating Foam for Residential and Commercial Construction.''

Comment: One commenter recommended that the minimum biobased content be raised from 8 percent to 10 percent. According to the commenter, their first efforts at creating a biobased foam came in above 10 percent and the commenter feels anyone who is truly interested in manufacturing biobased foam insulations should be able to reach the 10 percent mark.

Response: The biobased content of the product that set the proposed minimum biobased content for this item was 11 percent, higher than that reported by the commenter. Because of the margin of error in the test method, which is plus/minus three percentage points, USDA proposed a minimum biobased content of 8 percent (11 percent minus 3 percentage points). However, since proposal USDA has received two additional biobased content test results for this item. These two tested samples contained 10 percent and 13 percent biobased material. As discussed in the previous response, USDA has also dropped from consideration the one rigid foam product whose biobased content was 65 percent. The biobased contents of the 5 tested products within this item are now 10, 11, 11, 13, and 29 percent. Because 4 of the 5 data points are within a 3 percentage point range, USDA considers these products to be representative of the biobased products for which we have biobased content information. While the remaining product offers a significant increase in biobased content from the other products (29 percent versus about 10 percent), USDA decided not to set the minimum biobased content based on this single product. Therefore, the product with the 10 percent biobased content was determined to be the product upon which the minimum biobased content based. Subtracting the three percentage points to allow for testing variability results in a minimum biobased content of 7 percent for this item. USDA will continue to gather data on this item and, if sufficient data are obtained to justify subcategorization or a revision in the minimum biobased content, such change will be made in a future rulemaking.

Comment: One commenter believes that there is no overlap or conflict between biobased spray foam insulation and EPA's CPG guidance for foam-in-place insulation. The commenter stated that they had searched EPA's on-line CPG supplier database and did not find any listings for foam-in-place insulation with a recycled content. The commenter then conducted a broader general Web-based search, which also did not reveal any companies that indicated they are making spray foam insulation that contains a recycled or recovered material. Therefore, the commenter concluded that if there are no commercially available spray foam products that meet the CPG definition, then in reality there will be no overlap or conflict with biobased spray foam insulation.

Response: USDA has conducted additional research into whether there were any plastic spray-in-place insulating foams that were being manufactured with recycled materials. USDA contacted 13 insulation manufacturers and trade associations regarding spray-in-place insulation foams. None of the contacts identified a plastic spray-in-place insulating foam product with recycled content. USDA did identify spray-in-place products with recycled cellulose content. To the extent that such recycled content products and biobased spray-in-place products can perform the same job, there may be an overlap. Overall, however, if a purchasing agent requires a plastic spray-in-place insulating foam, there should be no overlap between biobased spray-in-placed products and CPG products.

While there is unlikely to be an overlap with regard to spray-in-place products, there is still a potential overlap between products within this designated item and products within the CPG's building insulation products group because products within this designated item include preformed products such as foam board. Polyisocyanurate (polyiso) materials, which are used to make insulating foam boards, almost always contain recycled content (see Appendix D in the document Technical Support for Final Rule—Round 2 Designated Items, which can be obtained from the BioPreferred Web site). Thus, while there may be no overlap with plastic spray-in-place insulating foam products, there is the potential for overlap between biobased foam board products and similar CPG products.

In conclusion, USDA points out that potential overlap can occur between biobased products and CPG products when they are used for the same purpose and when both can meet the required performance specifications. The key consideration in determining if there is an overlap between a biobased product and a CPG product is whether a purchaser can select either product for a specific job. USDA does not expect this to occur, on the basis of currently available products, for spray-in-place insulation products, but it could occur for preformed insulation products, such as foam board, which may be designated at a later date.

Comment: One commenter asked why it was necessary to conduct both E84–05 and E84–05e1 for insulating foam. According to the commenter, they have never seen anyone test 05e1 and were wondering if it can not be required or what the reasoning behind the extra requirement is.

Response: It is not necessary to test an insulating foam using test methods E84–05 and E84–05e1. The lists presented in the preamble for each of the designated items are compilations of test methods and performance standards that manufacturers have reported and are not lists of standards against which products within an item must be tested. The rule does not require an insulating foam to be tested against one or more particular standards, let alone against both standards identified by the commenter. It is up to the manufacturer of the product to determine the appropriate standard(s) against which to test their products. If a standard must be used to qualify a product for preferred

procurement, it will be identified in the rule and not in the preamble.

To avoid confusion and to better present standards in future proposals, USDA is refining the presentation of the ASTM standards to present only the standard number (in this case, E84) and not the year in which it was adopted (in this case, –05 and 05–e1).

Comment: One commenter questioned the use of a square foot as the unit of measure for the BEES analysis. According to the commenter, foam insulation is measured in board feet, which is 1-foot by 1-foot at a 1-inch depth. The commenter pointed out that this is important because $1.10 a square foot is hard to measure without knowing the depth of this insulation. For example, the commenter's foam installed runs about 40 cents a board foot, so at 3 inches deep your costs are $1.20 for every square inch at 3 inch depth.

Response: USDA agrees with the commenter that the functional unit for this item, as presented in the proposal, was incorrect. The functional unit for this item should have been reported as ''one-square foot that is 3.5 inches deep.'' USDA has updated this information on the BioPreferred Web site.

Hand Cleaners and Sanitizers

Comment: One commenter recommended adding skin surface removal standards to the rulemaking for hand cleaners and sanitizers, noting that the three performance standards (ATCC 11229, ATCC 6358, and ATCC 6539) identified measuring the sanitizing action of disinfectants and do not address removal, which is what hand cleaners are designed to do.

Response: USDA has searched the list of performance standards posted by the National Science Foundation, the EPA, the Food and Drug Administration, and the National Institute of Health to investigate whether any of these organizations have performance standards for hand cleaners. The search of these organizations' sites did not identify any performance standards for hand cleaners.

USDA also contacted the commenter to determine if the commenter has any information on specifications for hand cleaners. The commenter provided USDA information on food safety, which included hand washing requirements. The commenter also provided a link to hand hygiene in health care settings. This information is available on the BioPreferred Web site.

USDA would appreciate any additional information on hand cleaning performance standards that the commenter, or others, could provide. Any information received by USDA will be made available on the BioPreferred Web site.

Comment: One commenter stated that some of the hand cleaner products in the technical information did not seem accurate to the proposed definition, pointing to one product described as a ''whole body shampoo'' for skin and hair. The commenter recommended that the category be restricted to hand cleaners and sanitizers and that the definition be refined based on their input.

Response: USDA agrees that products within the technical documents and those used to define an item need to be consistent with the definition of the designated item. USDA evaluated the product described by the commenter and decided, because the product could be used as a hand cleaner, to leave the information about this product on the BioPreferred Web site with the other hand cleaners and sanitizers products. USDA's decision is based on the idea that as long as a product is marketed within a designated item, it should not matter if the product is also capable of performing in another designated item. The fact that this cleaning product can also be used as a shampoo should not eliminate it from being considered as a hand cleaner if it can perform that function and if it meets the minimum biobased content required of a hand cleaner. USDA notes that this particular product was not used in either developing the minimum biobased content or for the BEES analysis.

Comment: Two commenters recommended creating subcategories for hand cleaners. Both commenters suggested at minimum recognizing hand cleaners that are designed to remove soil, grease, etc., and those that are designed to kill microorganisms (antimicrobial). One of the commenters suggested following FDA formulation specifications to help develop subcategories. The other commenter suggested addressing hand cleaners and sanitizers in the same manner as was done for greases by providing a general category definition and then listing and defining subcategories as follows:

Hand Cleaners and Sanitizers—Personal care products formulated for use in removing a variety of different soils, greases, and similar substances, or bacteria from human hands with or without the use of water.

Hand Cleaners—Personal care products formulated for use in removing a variety of different soils, greases, and similar substances from human hands with or without the use of water.

Hand Sanitizers—Personal care products formulated for use in removing bacteria from human hands with or without the use of water.

Hand Cleaners and Sanitizers—Personal care products formulated for use in removing a variety of different soils, greases and bacteria from human hands with or without the use of water.

This commenter also suggested that, if USDA wants to retain a single item designation for hand cleaners and sanitizers, the definition be modified to read: Hand Cleaners and Sanitizers—Personal care products formulated for use in removing a variety of different soils, greases, and similar substances, and/or bacteria from human hands with or without the use of water.

Response: USDA agrees with the commenters that hand cleaners and sanitizers should be subcategorized because these two types of products meet very different performance specifications; that is, the sanitizing aspect requires those products to meet a performance level not required of hand cleaners. In the final rule, USDA is subcategorizing this designated item into two subcategories—(1) hand cleaners and (2) hand sanitizers, which includes cleaners that are formulated to be both a hand cleaner and sanitizer. USDA does not believe that a third separate subcategory for cleaners formulated to be both a hand cleaner and sanitizer is needed. A product that meets the minimum biobased content level and the sanitizing requirements to qualify as a hand sanitizer will also meet the minimum biobased content for a hand cleaner, which is lower than for a hand sanitizer.

USDA separated the products within this item into each of the two subcategories and then identified the biobased contents for the products within each subcategory. For hand cleaners, the biobased contents of the 21 tested hand cleaners are 21, 23, 33, 42, 42, 44, 45, 67, 70, 78, 80, 82, 83, 84, 84, 85, 86, 92, 95, 96, and 100 percent. Because there is a significant break between the 45 percent product and the 67 percent product, USDA reviewed the available product information to determine if there was any justification for creating two subcategories within this item. USDA's review of the information available for the products within these two groups did not identify any performance claims or other features that would justify further subcategorization. Because there are a significant number of products within the group with biobased contents above 67 percent, and because USDA could not identify any unique performance features within products in the other

group, the minimum biobased content has been set based on the product with 67 percent biobased content. Reducing the 67 percent by 3 percentage points to account for testing variability results in a minimum biobased content of 64 for this subcategory. In addition, the biobased contents of available products will be posted on the BioPreferred Web site, which will allow purchasing agencies the opportunity to review the biobased contents of available products and select those with higher biobased contents.

For hand sanitizers (and hand cleaners and sanitizers), the biobased contents of the 14 tested hand sanitizers are 3, 24, 76, 76, 80, 80, 88, 89, 90, 91, 94, 95, 95, and 96 percent. Within this data set, there is a significant break between the 24 percent product and the 76 percent products. USDA investigated the products below this break in the data but could not identify any performance claims or other unique features that justified creating a subcategory or setting the minimum biobased content on either of the two products below the 76 percent level. USDA is, therefore, setting the minimum biobased content for the hand sanitizer subcategory at 73 percent, based on the product with a tested biobased content of 76 percent.

Additional details on the subcategorization and establishment of their minimum biobased contents for products within this item can be found in Chapter 2 of the document ''Technical Support for Final Rule—Round 2 Designated Items,'' which is available on the BioPreferred Web site.

Finally, USDA has generally adopted the commenter's suggested definitions, with the exception of hand sanitizers, where USDA has combined the commenter's suggested definition for hand sanitizers with the suggested definition of hand cleaners and sanitizers.

Comment: One commenter recommended that the minimum biobased content for hand cleaners be set closer to 67 percent, based on the data in the background information, rather than at the proposed 18 percent. The commenter stated that, if the differences in content levels reflect differences in use or consistency (e.g., gel vs. liquid), then USDA should provide separate content levels for the various uses or consistencies.

Response: As noted in the previous response, USDA is breaking this item into two subcategories—hand cleaners and hand sanitizers. Based on the data available for both subcategories, USDA is setting the minimum biobased content for hand cleaners at 64 percent and for hand sanitizers at 73 percent.

Comment: One commenter recommended that, in the absence of extensive testing to determine the efficacy of hand cleaner and sanitizer products in their use in the health care industry, USDA exempt the health care industry from the preferred procurement requirement for hand cleaners and sanitizers. The commenter stated that doing so will ensure that health care professionals will be able to obtain products that meet patient safety needs. The commenter pointed out that EPA is responsible for determining whether or not a product can be considered a disinfectant and asked whether this had been considered in the development of requirements to procure biobased hand cleaners and sanitizers.

Response: The commenter is seeking a categorical exemption from the preferred procurement program for these products when used in healthcare facilities because there is an absence of testing to demonstrate the efficacy of these products in a healthcare setting. USDA does not believe that a categorical exemption for these products is warranted for the reasons discussed in the following paragraphs.

USDA has met with various Federal agencies during the development of the designation rules and, as discussed earlier in this preamble, has worked with DoD and NASA to develop an exemption for all items when used in products or systems designed or procured for combat or combat-related missions and for spacecraft systems and launch support equipment. However, an exemption for the hand cleaners and sanitizers designated item has not been requested by other Federal agencies that use these products in healthcare settings (such as the VA hospitals). While USDA values and considers the opinion of individual commenters in the rulemaking process, the concerns raised by this commenter do not provide sufficient support, in USDA's opinion, to justify an exemption for this item when other significant users of products within the item have not requested an exemption.

The statutory requirements of FSRIA require USDA to designate items for preferred procurement and to make available to the procurement agencies information on the designated items, including information on the performance characteristics of products offered within a designated item. It is still the responsibility of the procurement agent to determine whether a biobased product, or any other product, meets the performance requirements of the procuring agency for which the product is being bought and its intended use.

The statute requires procuring agencies to give preference to biobased products in designated items, but does not require the agency to purchase biobased products if one of three conditions exist, one of which addresses the performance, or lack thereof, of the biobased product. Specifically, the statute allows a procuring agency not to buy a biobased product within a designated item if the biobased product fails to meet the performance standards set forth in the applicable specifications or fails to meet the reasonable performance standards of the procuring agencies (see section 9002(c)(2)(B)). Because the statute already provides the relief sought by the commenters, there is no need to include such exemptions in the rule.

Providing a categorical exemption could have the effect of discouraging manufacturers from developing biobased products within a designated item. USDA believes this would have an unnecessary dampening effect on potential markets for acceptable biobased products in the future.

Finally, USDA urges manufacturers to note the concerns raised by this commenter and recognize that extra effort on the part of manufacturers may be necessary to provide procurement agents with evidence that the manufacturer's products meet the agency's requirements. This may require manufacturers to test their products against all applicable standards and requirements for the markets (e.g., healthcare facilities) in which they wish to market their products. In addition, because procuring agencies are not required to purchase biobased products if they fail any one of the criteria that allow an agency to not purchase a biobased product within a designated item, USDA is actively working to identify and publicize relevant performance standards so that manufacturers can understand how to make their products more desirable. To make information on the performance characteristics of biobased products more accessible to the procuring agencies, USDA is working with manufacturers to post product performance information on the BioPreferred Web site or to provide a link to the manufacturer's Web page where such information can readily be obtained. While manufacturers have the responsibility to test their products against applicable agency performance requirements and specifications, in order to comply with section 2902.4 of the Guidelines, procuring agencies will have to reexamine their performance

requirements and specifications to ensure that they are not biased against biobased products, that they are still necessary and relevant, and that they are not redundant.

With regard to the commenter's question as to whether the Agency had considered EPA's responsibility for determining whether a product can be considered a disinfectant, USDA contacted EPA and was informed that EPA does not regulate hand sanitizers. While EPA regulates a wide range of antimicrobial products, it does not regulate products used directly on humans or animals. Topical antimicrobial products are regulated by the Food and Drug Administration (FDA). FDA published a proposed rule on topical antimicrobial drug products for human use in the form of a ''Tentative Final Monograph'' in 1994. At that time, FDA requested comments on the use of topical antimicrobials as hand sanitizers or dips. The monograph contains the various testing and labeling requirements for these products. A representative of the Soap and Detergent Association indicated that, in practice, manufacturers follow the guidance in the Tentative Final Monograph.

USDA reviewed the June 17, 1994, **Federal Register** notice and determined that the definition of hand sanitizer in this final rule is consistent with FDA's discussion on health-care personnel handwash or antiseptic handwash, which are the equivalent categories to hand sanitizers. In that notice, FDA indicated that labeling of such product could be phrased as ''handwashing to decrease bacteria on the skin.'' See Appendix E of the document ''Technical Support for Final Rule—Round 2 Designated Items,'' which is available on the BioPreferred Web site, for the relevant portion of the June 17, 1994, FR notice.

Comment: One commenter recommended that a more thorough industry investigation be conducted prior to the publication of a final rule by conducting more analyses on products not found in the initial investigation. The commenter stated that they were concerned that USDA's collection methods were deficient because so few of products formed the basis of the proposed rule. The commenter referred to a California Air Resources Board survey which identified 291 antimicrobial hand or body cleaners or soaps, 43 antimicrobial dry hand washes, 497 general hand or body cleaners or soaps, 26 hand wipe towelettes, and 87 products in a category of other hand cleaners, sanitizers, and soaps sold in the state of California alone. The commenter therefore recommended that USDA conduct a very thorough evaluation of both hand cleaners and sanitizers. The commenter also stated that the BEES and biobased contents obtained may not be representative of all products on the market, representing instead only a small subset of products. The commenter recommended that the rulemaking demonstrate that the products evaluated are representative of the market.

Response: USDA appreciates the information concerning the CARB study, which covered both biobased and non-biobased products. Because the purpose of the BioPreferred Program is to identify biobased products for potential preferred procurement, USDA's product investigation efforts did not seek out non-biobased products. USDA identified 36 manufacturers of biobased products within this item (including both subcategories), with 73 biobased products being marketed. The range of biobased contents among the 35 tested products is from 3 percent to 100 percent.

While USDA has in place a rigorous procedure for identifying products that are biobased, USDA recognizes that its procedure will not uncover all possible biobased products. Based on available data, USDA cannot determine if the samples that were voluntarily submitted by manufacturers are representative of all biobased products within this item. Regardless, USDA believes that it is reasonable to set minimum biobased contents based on the information it does have. If the commenter or others have additional information on the biobased content of other biobased products within this item, USDA encourages the commenter and others to submit that information to USDA. USDA will evaluate the additional information in relationship to the minimum biobased content for this designated item.

For this and all other items, USDA welcomes assistance in identifying manufacturers and their biobased products for the preferred procurement program. A list of such items can be found on the BioPreferred Web site.

Composite Panels

Comment: Two commenters recommended that the description of composite panel be expanded to recognize that other materials, such as wheat or rice straw, wood, and wood fibers, may be used in the manufacture of composite panels. One of the commenters also recommended that, if the description continues to include reference to recycled or recovered wood, the EPPS CPA 2–06 standard should be referenced with its thorough reference list of recycled/recovered fibers sources used in composites.

Response: The commenters suggested expanding the description of what composite panels may be made from (see 71 FR 47574) to include ''wood and wood fibers.'' The description provided on page 47574 of the August 17, 2006, preamble is intended to be illustrative of types of materials used to manufacture composite panels; it does not exclude composite panels engineered from wood or wood fibers. Further, the definition of this designated item does not limit the types of materials that can be used to create a biobased composite panel. Therefore, USDA has not changed the definition of this item with regard to the commenter's recommendation. As discussed in the next response, however, USDA has created subcategories within this item.

Comment: One commenter identified the potential applications in which biobased composite panels may overlap with EPA designated recovered content products and stated that it is unclear whether the preferred procurement of composite panels was confined to these very narrow applications. The commenter pointed out that composite panels are used in a wide variety of products that may be specified and purchased by the government including furniture, office and kitchen cabinets, exterior siding, laminate flooring, shelving, moldings, mill work, doors, paneling, floor underlayment, stair treads. The commenter, therefore, recommended that the purchasing applications need to be expanded to include these categories.

Response: USDA agrees with the commenter that composite panels can be used in many different applications. As a result of this and other comments, USDA has re-evaluated the product data for this proposed item and has created five subcategories, as follows: (1) Plastic lumber composite panels, (2) acoustical composite panels, (3) interior panels, (4) structural interior panels, and (5) structural wall panels. Definitions were developed for each subcategory based on the typical applications for products with the subcategory. The definitions, as presented in the rule, provide examples of the types of applications for the subcategories but are not intended to be all inclusive of the variety of applications that exist.

These subcategories were developed based on the range of applications as well as the biobased content range among the tested products. The biobased content data for the subcategories were as follows:

(1) Plastic lumber composite panels—26 and 29 percent.

(2) Acoustical composite panels—40 percent.

(3) Interior panels—58, 60, 61, 62, 64, 65, and 66 percent.

(4) Structural interior panels—92, 92, and 92 percent.

(5) Structural wall panels—97 and 100 percent.

Based on the narrow range of biobased contents within each of the subcategories, the minimum biobased contents were set at: Plastic lumber composite panels—23 percent, acoustical composite panels—37 percent, interior panels—55 percent, structural interior panels—89 percent, and structural wall panels—94 percent.

Comment: One commenter recommended that additional standards be referenced for composite panels. These standards are: ANSI A208.1–1999 for Particleboard, ANSI A208.2–2002 for MDF, ANSI A1 35.4–2004 for Basic Hardboard, ANSI A135.5–2004 for Prefinished Hardboard Paneling and ANSI/AHA A135.6–1998 for Hardboard Siding. The commenter also recommended that the final rule reference the Environmentally Preferable Product Standard, EPPS 2–06, which specifies recycled/recovered fiber content. For composite panel purchases linked to kitchen cabinets, the commenter recommended referencing the Kitchen Cabinets Manufacturers Association program.

Response: USDA thanks the commenter for identifying these ANSI and NSIIAHA standards. USDA has added these standards for composite panels to the BioPreferred Web site. However, USDA does not see the need to make reference to the other standards as they do not apply to the designation of composite panels for preferred procurement of biobased products. Those wanting to learn about the standards for recycled/recovered content should consult EPA's EPPS Web site. In addition, the designation of composite panels is for the purchase of the panels and not for the end product, such as kitchen cabinets (i.e., kitchen cabinets are not a biobased product being designated for preferred procurement).

Comment: One commenter requested that the final rule for composite panels indicate that the Composite Panel Association has adopted a Grademark Certification Program for Environmentally Preferable Products as defined by Federal Executive Order 13101. The EPP certification program covers particleboard, medium density fiberboard and hardboard and requires that 100 percent of the content of the product is recycled/recovered fiber. The commenter recommended that the description of composite panel constituents in the proposed rule be modified to become inclusive of this standard.

Response: USDA thanks the commenter for identifying the Grademark Certification Program, which contains information on products within this designated item. USDA has referenced this program on the BioPreferred Web site. This will provide additional information on these products to those who purchase such products. However, there is no need to include this certification program into these standards as they do not affect determining whether a product qualifies as a biobased product eligible for preferred procurement.

Comment: Three commenters stated that the proposed minimum biobased content was too low.

One of the commenters stated that, based on the data in the background information, the level should be set at 60 percent or higher. The commenter then stated that, if the lower content levels reflect products used for different applications than those with higher content levels, USDA should provide separate content recommendations.

The second commenter stated that the proposed minimum biobased content of 26 percent was apparently based on the biobased content of the lowest performing product tested. The commenter felt that this was a rather lenient way to set a standard, particularly when most composite products are 100 percent biobased when the metric includes the raw materials referenced in EPPS CPA 2–06. The commenter then suggested that the standard be set to give preference to the highest biobased content products.

The third commenter stated that they believe that the proposed minimum biobased content falls below the minimum goals set for the preferred procurement program and actually could create a disincentive for expanding biobased product use. Based on the available data in the rulemaking and their experience with their own product, the commenter recommended setting the minimum content standard at a higher level. The commenter pointed out that a 26 percent standard was proposed in spite of the test results showing a mean content of all products tested of 71 percent and reflects the content of the lowest 12 percent of the products tested. The commenter points out that only 8 of 51 products were tested, less than 16 percent of all products considered. The commenter then stated that with the median of tested products at 71 percent content, and 4 products testing at greater than 90 percent content, it is realistic to expect that other products, if tested, would provide important additional support for setting the content standard at a higher level than the product with the lowest content. The commenter felt that setting the standard below the level of content of the product with the lowest biobased content is inconsistent with the goal of discouraging the use of products with de minimums biobased content to satisfy the requirements of Section 9002. Rather, according to the commenter, setting a higher level truly would encourage expended use of agricultural products in biobased products and would have a greater positive impact on rural communities by providing new and expanded markets for agricultural producers and expanding the manufacturing base in those communities. Finally, the fact that 75 percent of the products tested at greater than 50 percent content clearly demonstrates, according to the commenter, that products with the necessary performance-based characteristics can be developed and procured for the stated Federal purposes with a level of biobased content substantially higher than 26 percent.

Response: As discussed in a previous response, USDA has re-evaluated the proposed designated item and has determined that it is reasonable to create subcategories for this item based upon application use. USDA believes that the creation of the five subcategories, with a separate minimum biobased content for each, adequately addresses the commenters' concerns. Additional details on the subcategorization and establishment of their minimum biobased contents for products within this item can be found in Chapter 3.0 of the document ''Technical Support for Final Rule—Round 2 Designated Items,'' which is available on the BioPreferred Web site.

Comment: One commenter pointed out that the Composite Panel Association (CPA) has commissioned the Consortium for Research on Renewable Industrial Materials to conduct life-cycle inventory and LCA on particleboard, medium density fiberboard, and hardboard, the results of which are expected to be available in February 2007. The commenter encouraged the USDA to contact CPA about the CORRIM study. The commenter pointed out that, as just one important consideration that will influence the LCA report, wood is neutral with regard to carbon emission to the atmosphere, unlike petroleum-based products.

Response: USDA thanks the commenter for the information concerning the CORRIM and its ongoing life-cycle inventory and analysis. USDA has contacted the Composite Panel Association and requested that a copy of the study be sent to USDA once it is completed. USDA will then forward the results to NIST for review. If NIST validates the results, USDA will post the results on the BioPreferred Web site in order to provide the information to purchasers.

Fluid-Filled Transformers

Comment: One commenter stated that their Master Specifications requires transformer fluids to meet ASTM D3487–00, which was not listed among the standards for transformer fluids in the proposed rule. According to the commenter, in order for their facilities to use biobased products in lieu of traditional dielectric, the biobased fluid must meet original equipment manufacturer's specifications for existing equipment or performance standards related to electrical power generation and transmission for new transformers.

Response: USDA thanks the commenter for identifying this standard. USDA has included this standard in the technical information on this item on the BioPreferred Web site.

Comment: Three commenters stated that the proposed minimum biobased content of 66 percent for transformer fluids is too low. Two of the commenters recommended a minimum biobased content of 90 percent. One of the commenters pointed out that there are currently over 20,000 functioning transformers, produced by more than two dozen domestic manufacturers in at least 100 domestic electric utilities, filled with more than 95 percent vegetable oil-based dielectric coolants from at least two fluid manufacturers. According to this commenter, there are no technical reasons to reduce the minimum content to such a low value. The commenter suggested using a minimum biobased carbon content of 90 percent, stating that anything lower could be an incentive for suppliers to dilute the more expensive biobased base oil with cheaper petroleum oils. By such a dilution, the result would be using less biobased oils, increasing the fire hazard, and reducing the environmental benefits.

The second commenter stated that there are two basic chemistries used to make biobased transformer fluids—vegetable oil and synthetic esters. According to this commenter, the vegetable oil-based fluids are typically in the 95 percent biobased content range, while synthetic esters are in the 70 percent range. The commenter stated that synthetic ester-based transformer fluids are twice the cost of vegetable oil-based transformer fluids and are only used in very extreme applications, such as arctic conditions. The commenter then stated that by adopting a 66 percent minimum, USDA is setting the threshold at a level to include rare specialty applications rather than focus on the mainstream market, and it would not likely result in much biobased purchase volume anyway due to very high price of the synthetic ester-based transformer fluids. The commenter also felt that USDA may be creating an incentive for the introduction of ''vegetable oil—mineral oil blends'' that would unnecessarily use less biobased raw materials, thereby opposing the intent of BioPreferred Program. For these reasons, the commenter recommended a minimum biobased content for fluid-filled transformers of 90 percent.

The third commenter stated that based on the limited data in the background document, the level should be higher, but given the very limited data, the commenter recommended that USDA re-consider the content levels if comments received from product manufacturers and vendors support a higher content recommendation.

Response: USDA has re-evaluated the data for products within this item and has concluded that because there are two distinct types of formulations of transformer fluids, and because the ester-based fluids appear to be used primarily in severe weather applications, there is sufficient reason to subcategorize the item. Therefore, the fluid-filled transformers item has been divided into two subcategories: (1) Synthetic ester-based fluid-filled transformers and (2) vegetable oil-based fluid-filled transformers.

Based on data available at proposal, USDA had biobased content information on one synthetic ester-based transformer fluid and one vegetable oil-based transformer fluid. The biobased contents of these two products were, respectively, 69 percent and 98 percent. Since proposal, USDA has obtained biobased content data on an additional vegetable oil-based transformer fluid. The tested biobased content of this product is 100 percent.

For the synthetic ester-based fluid-filled transformers subcategory, USDA is establishing a minimum biobased content of 66 percent based on the single product for which biobased content was tested. For the vegetable oil-based fluid-filled transformers subcategory, USDA is establishing a minimum biobased content of 95 percent based on the two products tested.

As pointed out by the commenter, the cost of the synthetic ester-based product is sufficiently higher than the vegetable oil-based products to discourage their use, except in extreme applications. Thus, most purchasers are expected to buy the higher biobased content vegetable oil-based products regardless of the specified minimum biobased content. As pointed out elsewhere in this preamble, Federal agencies are expected under section 9002 to purchase products with the highest biobased content, as long as the products meet their performance needs and are available at an acceptable cost. To help purchasing agencies identify the biobased contents of available products and select those with higher biobased contents, the biobased contents of available products will be posted on the BioPreferred Web site.

Additional details on the subcategorization and the establishment of the minimum biobased contents for this item can be found in Chapter 5 of the document ''Technical Support for Final Rule—Round 2 Designated Items,'' which is available on the BioPreferred Web site.

Disposable Containers (Formerly Biodegradable Containers)

Comment: One commenter stated that the definition of containers is vague and needs clarification. The commenter recommended that this item be retitled ''disposable food service ware'' because ''biodegradable containers'' could be defined as encompassing boxes, pallets and packaging used to transport and store food products.

Response: USDA agrees with this commenter that this item should be focused on disposable containers and, as noted in a response to a previous comment, has renamed this designated item as ''disposable containers.'' It is USDA's intent for this item to include products in addition to disposable food service ware. Such additional products include containers that may take the form of boxes and packaging. However, pallets are not containers and would not be included under this item. Therefore, USDA has not limited this item to products that are only in the food service arena as requested by the commenter.

USDA notes that the products within this designated item may overlap with the EPA-designated recovered content product ''Paper and Paper Products.'' This EPA-designated recovered content product covers a wide range of paper products, including ''paperboard and

packaging.'' This subcategory, in turn, covers a variety of products, including corrugated shipping containers and industrial paperboard (e.g., mailing tubes). Additional information on this EPA-designated recovered content item, including the recommended recovered content levels for these products, can be found at *http://www.epa.gov/epaoswer/non-hw/procure/products/paperbrd.htm*.

Comment: One commenter suggested that biodegradable containers that replace single-use disposable containers that are not now recycled (such as polystyrene take-out containers) are preferable and deserve to be given procurement preference.

Response: As noted in the previous response, USDA has renamed this item as ''disposable containers.'' By doing so, preferred procurement will be given to disposable containers that are both biobased and biodegradable. This meets the commenter's request.

Comment: One commenter believes that the requirement to meet ASTM D6400 ''Standard Specifications for Compostable Plastics'' is not an appropriate definition for the category of Biodegradable Containers for inclusion on the Biobased Products List. According to the commenter, this test methodology is relatively new and not widely used or accepted at this time. The commenter also stated that the cost requirements for this test may make it unaffordable to many small or start-up businesses, making it a significant barrier to inclusion on the list. The commenter indicated that there are many alternative compost test methodologies, including full-scale testing conducted by the USDA Agricultural Research Service, which was conducted in conjunction with the Department of the Interior, the Environmental Protection Agency and the General Services Administration. The commenter felt that this work needed to be considered in defining this category. The commenter then stated the current definition could exclude products with large amounts of biobased materials that could significantly expand the use of biobased materials even though such products would not be compostable according to the ASTM D6400 test. Such an outcome, according to the commenter, would be counter to the goals of the project. The commenter noted that the other nine categories in this rulemaking do not include such a requirement.

Response: As stated in a response to another comment, the intent of this designated item is to give preferred procurement to biobased containers that are also biodegradable over disposable containers and not to give preferred procurement to biodegradable, biobased containers over biodegradable containers. To implement this intent, USDA has renamed the item to ''disposable containers'' and has added the requirement that the biobased versions of disposable containers be demonstrated to be biodegradable. The proposed rule included reference to ASTM D6400 as the method for determining whether or not a container is biodegradable. USDA agrees that some biobased versions of disposable containers may not be found to be biodegradable using ASTM D6400 because of their composition, but may be found to be biodegradable under other, equivalent test methods. Therefore, in recognition of this, the final rule requires the use of ASTM D6400 or other applicable and appropriate standard for biodegradability to demonstrate that a biobased container is also biodegradable.

Comment: Two commenters requested that the definition of biodegradable containers specifically exclude beverage bottles. According to the commenters, the current infrastructure to compost biodegradable containers and other biodegradable products is not yet developed and available in most U.S. communities and, thus, biodegradable beverage bottles that replace poly(ethylene terephthalate) (PET) or high-density polyethylene (HDPE) bottles are not necessarily preferable as these displace a product for which an established recycling infrastructure exists. The commenters claim that biodegradable beverage bottles in today's recycling infrastructure would end up neither composted nor recycled but in the reject stream of almost all recycling facilities in the U.S. The commenters then state that, if the USDA procurement program were to increase demand for biodegradable beverage bottles, this would have severe negative economic repercussions for well-established plastic bottle recyclers.

Response: The purpose of the BioPreferred Program is to encourage the purchase of biobased products, including, if they qualify, soda bottles. Like the commenter, USDA is concerned that such products are disposed of in an environmentally responsible manner. USDA has consulted with EPA and with representatives of the Association of Post-Consumer Plastic Recyclers (APCPR) to discuss this issue. APCPR explained that their primary concern with attempts to place PLA or other biobased plastics in existing recycling streams related to the negative impacts that these biobased plastics have on the recycling of PET. They pointed out that over seven billion pounds of PET are used annually in the country and that the recycling of PET has been adopted on a large-scale basis. There are two primary concerns related to the introduction of biobased plastics into the PET recycling stream. First, the presence of biobased plastics even in very small amounts (less than 1 percent) causes the resulting recycled plastic to lose the clarity which is demanded in the largest market for these products (''soda'' and water bottles). Even a slight haze in the final product is unacceptable to the bottling industry. The second concern relates to the actual recycling technology. PET is separated from HDPE and other petroleum-based plastics by floatation. PET floats in water and the others do not. Most biobased plastics also float, however, making the separation of PET from biobased plastics using floatation technology impossible. Thus, if there are biobased plastics in the recycling stream they remain with the PET stream. Following separation, the PET is shredded and then placed in dryers to remove the moisture. Because biobased plastics melt at a temperature that is much lower than the melting temperature of PET, the biobased plastics tend to melt in the PET dryers. Recyclers have indicated that the presence of even 0.1 percent of biobased plastics in the shredded stream can cause the dryers to ''gum up'' and results in the rejection of the contaminated PET.

APCPR pointed out that an optical-type technology for separating biobased plastics from PET is available, but that it is very expensive. Because there is currently such a small amount of biobased plastics available for recycling, there is no economic incentive for recyclers to purchase the equipment necessary to separate it from PET. APCPR further explained that for the recycling of biobased plastics to become economically viable there needs to be both a readily available supply of used material and a significant market for the recovered plastic, neither of which exists today.

APCPR also pointed out that biobased polymers used for other applications, such as ''clam shell'' containers and other therma-form products, do not present a problem for the recycling of those products. They also noted that composting in commercial composting operations is a viable alternative to the recycling of biobased polymers.

USDA encourages procuring agents and those involved in recycling to provide education material to potential

purchasers and users on environmentally preferred disposal of such products. The APCPR Web site (*http://www.plasticsrecycling.org*) presents technical information on plastics recycling and procuring agents are urged to visit the site for more information. In addition, USDA will post relevant information in this regard on the BioPreferred Web site to assist manufacturers, purchasers, and users become aware of the potential impacts of biobased plastics on recycling and on the preferred disposable methods for such products.

Comment: One commenter asked USDA to confirm whether biodegradable containers include products made with polylactic acid (PLA). If it does, the commenter suggested that EPA discuss the impact of mixing used PLA products with other plastics in recycling operations. The commenter pointed out that PLA can be a minor contaminant if mixed with fossil fuel based plastics such as PET and users of PLA products might inadvertently put used products in traditional recycling collection systems, because the products may appear similar to other types of plastic. The commenter suggested that users be advised instead to either compost their PLA products or work with PLA manufacturers to return the material back to them for recycling.

Response: USDA confirms that a biodegradable container made from PLA would qualify as a biobased product under this item. As discussed in the previous response, USDA is concerned that any product that affects recycling adversely be disposed of properly. Therefore, USDA encourages the commenter and those involved in recycling to provide education material to potential purchasers and users on environmentally preferred disposal of such products. To the extent that an existing market for recycled bottles changes, USDA believes this creates an opportunity for a new market for the recycling of biodegradable containers.

Comment: Three commenters recommended lowering the minimum biobased content for biodegradable containers. One commenter recommended lowering the minimum biobased content from 96 percent to 72 percent, and one commenter recommended lowering it to 85 percent. The third commenter did not offer a specific recommendation as an alternative biobased content.

In support of their recommendation of 72 percent, the first commenter stated that their product has a biobased content of 75 percent, but had not been tested in time to be part of the data set used for the proposed rule, although its BEES analysis had been used. The commenter stated that by setting the minimum biobased content at 72 percent, the goal of inclusion of high performing biobased products to maximize the use of these materials will be better met.

The second commenter supported their recommendation (85 percent) by stating that this segment of the market is still very new, as evidenced by the fact that only 6 containers were found and only 2 provided biobased percentages. The commenter stated that an 85 percent minimum is still significantly higher than that of biodegradable films and cutlery and that the lower threshold should enable the properties of these materials to be expanded and for more applications to be marketed. The commenter then stated that USDA can always raise the minimum contents in the future as the market becomes more fully developed.

The third commenter expressed concern that a 96 percent minimum biobased content would severely limit the product selection options for containers. This commenter pointed out that suitable containers with biobased contents ranging from 45 to 80 percent are under development and should be commercially viable in 2007, including two products that the commenter is currently working on. The commenter also referred to a new class of biobased containers incorporating PLA based solutions that would add toughness to the containers. The commenter, therefore, requested USDA to refrain from setting a minimum biobased content of 96 percent for biodegradable containers in favor of setting the biobased content at a lower level, thereby increasing the number of potential products and materials that would be available. The commenter concluded by stating that by implementing the 96 percent limit proposed, the only current material would be PLA, which is in very short supply and is very limited in terms of usage because of heat resistance and impact resistance.

Response: At the time USDA investigated this item for designation, biobased content data were available for two products, which had biobased contents of 99 and 100 percent. Since the publication of the proposed rule, the first commenter has provided a sample that has a tested biobased content of 75 percent. USDA has also obtained biobased content test results for products with 29, 32, and 98 percent biobased content. Thus, the data set for this item is now 29, 32, 75, 98, 99, and 100 percent biobased contents. Because there is a significant break between the 32 percent product and the 75 percent product, USDA reviewed the available product information to determine if there was any justification for creating two subcategories within this item. USDA is aware that some biobased disposable containers provide improved performance characteristics when compared with others when used in high temperature/moisture applications. At this time, however, USDA does not have sufficient product performance information to establish subcategories. USDA will continue to gather information on this item and, if sufficient product performance data can be obtained, will consider creating subcategories in a future rulemaking. USDA is setting the minimum biobased content for this item at 72 percent based on the product with a tested biobased content of 75 percent.

Additional details on the products within this item can be found in the document ''Technical Support for Final Rule—Round 2 Designated Items,'' which is available on the BioPreferred Web site.

Comment: One commenter suggested that, in addition to the BEES analysis, food safety and product integrity needs to be incorporated in product choice. According to the commenter, biobased biodegradable containers produced from natural starch-based or synthetic corn-based feedstock have their limits on what food products can be safely packaged in them. The commenter pointed out that this item does not take variability of foods into account, such as hot coffee, high moisture foods, or acidic condiments when prescribing biodegradable containers under this rule. The commenter concluded by stating that food packaging made from biomass is still experimental and there remain considerable data gaps on its feasibility.

Response: While USDA agrees with the commenter that some biobased biodegradable containers will perform better under certain circumstances than others, there are products within this item that are being used in the market place. Thus, USDA disagrees with the characterization of biobased containers as ''experimental,'' although there are some products still being developed in this item as well as in other items. As more products are developed within this item, USDA will make information available on the BioPreferred Web site to improve the data available to procuring agencies. Finally, the statute allows purchasers to not give preferred procurement if a biobased product fails to meet applicable performance standards.

Fertilizers

Comment: One commenter stated that the definition of fertilizers appears to cover both biobased and chemical fertilizers and asked if this was correct.

Response: The commenter is correct—the definition of fertilizers covers both biobased and chemical fertilizers.

Comment: One commenter asked if a hypothetical product that contains 10 percent total organic carbon by weight, and 90 percent other materials would qualify as a fertilizer as long as a minimum 71 percent of the weight of the total organic carbon component is qualifying biobased carbon.

Response: The commenter is correct—such a hypothetical product would qualify as a fertilizer and would be afforded preferred procurement as long as its biobased content met or exceeded the minimum biobased content for fertilizers.

Comment: One commenter suggested USDA rename the item ''biobased fertilizers,'' to distinguish it from other types (e.g., inorganic, biosolids) fertilizers. Otherwise, for example, it appears that any type of fertilizers could be used in organic farming.

Response: Under this item, the intent is to provide preferred procurement for fertilizers that are biobased. Such biobased fertilizers would replace ''fertilizers,'' not biobased fertilizers. The name and definition of this item, therefore, must remain ''fertilizers.''

Biobased fertilizers may contain chemical and synthetic products and even recycled hazardous materials. Therefore, some biobased fertilizers may be incompatible with those that can be used in organic farming. In addition, if a biobased fertilizer contains recycled hazardous wastes, the fertilizer would need to meet applicable land disposal restriction standards for any hazardous constituents they contain, as required under 40 CFR 266.20(d).

Comment: One commenter asked whether these products are blends of both biobased and chemical components or whether they mostly consist of biobased components. The commenter suggested adding a discussion regarding what other types of materials could be in the fertilizers along with the ''waste'' or ''recovered'' biobased components (e.g., chemical/synthetic ingredients).

Response: In response to the commenter's questions, most biobased fertilizers are likely to consist mostly of biobased components, but they can be made from blends of both biobased and chemical components. USDA has added additional information to the definition of fertilizer in the final rule to identify types of material that may be found in fertilizers.

Comment: One commenter asked whether the biobased carbon in these fertilizers is always recovered, or is it ever virgin. The commenter stated that if it's always recovered, then there will always be overlap (i.e., not ''in some cases'' as stated in proposed § 2902.22(d), but there will never be an issue since buying this product will simultaneously satisfy both statutes. The commenter suggested that USDA note in the preamble that if any of the fertilizers in question are made from recycled hazardous wastes, the fertilizer products would need to meet applicable land disposal restriction standards for any hazardous constituents they contain, as required under 40 CFR 266.20(d).

Response: At this time, USDA is unaware of any biobased fertilizers made from virgin materials. USDA agrees, therefore, that ''in some cases'' is incorrect based on our current knowledge. USDA also agrees with the commenter that this is irrelevant to the overlap concern because buying a biobased fertilizer satisfies both programs. With regard to the commenter's second point concerning the potential for fertilizers being made with recycled hazardous waste and thus not being able to meet applicable land disposal restriction standards, while this is not applicable to biobased fertilizers alone, USDA will post such information on the BioPreferred Web site. In addition, USDA has added a note in the final rule concerning the potential effect of fertilizers that contain recycled hazardous material.

Comment: One commenter stated that text in the preamble implied that EPA has finalized the designation for fertilizers under the CPG program. Because EPA has not done so at this time, the commenter requested that USDA check with EPA on the status of fertilizers before finalizing the designation. If EPA has not finalized the designation of fertilizers for the CPG program, EPA suggested that USDA use the word ''proposed'' when referring to fertilizers in the context of the CPG program. The commenter also stated that if the EPA final rule for fertilizers does not get finalized prior to the promulgation of this designated item, then USDA should delete proposed § 2902.22(d) altogether, and instead address this issue solely in the preamble. The commenter provided suggested language (e.g., Overlap will not be an issue for fertilizers unless and until EPA finalizes the CPG designation for fertilizers made from recovered organic materials, in which case. * * *'')

Response: EPA finalized the designation of ''fertilizer made from recovered organic materials'' on September 14, 2007. As a result, paragraph (d) of section 2902.22 was retained in the final rule.

Sorbents

As part of USDA's re-evaluation of the proposed minimum biobased contents in this regulation, USDA examined the proposed level of 52 percent for the sorbents item. Biobased content data are available for 11 products within this item, as follows: 55, 78, 92, 94, 97, 99, 100, 100, 100, 100, and 100 percent. As the data range shows, there are significant breaks in the tested biobased contents between the 55 percent product and the 78 percent product, and between the 78 percent product and the 92 percent product. Based on the information available, no obvious performance features justified subcategorizing or including the lower biobased content items in the final designation. In addition, USDA identified a grouping of products with biobased contents above 92 percent. This grouping would afford the Federal procurement community with numerous product options at the higher level of biobased content.

Therefore, USDA has set the minimum biobased content for this item at 89 percent, based on the item with a tested biobased content of 92 percent. As with other designated items, USDA will continue to gather information on this item and, if information justifying subcategorization is obtained, will create subcategories within this item in a future rulemaking.

Graffiti and Grease Removers

Comment: One commenter suggested that the Green Seal standard for degreasers (GS–34) be mentioned as a relevant environmental standard for this item.

Response: USDA agrees that such information can be useful and will add information on the Green Seal standard for degreasers (GS–34) to the performance information available on the BioPreferred Web site for this designated item.

Comment: One commenter stated that the minimum biobased content for grease and graffiti removers should be 38 percent (not 21 percent) based on the data in the background information. The commenter then stated that if the lower content levels reflect products used for different applications than those with higher content levels, then USDA

should provide separate content recommendations.

Response: Since proposal, USDA has obtained biobased content test results for several additional products within this item. Also, the product with 24 percent biobased content that was used as the basis for the proposed minimum biobased content is no longer offered by its manufacturer. The biobased content data set for this item now contains 19 test results, as follows: 37, 38, 44, 52, 53, 55, 58, 60, 61, 61, 63, 75, 77, 79, 89, 90, 94, 95, and 100. USDA evaluated the available product information for this item and set the minimum biobased content at 34 percent. Even though there is a wide range of biobased contents within this item, USDA was unable to identify any significant break points or product groupings within the data. Also, as explained in the proposal preamble, graffiti and grease removers are formulated to remove a wide variety of paints and other marking materials, as well as grease, from many types of surfaces and using several different application techniques. For example, some graffiti and grease removers are sold as concentrates to be mixed with water, while others are designed to be used as purchased; some are designed to be sprayed on with power washers, while others are designed to be applied with brushes; and some are designed to provide a foaming action, while others are not. USDA considered creating subcategories for this item based on product performance claims, formulation, and/or application techniques but did not have sufficient data to do so at this time. USDA will, however, continue to gather and evaluate product information for this item and will develop subcategories in a future rulemaking if sufficient justification can be obtained. Because of the wide range in product characteristics, USDA is proposing to set the minimum biobased content at a level that will include all of the products sampled.

Amendments to 7 CFR Part 2902

USDA is making technical amendments to three sections in subpart B to:

- Update the reference to the Web site from the ''USDA Web site'' to the ''BioPreferred Web site;''
- Revise the text, as necessary, concerning requesting information on the types of materials contained in the product to include biobased ingredients; and
- Add a note to refer the user to the potential overlap with EPA recovered material content products and where such products are designated in the Code of Federal Regulations.

These technical amendments update these three paragraphs to conform to the most recent language being used in subsequently promulgated sections under subpart B, including those sections in today's rulemaking.

V. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

This action has been determined significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We are not able to quantify the annual economic effect associated with this final rule. As discussed in the proposed rule, USDA made extensive efforts to obtain information on the Federal agencies' usage within the nine designated items, including their subcategories. These efforts were largely unsuccessful. Therefore attempts to quantify the economic impact of this rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing designated items if costs are ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of this rulemaking. This assessment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased). Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable costs.

1. Summary of Impacts

This rulemaking is expected to have both positive and negative impacts on individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by this rule. The rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Rule

The designation of these nine items, including their subcategories, provides the benefits outlined in the objectives of section 9002: To increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas; and to substitute products with a possibly more benign or beneficial environmental impact, as compared to the use of fossil energy-based products. On a national and regional level, this rule can result in expanding and strengthening markets for biobased materials used in these items.

3. Costs of the Rule

Like the benefits, the costs of this rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Procurement costs for Federal agencies may rise as they evaluate the availability and relative cost of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

When an agency issues a final rule following a proposed rule, the Regulatory Flexibility Act (RFA, 5 U.S.C. 601–612) requires the agency to prepare a final regulatory flexibility analysis. 5 U.S.C. 604. However, the requirement for a final regulatory flexibility analysis does not apply if the head of the agency certifies that the rule will not, if promulgated, have a

significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

USDA evaluated the potential impacts of its designation of these items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal Procurement of Biobased Products under section 9002 of FSRIA applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, this rule will not have a significant economic impact on small governmental jurisdictions. USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers. Conversely, the preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. However, this rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items under certain conditions relating to the availability, performance, or cost of biobased items. This rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, the economic impacts of this rule are not expected to be significant.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market products within the items and their subcategories designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses affected by this rulemaking is not expected to be substantial.

After considering the economic impacts of this rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of biobased materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

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

Today's rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this rule is currently approved under OMB control number 0503–0011.

J. Government Paperwork Elimination Act Compliance

The Office of Energy Policy and New Uses is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504 note), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated item. For information pertinent to GPEA compliance related to this rule, please contact Marvin Duncan at (202) 401–0461.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

■ For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Amend § 2902.3 by adding paragraph (e) to read as follows:

§ 2902.3 Applicability to Federal procurements.

* * * * *

(e) *Exemptions.* The following applications are exempt from the preferred procurement requirements of this part:

(1) Military equipment: Products or systems designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

■ 3. Amend § 2902.10 by removing paragraph (e) and revising paragraph (d) to read as follows:

§ 2902.10 Mobile equipment hydraulic fluids.

* * * * *

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content product: Re-refined Lubricating Oils. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains petroleum-based ingredients, re-refined oil, and/or any other recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated lubricating oils containing re-refined oil and which product should be afforded the preference in purchasing.

Note to paragraph (d): Mobile equipment hydraulic fluid products within this designated item can compete with similar lubricating oils containing re-refined oil. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated lubricating oils containing re-refined oil as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

■ 4. Amend § 2902.11 by revising paragraph (d) to read as follows:

§ 2902.11 Roof coatings.

* * * * *

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content product: Roofing Materials. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any type of recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with recovered content roofing materials and which product should be afforded the preference in purchasing.

Note to paragraph (d): Roof coating products within this designated item can compete with similar roofing material products. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated roofing material containing recycled material as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

§ 2902.13 [Amended]

■ 5. Amend § 2902.13 by removing paragraph (d).

■ 6. Amend § 2902.14 by removing paragraph (e) and revising paragraph (d) to read as follows:

§ 2902.14 Penetrating lubricants.

* * * * *

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content product: Re-refined Lubricating Oils. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains petroleum-based ingredients, re-refined oil, and/or any other recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated lubricating oils containing re-refined oil and which product should be afforded the preference in purchasing.

Note to paragraph (d): Penetrating lubricant products within this designated item can compete with similar re-refined lubricating oil products. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recycled material as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

■ 7. Add §§ 2902.16 through 2902.24 to subpart B to read as follows:

§ 2902.16 Adhesive and mastic removers.

(a) *Definition.* Solvent products formulated for use in removing asbestos, carpet, and tile mastics as well as adhesive materials, including glue, tape, and gum, from various surface types.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 58 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased adhesive and mastic removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased adhesive and mastic removers.

§ 2902.17 Plastic insulating foam for residential and commercial construction.

(a) *Definition.* Spray-in-place plastic foam products designed to provide a sealed thermal barrier for residential or commercial construction applications.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 7 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased plastic insulating foam for residential and commercial

construction. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased plastic insulating foam for residential and commercial construction.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Building Insulation. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated building insulation and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased insulating products within this designated item can compete with similar insulating products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated building insulation containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12. EPA provides recovered materials content recommendations for building insulation products in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

§ 2902.18 Hand cleaners and sanitizers.

(a) *Definitions.* (1) *Hand cleaners.* Products formulated for personal care use in removing a variety of different soils, greases, and similar substances from human hands with or without the use of water.

(2) *Hand sanitizers.* Products formulated for personal care use in removing bacteria from human hands with or without the use of water. Personal care products that are formulated for use in removing a variety of different soils, greases and similar substances and bacteria from human hands with or without the use of water are classified as hand sanitizers for the purposes of this rule.

(b) *Minimum biobased content.* The minimum biobased content requirement for all hand cleaners and/or sanitizers shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Hand cleaners—64 percent.

(2) Hand sanitizers (including hand cleaners and sanitizers)—73 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased hand cleaners and sanitizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased hand cleaners and sanitizers.

§ 2902.19 Composite panels.

(a) *Definitions.* (1) *Plastic lumber composite panels.* Engineered products suitable for non-structural outdoor needs such as exterior signs, trash can holders, and dimensional letters.

(2) *Acoustical composite panels.* Engineered products designed for use as structural and sound deadening material suitable for office partitions and doors.

(3) *Interior panels.* Engineered products designed specifically for interior applications and providing a surface that is impact-, scratch-, and wear-resistant and that does not absorb or retain moisture.

(4) *Structural interior panels.* Engineered products designed for use in structural construction applications, including cabinetry, casework, paneling, and decorative panels.

(5) *Structural wall panels.* Engineered products designed for use in structural walls, curtain walls, floors and flat roofs in commercial buildings.

(b) *Minimum biobased content.* The minimum biobased content requirement for all composite panels shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Plastic lumber composite panels—23 percent.

(2) Acoustical composite panels—37 percent.

(3) Interior panels—55 percent.

(4) Structural interior panels—89 percent.

(5) Structural wall panels—94 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased composite panels. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased composite panels.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the following EPA-designated recovered content products: Laminated Paperboard and Structural Fiberboard; Shower and Restroom Dividers; and Signage. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated laminated paperboard, structural fiberboard, shower and restroom dividers, and signage, and which product should be afforded the preference in purchasing.

Note to paragraph (d): Composite panel products within this designated item can be made with recycled material. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated laminated paperboard and structural fiberboard, shower and restroom dividers, and signage containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12. EPA provides recovered materials content recommendations for laminated paperboard and structural fiberboard, shower and restroom dividers, and signage in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

§ 2902.20 Fluid-filled transformers.

(a) *Definition.* (1) *Synthetic ester-based fluid-filled transformers.* Electric power transformers that are designed to utilize a synthetic ester-based dielectric (non-conducting) fluid to provide insulating and cooling properties.

(2) *Vegetable oil-based fluid-filled transformers.* Electric power transformers that are designed to utilize a vegetable oil-based dielectric (non-conducting) fluid to provide insulating and cooling properties.

(b) *Minimum biobased content.* The minimum biobased content requirement for all fluid-filled transformers shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Synthetic ester-based fluid-filled transformers—66 percent.

(2) Vegetable oil-based fluid-filled transformers—95 percent.

(c) *Preference compliance date.* (1) *Synthetic ester-based fluid-filled transformers.* Determination of the compliance date for synthetic ester-based fluid-filled transformers is deferred until USDA identifies two or more manufacturers of synthetic ester-based fluid-filled transformers. At that time, USDA will publish a document in the **Federal Register** announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased synthetic ester-based fluid-filled transformers.

(2) *Vegetable oil-based fluid-filled transformers.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased vegetable oil-based fluid-filled transformers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased vegetable oil-based fluid-filled transformers.

§ 2902.21 Disposable containers.

(a) *Definition.* Products designed to be used for temporary storage or transportation of materials including, but not limited to, food items.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 72 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Biodegradability.* At the time a manufacturer offers a product under this item for Federal purchase under the BioPreferred Program, the preferred procurement product must be capable of meeting the current version of ASTM D6400 if disposed of in a non-marine environment, the current version of ASTM D7081 if disposed of in a marine environment, or other appropriate and applicable standard for biodegradability.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Paper and Paper Products. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated paper and paper products and which product should be afforded the preference in purchasing.

Note to paragraph (d): Disposable containers can include boxes and packaging made from paper. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated paper and paper products containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.10. EPA provides recovered materials content recommendations for paper and paper products in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found on EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

(e) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased disposable containers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased disposable containers.

§ 2902.22 Fertilizers.

(a) *Definition.* Products formulated or processed to provide nutrients for plant growth and/or beneficial bacteria to convert nutrients into plant usable forms. Biobased fertilizers, which are likely to consist mostly of biobased components, may include both biobased and chemical components.

Note to paragraph (a): Biobased fertilizers, as well as other fertilizers, may be made with recycled hazardous waste. Such fertilizers need to meet applicable land disposal restriction standards for any hazardous constituents they contain, as required under 40 CFR 266.20(d).

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 71 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased fertilizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased fertilizers.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Fertilizer. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated fertilizer product and which product should be afforded the preference in purchasing.

Note to paragraph (d): Fertilizers within this designated item can be made with recycled materials. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated fertilizers containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.15. EPA provides recovered materials content recommendations for fertilizers in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

§ 2902.23 Sorbents.

(a) *Definition.* Materials formulated for use in the cleanup and

bioremediation of oil and chemical spills, the disposal of liquid materials, or the prevention of leakage or leaching in maintenance applications, shop floors, and fuel storage areas.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 89 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased sorbents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased sorbents.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Sorbents. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated sorbents and which product should be afforded the preference in purchasing.

Note to paragraph (d): Sorbents within this designated item can be made with recycled materials. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated sorbents containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17. EPA provides recovered materials content recommendations for sorbents in the Recovered Materials Advisory Notice (RMAN) published for these products. The RMAN recommendations can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

§ 2902.24 Graffiti and grease removers.

(a) *Definition.* Industrial solvent products formulated to remove automotive, industrial, or kitchen soils and oils, including grease, paint, and other coatings, from hard surfaces.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 34 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the remover must be determined before dilution.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying graffiti and grease removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased graffiti and grease removers.

Dated: May 2, 2008.

Harry Baumes,

Associate Director, Office of Energy Policy and New Uses, U.S. Department of Agriculture.

[FR Doc. E8–10107 Filed 5–13–08; 8:45 am]

BILLING CODE 3410–GL–P

Federal Register

Wednesday,
May 14, 2008

Part IV

Department of Agriculture

Office of Energy Policy and New Uses

7 CFR Part 2902

Designation of Biobased Items for Federal Procurement; Final Rule

DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA31

Designation of Biobased Items for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending the guidelines for designating biobased products for Federal procurement, to add ten sections to designate items, including subcategories, within which biobased products will be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002. USDA also is establishing a minimum biobased content for each of these items and subcategories.

DATES: This rule is effective June 13, 2008.

FOR FURTHER INFORMATION CONTACT: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue SW., MS–3815 Washington, DC 20250–3815; e-mail: *mduncan@oce.usda.gov;* phone (202) 401–0461. Information regarding the Federal Procurement of Biobased Products (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Changes
IV. Discussion of Comments
V. Regulatory Information
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act (RFA)
C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
D. Executive Order 12988: Civil Justice Reform
E. Executive Order 13132: Federalism
F. Unfunded Mandates Reform Act of 1995
G. Executive Order 12372: Intergovernmental Review of Federal Programs
H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
I. Paperwork Reduction Act
J. Government Paperwork Elimination Act Compliance

I. Authority

These items, including their subcategories, are designated under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

As part of the Federal Procurement of Biobased Products, USDA published on August 17, 2006, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of 10 items for the preferred procurement of biobased products by Federal agencies (referred hereafter in this FR notice as the ''preferred procurement program''). This proposed rule can be found at 71 FR 47590. This rulemaking is referred to in this preamble as Round 3 (RIN 0503–AA31).

The Round 3 proposed rule proposed designating the following items, including their subcategories, for the preferred procurement program: 2-cycle engine oils; lip care products; non-durable films; [1] stationary equipment hydraulic fluids; disposable cutlery; [2] glass cleaners; greases, including food grade greases, multipurpose greases, rail track greases, truck greases, and greases not elsewhere specified as subcategories; dust suppressants; carpets; and carpet and upholstery cleaners.

Today's final rule designates the following 10 items, including subcategories, within which biobased products will be afforded Federal procurement preference: 2-cycle engine oils; lip care products; films, including semi-durable films and non-durable films as subcategories; stationary equipment hydraulic fluids; disposable cutlery; glass cleaners; greases, including food grade greases, multipurpose greases, rail track greases, truck greases, and greases not elsewhere specified as its subcategories; dust suppressants; carpets; and carpet and upholstery cleaners, including spot removers and general purpose cleaners as subcategories. USDA has determined that each of the items, including the subcategories within them, being designated under today's rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: To improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

When USDA designates by rulemaking an item (a generic grouping of products) for preferred procurement under the BioPreferred Program, manufacturers of all products under the umbrella of that item that meet the requirements to qualify for preferred procurement can claim that status for their products. To qualify for preferred procurement, a product must be within a designated item and must contain at least the minimum biobased content established for the designated item. When the designation of specific items is finalized, USDA will invite the manufacturers of these qualifying products to post information on the product, contacts, and performance testing on its BioPreferred Web site, *http://www.biopreferred.gov.* Procuring agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated item. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items, including their subcategories, where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more.

Subcategorization. Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are groups of products within the item that meet different markets and uses and/or different performance specifications. For example, within the designated item ''hand cleaners and sanitizers,'' some products are required to meet performance specifications for sanitizing, while other products do not need to meet these specifications. Where such subgroups, or subcategories, exist, USDA intends to create subcategories. Thus, for example, for the designated item ''hand cleaners and sanitizers,'' USDA determined that it was reasonable to create a ''hand cleaner'' subcategory and a ''hand sanitizer'' subcategory. Sanitizing specifications would be applicable to the later subcategory, but not the former.

[1] At proposal, this item was identified as ''biodegradable films.'' Based on comments received, and as explained in this preamble, USDA has renamed this item as ''films'' and combined it with the proposed item ''durable films'' that was included in the October 11, 2006 Round 4 proposal (71 FR 59862).

[2] At proposal, this item was identified as ''biodegradable cutlery.'' Based on comments received, and as explained in this preamble, USDA has renamed this item as ''disposable cutlery.''

In sum, USDA looks at the products within each item to evaluate whether there are groups of products within the item that meet different performance specifications and, where USDA finds this type of difference, it intends to create subcategories.

For some items, however, USDA may not have sufficient information at the time of proposal to create subcategories within an item. For example, USDA may know that there are different performance specifications that de-icing products are required to meet, but it has only information on one type of de-icing product. In such instances, USDA may either designate the item without creating subcategories (i.e., defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the item until additional information is obtained on products within these other subcategories.

Within today's rulemaking, USDA has created subcategories within three items—films, greases, and carpet and upholstery cleaners. For films, the subcategories are semi-durable films and non-durable films. For greases, the subcategories are: Food grade greases, multipurpose greases, rail track greases, truck greases, and greases not elsewhere specified. For carpet and upholstery cleaners, the subcategories are spot removers and general purpose cleaners.

Minimum Biobased Contents. The minimum biobased contents being established with today's rulemaking are based on products for which USDA has biobased content test data. In addition to considering the biobased content test data for each item, USDA also considers other factors when establishing the minimum biobased content. These other factors include: Public comments received on the proposed minimum biobased contents; product performance information to justify the inclusion of products at lower levels of biobased content; and the range, groupings, and breaks in the biobased content test data array. Consideration of this information allows USDA to establish minimum biobased contents on a broad set of factors to assist the Federal procurement community in its decision to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, USDA must rely on biobased product manufacturers to voluntarily submit product information and, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated item. As USDA obtains additional data on the biobased contents for products within these ten designated items and their subcategories, USDA will evaluate whether the minimum biobased content for a designated item or subcategory will be revised.

USDA anticipates that the minimum biobased content of an item or subcategory that is based on a single product is more likely to change as additional products in those items and subcategories are identified and tested. In today's rulemaking, none of the minimum biobased contents are based on a single tested product.

For all items and subcategories where additional information indicates that it is appropriate to revise a minimum biobased content established under today's rulemaking, USDA will propose the change in a notice in the **Federal Register** to allow public comment on the proposed revised minimum biobased content. USDA will then consider the public comments and issue a final rulemaking on the minimum biobased content.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products. Some of the products that are biobased items designated for preferred procurement may also be items the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for Products Containing Recovered Materials. Where that occurs, an EPA-designated recovered content product (also known as ''recycled content products'' or ''EPA-designated products'') has priority in Federal procurement over the qualifying biobased product as identified in 7 CFR 2902.2. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to provide additional product and performance information to Federal agencies to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. As this information becomes available, USDA will place it on the BioPreferred Web site with its catalog of qualifying biobased products.

In cases where USDA believes an overlap with EPA-designated recovered content products may occur, manufacturers are being asked to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains petroleum-based components and whether the product contains recovered materials. Federal agencies may also ask manufacturers for information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the Building for Environmental and Economic Sustainability (BEES) analysis or ASTM Standard D7075 for evaluating and reporting on environmental performance of biobased products). Such information will permit agencies to determine whether or not an overlap occurs.

Section 6002 of RCRA requires a procuring agency procuring an item designated by EPA generally to procure such items composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

Where a biobased item is used for the same purposes and to meet the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because ''lubricating oils containing re-refined oil'' has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, ''lubricating oils containing re-refined oil.'' If, on the other hand, that biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to cost, availability, and performance.

This final rule designates three items for preferred procurement for which there may be overlap with EPA-designated recovered content products. These items are: (1) Films in the semi-durable films subcategory, (2) stationary equipment hydraulic fluids and (3) carpets. Depending on how they are to be used, qualifying products under

these three items may overlap, respectively, with the EPA-designated recovered content products ''plastic trash bags,'' ''re-refined lubricating oil,'' and ''carpets (polyester).'' EPA provides recovered materials content recommendations for these three recovered content products in a Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations for each of these CPG products can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

EPA is proposing to designate nylon carpets as a recovered content product. If and when EPA finalizes designation of nylon carpets as a recovered content product, then carpets would have the potential to overlap with these types of carpets as well as the currently EPA-designated recovered content polyester carpets.

Future Designations. In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within items. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing and for the BEES analytical tool. Based on these results, USDA will then propose new items for designation for preferred procurement.

As stated in the preamble to the first six items designated for preferred procurement (71 FR 13686, March 16, 2006), USDA plans to identify approximately 10 items in each future rulemaking. USDA has developed a preliminary list of items for future designation. This list is available on the BioPreferred Web site. While this list presents an initial prioritization of items for designation, USDA cannot identify with any certainty which items will be presented in each of the future rulemakings. Items may be added or dropped and the information necessary to designate an item may take more time to obtain than an item lower on the prioritization list.

III. Summary of Changes

As the result of comments received on the proposed rule (see Section IV), USDA made changes to the rule, which are summarized below.

Item names. The names for two of the 10 items were revised. ''Biodegradable Films'' is now ''Films.'' ''Biodegradable Cutlery'' is now ''Disposable Cutlery.''

Item Definitions. The definitions of six of the 10 items were revised to varying degrees. These six items are: 2-cycle engine oils; films; stationary equipment hydraulic fluids; disposable cutlery; greases; and carpets.

Subcategories. In addition to finalizing the proposed subcategories under the ''greases'' item, subcategories were created for two items. The item that was proposed as ''biodegradable films'' and the proposed item ''durable films'' that was included in the October 11, 2006, Round 4 proposal (71 FR 59862) were combined as two subcategories (semi-durable films and non-durable films) under an item named ''films.'' The carpet and upholstery cleaners item was subcategorized into (1) spot removers and (2) general purpose cleaners.

Minimum biobased content. Several of the proposed minimum biobased contents for the designated items have changed for the final rule in response to public comments and in consideration of available product performance information. As a result of the comments received regarding the proposed minimum biobased contents and the availability of additional biobased content tests for several items, USDA re-evaluated the proposed minimum biobased contents of all of the items.

Items for which the minimum biobased content was changed from the proposed level are presented here and the rationale for the changes is discussed in the section of this preamble presenting the item-specific comments and responses.

For 2-cycle engine oils, the proposed minimum biobased content of 7 percent was changed to 34 percent.

For the films item (proposed as ''biodegradable films''), the proposed minimum biobased content of 22 percent was changed to 45 percent for the semi-durable films subcategory and 85 percent for the non-durable films subcategory.

For the stationary equipment hydraulic fluids, the proposed minimum biobased content of 46 percent was changed to 44 percent.

For the disposable cutlery item (proposed as ''biodegradable cutlery''), the proposed minimum biobased content of 33 percent was changed to 48 percent.

For glass cleaners, the proposed minimum biobased content of 23 percent was changed to 49 percent.

For the greases item, the proposed 73 percent minimum biobased content for the multipurpose greases subcategory was changed to 72 percent and the proposed 72 percent minimum biobased content for the truck greases subcategory was changed to 71 percent.

For dust suppressants, the proposed minimum biobased content of 66 percent was changed to 85 percent.

For the proposed carpet and upholstery cleaners item the proposed minimum biobased content of 34 percent was changed to 54 percent for the general purpose cleaners subcategory and the minimum biobased content for the spot removers subcategory was set at 7 percent.

Overlap with EPA CPG products. For the items stationary equipment hydraulic fluids and carpets, potential overlap with EPA CPG products was added to the final rule. Then, for both items that may overlap with EPA CPG products (re-refined lubricating oils and polyester carpets), a note was added to facilitate finding information on the two EPA CPG products.

IV. Discussion of Comments

USDA solicited comments on the proposed rule for 60 days ending on October 16, 2006. USDA received comments from 31 commenters by that date. The comments were from private citizens, individual companies, industry organizations, one foreign government, and various Federal agencies.

The comments contained in this **Federal Register** (FR) notice address general and specific comments related to Round 3 items. In addition to the information provided in the responses to public comments presented in this preamble, USDA has prepared a technical support document titled ''Technical Support for Final Rule—Round 3 Designated Items,'' which contains documentation of USDA's efforts to research and respond to public comments. The technical support document is available on the BioPreferred Web site. The technical support document can be located by clicking on the Proposed and Final Regulations link on the left side of the BioPreferred Web site's home page (*http://www.biopreferred.gov*). Click on Supporting Documentation under Round 3 Designation under Final Rules. This will bring you to the link to the technical support document.

The technical support document includes, but is not limited to: (1) Information on whether the standards presented in the preamble to the proposed rule are test methods, performance standards, or ''other'' (e.g., a certification by a trade association or council, a classification system) (Chapter 1.0), (2) BEES impact values for each item (Appendix B), and (3) a tabular and graphical presentation of the BEES environmental performance scores for each item (Appendix C). This information is being presented in the

technical support document as the result of general comments received on both Rounds 2 and 3. The technical support document for Round 3 includes additional information as identified in the remainder of this preamble.

General Comments

Minimum Biobased Content

Several commenters felt that USDA was proposing minimum biobased contents that were too low for many of the products. These, and other, commenters also provided specific comments on the proposed minimum biobased contents for specific items. Those specific comments are addressed later in the preamble under Item Specific Comments. Here, USDA is responding to the comments that more generally address the procedure USDA uses in proposing minimum biobased contents.

Comment: Several commenters were concerned about the approach USDA used to determine minimum biobased contents. One commenter recommended that, rather than setting the threshold level below the lowest percentage observed in the lowest end product in the survey, USDA reward the top half or top two thirds of the respondents, at least where the spread is more than 20 percentage points. Two other commenters recommended that USDA consider a minimum threshold of 50 percent biobased content given that products with biobased contents above 50 percent are available in all categories.

Response: In response to these public comments and ongoing discussions with other Federal agencies, and because several additional biobased content test results were obtained after proposal, USDA re-evaluated the proposed minimum biobased contents for each of the proposed items. In re-evaluating the minimum biobased contents, USDA considered factors including the number of, and the distribution of, the test data points as well as the product manufacturer's claims related to performance, biodegradability, and range of applicability.

In those cases where all of the products' biobased contents were within a narrow range and no data were available to distinguish significant performance differences among the products, USDA set the minimum biobased content at the level that would allow preferred procurement for all of the products for which data were available.

For items where the products' biobased contents showed a wider range and included one or more significant breaks in the range, USDA reviewed the product information to determine if there were performance or applicability differences among the products that could be used for creating subcategories based on the groups of products that have similar biobased contents. For example, if the biobased contents of half of the products within an item were in the 30 to 50 percent range and the other half were in the 80 to 95 percent range, USDA considered whether the product information supported the creation of two subcategories. Information that was considered to be supportive of subcategorization were claims of product features such as ''special applications,'' ''high temperature applications,'' or ''single-use versus multiple-use.'' In those cases where the biobased content and other product information supported subcategorization, USDA has created subcategories in this final rule.

In other cases, USDA has considered subcategorization for an item based upon initial performance information, but USDA does not currently have sufficient data to justify creating subcategories. Where that is the case, USDA has generally set the minimum biobased content based on the group of products with the higher biobased contents. For these items, USDA will continue to gather data on products within the item and will create subcategories in a future rulemaking if sufficient data are obtained.

For some items, there was a significant range in the reported biobased contents but the data points were evenly spread over the entire range. In those cases, if there were no data to distinguish the features of any grouping or subset of the products, USDA has generally set the minimum biobased content based on the product with the lowest biobased content in order to allow procuring agencies the widest selection of products from which to select those that best meet their needs. As additional product performance information becomes available and as additional products within these items become available with higher biobased contents, USDA will consider increasing the minimum biobased content or creating subcategories where performance characteristics or application use justify subcategorizing.

As a result of the re-evaluation, many of the proposed minimum biobased contents have been revised for the final rule. These revisions will be presented and discussed in the item specific sections later in this preamble. For two items, USDA reviewed the biobased content data but did not find sufficient justification for revising the proposed minimum biobased content level. For lip care products, 8 biobased content test results were available (85, 86, 88, 88, 92, 93, 98, and 100 percent). Because this is a narrow range of data points, USDA proposed setting the minimum biobased content based on the product with a biobased content of 85 percent. Subtracting the three percentage points to allow for testing variability results in a minimum biobased content of 82 percent for this item. No public comments or additional data were received to support changing the proposed level. As a result, the proposed minimum biobased content of 82 percent was retained for the final rule.

For the carpets designated item, USDA reviewed the biobased content data (10, 10, 23, 24, 31, 35, and 37 percent) and found that the biobased content of the products that have been tested increases as the ''weight'' of the carpet increases. In most of these products the biobased material is used as the carpet backing and the thicker the backing, the higher the biobased content. The product with 37 percent biobased content also has a small amount of biobased material incorporated into the carpet face. USDA considered the possibility of creating subcategories within this item based on performance features (such as durability) but does not have sufficient data to justify subcategorization at this time. Because there are no significant breaks in the range of data points and the overall range is small, USDA has retained the proposed 7 percent minimum biobased content for this item. USDA will continue to gather information on this item and will consider creating subcategories in a future rulemaking.

Biobased Content Testing

Comment: One commenter recommended that the ASTM active standard D6866–06 (standard test methods for determining the biobased content of natural range materials using radiocarbon and isotope ratio mass spectrometry analysis) replace the historical D6866–04.

Response: USDA agrees that the most recent and active ASTM standard needs to be used. In order to minimize the need to update the regulation, USDA has decided to simply refer to the base ASTM designation (in this case, ASTM 6866) and drop the year designation (in this case, the –04) and instead specify in the final rule that ''the current version'' of ASTM D6866 be used for determining biobased content.

Information on Designated Items

Comment: One commenter, noting that USDA stated that its attempts to gather data were ''largely unsuccessful,'' urged USDA to re-examine and improve upon its prior efforts to gather complete, technically sound information on products within designated items and to use that information to further refine the program in the future.

Response: USDA uses the phrase ''largely unsuccessful'' in the context of its efforts to obtain information on the amount of products within designated items that Federal agencies are using (for example, see Section IV.A, Executive Order 12866 in this preamble) and not on the information associated with the products within each item. Information on the usage of products would assist USDA to make estimates of the potential economic impact of the rule.

USDA has in place a procedure to gather technical information on products within each item it proposed for designation. As USDA proposes additional items for designation, it seeks to improve this process with each successive rulemaking to ensure the information it has is technically sound. One area in which USDA is using the improved information is in the development of subcategories within items. There will always be some uncertainty in the data obtained, but USDA will continue to propose items for designation for preferred procurement with the data it has in hand. USDA encourages the provision of additional information on products within items prior to their being designated for preferred procurement. The items being considered for preferred procurement can be found on the BioPreferred Web site.

Comment: One commenter suggested that the data that form the basis for USDA's decisions and their source be available to the public. The commenter noted, as one example, that USDA intends to post public comments on the ''positive environmental and human health attributes'' of products on its Web site, and make the comments available to Federal procurement agencies to ''* * * assist them in making 'best value' purchasing decisions.''

Response: Since the first round of six items were designated for preferred procurement, USDA has provided significantly more data on each item being proposed for preferred procurement on the BioPreferred Web site. At the BioPreferred Web site, technical information is provided on products within the items. The BioPreferred Web site can be accessed by the public at *http://www.biopreferred.gov*.

USDA is concerned that the commenter might believe that USDA is using comments received on the ''positive'' attributes of biobased products as a basis for designating an item for preferred procurement, while ignoring potential ''negative'' attributes. This is not the case. The availability of information on the environmental and health attributes and life costs of items is part of the basis for proposing an item for preferred procurement. USDA is using the BEES analysis, which is ''neutral'' in regards to whether an environmental impact of a biobased product is ''positive'' or ''negative,'' to provide some of this information. Finally, the statute authorizing the preferred procurement program for biobased products requires USDA to, in part, provide information on ''environmental and health benefits'' of such materials and items. Thus, USDA has a statutory obligation to make such information on the positive environmental and human health attributes available.

One way USDA is implementing this requirement is by posting public comments on the positive environmental and human health attributes of products on the BioPreferred Web site. Given the infancy of most biobased product markets, this type of information is often not generally known and providing access to such information, provided it is documented, is important to the success of the BioPreferred Program. If such information is anecdotal, it will be so indicated.

Comment: One commenter suggested that USDA take reasonable steps to ensure that the information that is offered to government agencies and that is provided on the government's Web site be objective and accurate. The commenter states that, while USDA's preference for using data and certifications that come from consensus standards organizations is commendable, it does not alleviate this concern. According to the commenter, there appears to be no current mechanism to verify accuracy and that USDA's request ''When possible, please provide appropriate documentation to support the environmental and human health attributes you describe'' alone appears to be insufficient to ensure fairness.

Response: USDA agrees with the commenter that the information made available to government agencies concerning biobased products needs to be objective and accurate. To address this situation, USDA is requiring manufacturers to provide documentation for information that will be posted directly on the BioPreferred Web site. If, in the opinion of USDA, such claims cannot be sufficiently supported, they will not be posted on the BioPreferred Web site. A manufacturer is still allowed to post such ''undocumented'' claims on their own Web sites, as any other manufacturer of any other product can do. USDA is not responsible for the information posted on a manufacturer's Web site. Thus, information obtained from the manufacturer's Web site needs to be considered in this context. Because USDA makes this distinction in the information it allows to be posted on the BioPreferred Web site, USDA disagrees with the commenter that this mechanism results in ''unfair'' results.

The second step that USDA plans to implement to help ensure the accuracy of the information posted on the BioPreferred Web site is an audit program. Under this audit program, USDA will randomly select products for sampling to ensure the accuracy of the information on selected products. The size of the BioPreferred Program, however, makes it difficult for USDA to reasonably verify every claim on every product. Thus, USDA must rely on an audit program.

Lastly, USDA notes that, by requiring the biobased content on products to be determined in an ISO-compliant facility, USDA is reasonably ensuring the accuracy of the reported biobased content. In conclusion, USDA believes the above steps meet the commenter's concerns.

Biobased Polymers

Comment: One commenter requested that USDA evaluate and address the effect that biobased polymers will have on current recycling streams and markets. According to the commenter, to the best of their knowledge, no technology exists to screen out biobased products during the recycling process and the presence of a small fraction of biobased polymers in the recycling stream may result in unintended consequences to the recycling infrastructure.

Response: The purpose of the BioPreferred Program is to encourage the purchase of biobased products, including products that are commonly recycled. However, like the commenter, USDA is concerned that such products are disposed of in an environmentally responsible manner. USDA has consulted with EPA and with representatives of the Association of Post-Consumer Plastic Recyclers

(APCPR) to discuss this issue. APCPR explained that their primary concern with attempts to place PLA or other biobased plastics in existing recycling streams related to the negative impacts that these biobased plastics have on the recycling of PET. They pointed out that over seven billion pounds of PET are used annually in the country and that the recycling of PET has been adopted on a large-scale basis. There are two primary concerns related to the introduction of biobased plastics into the PET recycling stream. First, the presence of biobased plastics even in very small amounts (less than 1 percent) causes the resulting recycled plastic to lose the clarity which is demanded in the largest market for these products (''soda'' and water bottles). Even a slight haze in the final product is unacceptable to the bottling industry. The second concern relates to the actual recycling technology. PET is separated from HDPE and other petroleum-based plastics by floatation. PET floats in water and the others do not. Most biobased plastics also float, however, making the separation of PET from biobased plastics using floatation technology impossible. Thus, if there are biobased plastics in the recycling stream they remain with the PET stream. Following separation, the PET is shredded and then placed in dryers to remove the moisture. Because biobased plastics melt at a temperature that is much lower than the melting temperature of PET, the biobased plastics tend to melt in the PET dryers. Recyclers have indicated that the presence of even 0.1 percent of biobased plastics in the shredded stream can cause the dryers to ''gum up'' and results in the rejection of the contaminated PET.

APCPR pointed out that an optical-type technology for separating biobased plastics from PET is available, but that it is very expensive. Because there is currently such a small amount of biobased plastics available for recycling, there is no economic incentive for recyclers to purchase the equipment necessary to separate it from PET. APCPR further explained that for the recycling of biobased plastics to become economically viable there needs to be both a readily available supply of used material and a significant market for the recovered plastic, neither of which exists today.

APCPR also pointed out that biobased polymers used for other applications, such as ''clam shell'' containers and other therma-form products, do not present a problem for the recycling of those products. They also noted that composting in commercial composting operations is a viable alternative to the recycling of biobased polymers. USDA encourages procuring agents and those involved in recycling to provide education material to potential purchasers and users on environmentally preferred disposal of such products. The APCPR Web site (*http://www.plasticsrecycling.org*) presents technical information on plastics recycling and procuring agents are urged to visit the site for more information. In addition, USDA will post relevant information in this regard on the BioPreferred Web site to assist manufacturers, purchasers, and users become aware of the potential impacts of biobased plastics on recycling and on the preferred disposable methods for such products.

Purchase of Biobased Products

Comment: One commenter urged USDA to clarify in the final rule that it is not requiring procuring agencies to limit their choices to biobased products that fall under the items for designation in this proposed rule in order to avoid the unintended consequence of severely limiting product selection and material selection options. The commenter pointed out that a product should be reasonably available, meet USDA's requirements for performance for the application intended, and be available at a reasonable price.

Response: USDA agrees with the commenter that Federal agencies are not limited to considering biobased products when making purchasing decisions under the preferred procurement program for biobased products. Even though biobased products are given preferred procurement, purchasing agencies can buy other competing products when biobased products are not readily available, are not available at a reasonable cost, or do not meet Agency performance standards. USDA believes that this is clearly stated for the current rulemaking and will continue to make it clear in future rulemakings as well.

Item Specific Comments

2-Cycle Engine Oils

Comment: One commenter stated that the definition of 2-cycle engine oil needed to be modified to make it clearer as to what products are within the item designation.

Response: USDA appreciates the need expressed by the commenter to have clearly defined items to identify which products are included in the item. USDA has modified the definition slightly to be clearer that products in this item are ''designed for use in 2-cycle engines'' and that such products provide lubrication and/or other properties beneficial to 2-cycle engines.

Comment: Two commenters stated that the list of performance standards shown for 2-cycle engine oils were not the applicable performance standards. The commenters referred to the standards set by four standard-setting organizations—the National Marine Manufacturers Association (NMMA), American Petroleum Institute (API), Japanese Automobile Standards Organization (JASO), and International Standards Organization (ISO). The commenters pointed out that the only relevant standard for outboard motors is the one set by the NMMA. The commenters felt that to continue to include 2-cycle engine oils that do not meet or exceed standards set by these four organizations would result in engine failure and a bad reputation for products within this item designation. The commenters, therefore, recommended that only those 2-cycle engine oils that meet one or more of the standards set by those four organizations be included in the preferred procurement program.

One of the commenters further recommended that the level of criteria be included so that purchasers can buy products according to the level of performance needed.

Response: USDA thanks the commenters for the information concerning the standards being set by the four organizations identified by the commenters. USDA agrees that purchasers of 2-cycle engine oils need to be aware of these standards when purchasing any 2-cycle engine oil, including biobased 2-cycle engine oils. USDA believes the best way to provide this information is to make it available on the BioPreferred Web site. USDA disagrees that such standards need to be incorporated into the rule for these products because to do so, in part, would place restrictions on the manufacturers of biobased 2-cycle engine oils that do not exist for manufacturers of non-biobased 2-cycle engine oils. Although USDA believes that it would be beneficial to the manufacturer of any product to be able to demonstrate that their products meet or exceed applicable performance standards, USDA does not believe that it should force biobased product manufacturers, by regulation, to test against all applicable performance standards prior to marketing their products. USDA believes this is unnecessary because purchasing agencies should not buy biobased 2-cycle engine oils or, for that matter, petroleum-based 2-cycle engine oils if

they do not meet the agency's specifications or performance standards.

Comment: Three commenters stated that the proposed minimum biobased content of 7 percent for 2-cycle engine oils was too low. One of the commenters recommended a minimum biobased content of 30 percent. According to this commenter, there are a variety of 2-cycle engine oils with renewable contents in the 30 to 50 percent range that meet the applicable performance standards and that are commercially available from different manufacturers.

The second commenter recommended that the minimum biobased content for 2-cycle engine oils be at least 50 percent. This commenter expressed concerned that at this low biobased content, 2-cycle engine oils would not even pass the ASTM–D5864 Biodegradable Classification and that European Union 2-cycle engine oils are at least biodegradable.

The third commenter suggested that, based on the data in the background information, USDA recommend multiple content levels reflecting differences in product use.

All three commenters expressed concern that petroleum companies would add just enough biobased oils to their products to qualify for preferred procurement. One of the commenters stated that this would ruin biobased manufacturers in this particular market and another stated that this would be contrary to the objectives of the Farm Security and Rural Investment Act.

Response: As discussed earlier in this preamble, USDA re-evaluated the proposed minimum biobased content for all of the proposed items. Based on the re-evaluation of the biobased content data, the minimum biobased content for 2-cycle engine oils has been set at 34 percent. The biobased content for products that have been tested are: 37, 39, 60, 77, and 78 percent. At proposal, the minimum biobased content of 7 percent was based on a product that was described as being formulated to meet specific Japanese performance standards for small engines. Since proposal, this product has been withdrawn by its manufacturer and is no longer available.

Because there is a significant break in the data between the 39 percent product and the 60 percent product, USDA considered the possibility of establishing subcategories within this item. The two products with 37 and 39 percent biobased content have shown that they meet certain small engine performance specifications and biodegradability standards, while such information is not available for the products with the higher biobased contents. At this time, however, USDA has not received sufficient information related to small engine performance specifications to justify subcategorizing this item. USDA will continue to collect performance information and will consider subcategorizing this item through future rulemakings as additional information is made available.

Based on the presently available information, USDA believes that setting a minimum biobased content to allow procuring agencies to select products at this lower biobased content level is desirable. USDA will continue to gather additional information on the performance of other products within this item. If verification is obtained that products with significantly higher biobased contents can meet the performance and biodegradability standards offered by the products with lower biobased contents, USDA will also consider raising the minimum biobased content for this item in a future rulemaking. As additional information becomes available, USDA will also consider creating subcategories within this item at a later date based on features such as biodegradability.

Because biodegradability can be an important attribute for 2-cycle engine oils used in marine environments, USDA continues to encourage all manufacturers of 2-cycle engine oils, and other biobased products, to provide as much information as possible concerning biodegradability and other beneficial characteristics of their products. The ASTM method mentioned by the one commenter (ASTM–5864) is a test method that can be used to determine the level of biodegradability. The availability of such information will assist procuring agencies in selecting biobased products that meet particular needs, such as biodegradability.

Lip Care Products

Comment: One commenter pointed out that there is no standard for lip care balm.

Response: USDA appreciates the commenter's review of, and comment on, the proposed designated item. USDA agrees with the commenter that no performance standards for lip balm have been identified. USDA points out, however, that the lack of identified performance standards is not relevant to the designation of an item for preferred procurement. In order to designate items for preferred procurement, section 9002 of FSRIA requires USDA to consider: (1) The availability of items; and (2) the economic and technological feasibility of using the items, including the life cycle costs of the items. If and when performance standards and other relevant measures of performance are identified for this item, USDA will provide such information on the BioPreferred Web site.

Films (Formerly Biodegradable Films)

Comment: One commenter stated that the definition for biodegradable films was vague and needed clarification. The commenter assumed that, based on the proposed definition, the designated item includes non-durable films intended to be used once before being discarded. The commenter then asked: How will the ''durable films'' item to be proposed at a later date be differentiated from this item? The commenter recommended that this item be retitled ''disposable bags, wrappings and liners.''

Response: USDA agrees with the commenter that the name for this item should not refer to ''biodegradable'' films. USDA has renamed this item as ''films'' and has an included a non-durable films subcategory for the products that were in the ''biodegradable films'' item at proposal. USDA also proposed, under a separate rulemaking, designating an item named ''durable films'' and has now included under the new ''films'' item a subcategory for the products that were in that proposed item. USDA has revised the definitions in the final rule for the ''semi-durable films'' subcategory to make it clearer as to the types of products it covers as opposed to those films that would be covered by the ''non-durable films'' subcategory. For example, USDA has revised the definition to clearly state that non-durable films are intended for single use before being discarded, as suggested by the commenter.

Comment: One commenter recommended that, based on the data in the background information, the minimum biobased content for this item be set based on the products with tested biobased contents of either 52 or 62 percent, rather than on the product with a tested biobased content of 25 percent, which resulted in the proposed minimum biobased content of 22 percent. The commenter then stated that USDA should obtain information to justify the claim made in the preamble that Federal agencies need products with a longer shelf-life, thereby supporting the 22 percent content recommendation.

Response: As discussed above, USDA has established two subcategories for this item, one for semi-durable films and one for non-durable films. For the semi-durable films subcategory, USDA has biobased content data for 11 products (25, 48, 49, 52, 62, 62, 62, 62,

62, 62, and 64 percent biobased). Because there is a significant break in the data between the 25 percent product and the 48 percent product, USDA investigated the product information available for the 25 percent product to determine if it offered characteristics not offered by the other products. USDA found that there were no performance claims for this product that distinguished it from the products with a higher biobased content. The biobased content for the remaining products were within a narrow range and no performance or applicability information was available to further divide the products within the subcategory. Therefore, the minimum biobased content has been set at 45 percent for this subcategory, based on the product with the tested biobased content of 48 percent.

For the non-durable films subcategory, the tested biobased contents are: 88, 89, 90, 94, and 96 percent. The data points are within a narrow range and no information was available to further divide the products within the subcategory. USDA is, therefore setting the minimum biobased content for non-durable films at 85 percent, based on the product with a biobased content of 88 percent.

Stationary Equipment Hydraulic Fluids

Comment: One commenter requested that USDA designate as a subcategory hydraulic oil used in mobile equipment for preferred procurement.

Response: USDA has already designated mobile hydraulic fluids under the first group of products designated for preferred procurement. The commenter is referred to the March 16, 2006, **Federal Register** notice (71 FR 13686). To help avoid such confusion, USDA will try in future proposals to group similar items together within a rulemaking.

Comment: Two commenters stated that the definition of stationary equipment hydraulic fluids was somewhat unclear and needed to be modified. One of the commenters suggested the following definition: Fluids used in stationary hydraulic equipment systems that have various mechanical parts, such as cylinders, pumps, valves, pistons, and gears, that are used for the transmission of power (and also for lubrication and/or wear, rust, or oxidation protection).

Response: USDA appreciates the commenters' suggested revisions to the proposed definition of this designated item and has incorporated the suggestions into the definition in the final rule.

Comment: Two commenters addressed the proposed minimum biobased content for stationary equipment hydraulic fluids. One commenter agreed with the proposed minimum biobased content of 46 percent. The other commenter felt that, based on the data in the background information, the proposed content was too low and should be based on the product with a tested biobased content of 64 percent. This commenter also stated that, if the lower content levels reflect products used for different applications than those with higher content levels, then USDA should provide separate content recommendations.

Response: The 48 biobased content data points in this data set range from 47 percent to 100 percent. USDA's re-evaluation of the biobased content data for this item did not identify any significant breaks in the range nor was there data available to support subcategorization. Because of the very wide range of applications in which these products are used, USDA was unable to identify discreet subcategories without significant overlaps in the biobased contents among the subcategories. USDA is setting the minimum biobased content for this item at 44 percent, based on the product with a tested biobased content of 47 percent, because the products at this end of the range are believed to offer performance characteristics, such as the ability to be used in low temperature applications, not offered by some of the products with a higher biobased content. USDA will continue to gather additional information for this item and will consider creating subcategories based on product performance and/or applicability if sufficient supporting documentation can be obtained.

Comment: One commenter stated that, as a practical matter, the overlap with biobased hydraulic fluids and EPA-designated recovered content lubricating oils is likely to be limited because most re-refined oil is being used for motor/engine oil, not hydraulic fluids. The commenter stated that DLA's re-refined oil program is focused on motor/engine oil and not hydraulic fluids and that a check of the DLA Web site does not indicate any standards for, or purchase contract for, re-refined hydraulic fluid. Further, according to the commenter, most of the re-refined oil vendors listed in EPA's CPG supplier database are selling re-refined motor/engine oil, with only one or two companies on the list appearing to sell re-refined hydraulic fluids. The commenter believes that market factors are directing the current supply of re-refined base oil stock into the engine oil segment, which probably makes sense given the size of that market.

Based on these factors, the commenter believes that it is entirely possible that Federal buyers may have a difficult time finding and, with very limited choices, buying re-refined hydraulic fluids. The commenter believes that buyers wanting to replace petroleum-based hydraulic fluid products may find biobased hydraulic fluids more available in the marketplace than re-refined hydraulics. The commenter noted that, in situations where there are concerns for spills, readily biodegradable biobased hydraulic oil would be a better choice based on performance.

Finally, the commenter stated that if more re-refined base stock oil becomes available in the market place, it is possible that manufacturers of hydraulic fluids could use a combination of vegetable oils and re-refined oil base stock to meet both biobased content and CPG Guidelines.

Response: USDA believes that the commenter makes some very good and valid observations concerning the potential for, or lack of, overlap between biobased hydraulic fluids for stationary equipment and EPA-designated recovered content re-refined lubricating oil. However, USDA continues to believe there is a potential for overlap and that to identify such potential is still worthwhile. Furthermore, USDA appreciates the point raised by the commenter concerning the potential preference to be shown to biobased hydraulic fluids over EPA-designated recovered content products where biodegradability may be an issue in the use of the fluid. In such instances, the biobased fluid may be able to meet the need to be biodegradable while the non-biobased fluid cannot.

Disposable Cutlery (Formerly Biodegradable Cutlery)

Comment: One commenter asked why this biobased item was also ''biodegradable.'' Another commenter pointed out that the other ''biodegradable'' items referenced ASTM D6400 in their definitions and asked whether cutlery should also reference ASTM D6400 instead of ASTM D5338.

Response: The products covered by this item were intended to be disposable cutlery, with preferred procurement to be given to biobased disposable cutlery. Further, it was USDA's intent that preferred procurement is given to biobased disposable cutlery that is also biodegradable. As discussed earlier in this preamble, where disposability considerations are equally important as

performance characteristics, USDA plans on requiring biodegradability for products within the designated item if there are established biodegradability standards. Some of the manufacturers of products within this item claim biodegradability as a feature of their products. However, USDA has not been successful in obtaining sufficient evidence that these products provide acceptable levels of performance. Thus, USDA does not believe that, at this time, biodegradability should be a requirement that products in this item must meet to qualify for preferred procurement. However, USDA will continue to investigate the performance of biodegradable disposable cutlery and, if sufficient evidence of acceptable performance is obtained, USDA will amend the designation of disposable cutlery to add biodegradability as a requirement for this item. USDA also continues to urge procuring agencies to consider biodegradability as a desirable feature of products within this item and to purchase biodegradable biobased disposable cutlery to the extent that these products meet their performance needs.

USDA agrees with the commenter that ASTM D6400 should be the primary test method for demonstrating the biodegradability of biobased cutlery. However, there may be other biobased formulations for which ASTM D6400 would not be the appropriate test method for demonstrating biodegradability. For example, if the cutlery is to be disposed of in a marine environment, the appropriate test method would be ASTM D7081. Thus, while biodegradability is not a requirement for products within this item, manufacturers wishing to demonstrate biodegradability are encouraged to use the most appropriate ASTM test methods.

Lastly, USDA notes that disposable cutlery needs to be composted rather than landfilled in order for the cutlery to biodegrade and that they need to be composted in commercial composting facilities in order to be exposed to the proper temperature and moisture requirements for composting. Composting these products in a ''backyard'' compost pile will not necessarily result in the complete biodegradation of the product.

Comment: One commenter stated that the information provided in the Performance Standards document does not indicate whether biodegradable cutlery will perform when used for eating. A second commenter noted that biobased cutlery, if purchased, may not initially replace the combat-tested utensil, heavy duty, long handled spoon in the Meal, Ready-To-Eat without extensive DoD review, testing, field test and approval from U.S. Army Natick, ACES, Surgeon General and the Military Services. The second commenter also noted that applying the procurement preference rule to this combat-related product would not result in the multiplied effect across the economy that they would expect in the cutlery similar to that used in restaurants across the nation.

Response: USDA agrees with the points made by the commenters. USDA was unable to identify any performance standards relevant to disposable cutlery and encourages the development of such to assist in the evaluation of such products. Without such standards as a guide, the performance of biobased cutlery may be unknown in any one situation. USDA does know through real-world experience that the performance of biobased cutlery will vary depending on its formulation and on the particular environment in which it is used.

With regard to the second commenter, USDA notes that, for the reasons provided earlier in this preamble, the final rule does not require preferred procurement for disposable cutlery purchased for use in combat or combat-related missions. If and when biobased cutlery is demonstrated to meet all of the performance requirements of DoD in tactical situations, USDA reserves the right to withdraw such exemptions for disposable cutlery. Should that situation occur, USDA appreciates the fact that purchase of biobased cutlery may be more limited for combat-related purchases than for general restaurant purchases, but the statute for this program is aimed at Federal agency purchases and not for private enterprise purchases.

Comment: Two commenters recommended that USDA set the minimum biobased content near 100 percent given the availability of products in this item containing 100 percent biobased content. One of the commenters stated that 33 percent is too low. A third commenter expressed concern with the direction of the biobased content for cutlery based on their experience. The commenter stated that they are likely to start procuring 50 percent biobased cutlery even though a superior 100 percent biobased utensil already exists. This commenter asked ''What are practical ways the Federal Government can find and place incentives in its policies for contractors to develop biobased products with the greatest degree (high percent) of biobased content, and measure its success in this regard?''

Response: USDA appreciates the fact that some biobased cutlery can be made with nearly 100 percent biobased content, such as in the production of spoons based on PLA. However, the performance variability of currently available biobased cutlery under different food environments (for example, hot soups and drinks) is well known and this variability is associated directly with biobased content. Purchasers of biobased cutlery need to take into account such performance aspects, even if they occur in a trial-and-error mode as there are no performance standards established for this item. To account for these different applications, a wider range of biobased content cutlery should be made available. USDA currently has biobased content test data on six samples of products within this item (36, 49, 51, 73, 97, and 100 percent). As discussed earlier, USDA has re-evaluated the biobased content data and the proposed minimum biobased contents for all of the proposed items. In reviewing the data for this item, USDA found that the product with the 49 percent biobased content is currently being reformulated by its manufacturer and, thus, it will not be considered in setting the minimum biobased content. Within the remaining data, there are breaks in the data between the 36 and 51 percent products, the 51 and 73 percent products, and the 73 and 97 percent products. USDA did not have sufficient data on the performance of products within these groups to justify creating subcategories. However, USDA is aware that there does appear to be a correlation between biobased content and performance with high temperature food and beverages. That is, the higher biobased content products do not generally perform as well in high temperature applications. As a result, USDA is setting the minimum biobased content for this item at 48 percent, based on the product with a tested biobased content of 51 percent. USDA believes that setting the minimum biobased content at this level will allow products with acceptable high temperature performance characteristics to receive the procurement preference.

As more information is developed on the biobased content of products within this item and on the associated performance of those products, USDA will revisit this item to determine if the minimum biobased content needs to be revised or if it is appropriate to develop subcategories. USDA will also continue to investigate the performance of biodegradable disposable cutlery and, if sufficient evidence of acceptable

performance is obtained, USDA will amend the designation of disposable cutlery to add biodegradability as a requirement for this item.

Glass Cleaners

Comment: One commenter stated that they were concerned that USDA's collection methods were deficient because so few products formed the basis of the proposed rule. The commenter referred to a California Air Resources Board (CARB) survey, which identified 127 aerosol glass cleaners sold in the state of California alone. The commenter, therefore, recommended that USDA conduct a very thorough evaluation of glass cleaners. The commenter also stated that the BEES and biobased contents obtained may not be representative of all products on the market, representing instead only a small subset of products. The commenter recommended that the rulemaking demonstrate that the products evaluated are representative of the market and appear to have been overlooked in USDA's initial investigation.

Response: USDA appreciates the information concerning the CARB study, which covered both biobased and non-biobased products. Because one of the purposes of the BioPreferred Program is to identify biobased products for potential preferred procurement, USDA's product investigation efforts did not seek out non-biobased products. USDA identified, at proposal, 16 manufacturers of biobased products within this item, with 19 biobased products being marketed.

While USDA has in place a rigorous procedure for identifying products that are biobased, USDA recognizes that its procedure will not uncover all possible biobased products. Based on available data, USDA cannot determine if the samples that were voluntarily submitted by manufacturers are representative of all biobased products within this item. Regardless, USDA believes that it is reasonable to set minimum biobased contents based on the information it does have. If the commenter or others have additional information on the biobased content of other biobased products within this item, USDA encourages the commenter and others to submit that information to USDA. USDA will evaluate the additional information in relationship to the minimum biobased content for this designated item.

For this and all other items, USDA welcomes assistance in identifying manufacturers and their biobased products for the BioPreferred Program. A list of such items can be found on the BioPreferred Web site.

Comment: One commenter stated that some of the products investigated under glass cleaners do not seem to fit the proposed definition. For example, one product description states: ''* * * (product) is for use on bathroom mirrors, goggles, or any lens surface where confined areas tend to mist or fog. Forms an invisible shield, or film, that keeps mirrors, car windows, glass, goggles, lenses and plastic, free from mist, steam, or fogging.'' The commenter, therefore, recommended that the category be clearly defined and restricted to glass cleaners only. The commenter also recommended that the definition be refined based on their input.

Response: USDA has re-examined the products identified under the glass cleaner item designation. The product identified by the commenter also performs a glass cleaning function. Thus, USDA believes that it is reasonable to retain this particular product as a product under this item. However, USDA agrees in principle with the commenter that the information provided on products under each item should be only for products that are within the definition of the item designated for preferred procurement. Therefore, USDA will review products within all items designated to make sure this occurs. Because the product questioned by the commenter still falls within the intended group of products defined by this item, USDA has determined that it is unnecessary to redefine the item in the final rule.

Comment: One commenter recommended that the standard for performance should not be restricted to the U.S. Navy #NASEA 6840 and Green Seal (GS) GS–37 methods, but must include other methods such as the EPA Design for the Environment performance standards, or other science-based performance criteria. The commenter then stated that all test methods should be thoroughly researched and evaluated and, if relevant, included in the proposed rule.

Response: USDA points out that the performance standards and test methods that are reported in the preamble are neither requirements nor the entire universe of relevant and applicable performance standards for glass cleaners. The reported performance standards and test methods are those that have been used and reported by manufacturers of biobased glass cleaners. While it is not necessary to identify all test methods and performance standards that are applicable to an item in order to designate that item for preferred procurement, USDA encourages the provision of additional information on other relevant and appropriate test methods and performance standards for glass cleaners and will post relevant information on the BioPreferred Web site.

With regard to the comment on the Design for the Environment (DfE), the DfE Formulator program is not a standard per se, but an industry partnership program designed to help manufacturers design products with better environmental profiles. The DfE program provides recognition to participating companies and products that have ''passed'' the DfE criteria. The DfE review process focuses primarily on health and environmental criteria, and has reviewed both glass cleaners and carpet cleaners, two items within this rulemaking. The DfE program does include relevant performance standards, such as ASTM and CSMA standards, for cleaning products. Relevant industry standards for cleaners identified through DfE include: SSPA Method DCC09 for cleaning, streaking, and smearing for glass cleaners; ASTM D488 for soil removal on relevant substrates for general purpose cleaners; CSMA DCC–03 and AATCC test method 171–1995 for carpet cleaners; and ASTM D5345 for soil removing for washroom cleaners. For more information on the DfE program, visit *http://epa.gov/dfe/pubs/projects/formulat/formpart.htm*. Appendix A of the document Technical Support for Final Rule—Round 3 Designated Items, which can be accessed on the BioPreferred Web Site, contains a draft document of the DfE Formulator Program.

Comment: One commenter stated that the minimum biobased content for glass cleaners, based on the data in the background information, should be 52 percent, not the proposed 23 percent. The commenter also stated that if USDA decides to retain the 23 percent level, that this level appears to be erroneous and should be 26 percent because the data in the background information shows products with biobased contents ranging from 29 to 100 percent. Therefore, the content level should be 26 percent, not 23 percent.

Response: At proposal, USDA had biobased content test data on four glass cleaners. The biobased contents were 29, 52, 67, and 100 percent. As pointed out by the commenter, the range of reported biobased contents for tested products is 29 to 100 percent and, using the rationale presented at proposal, the minimum biobased content should have been set at 26 percent. At one point during the evaluation of this item USDA

had information on a product with a tested biobased content of 26 percent. However, this product was withdrawn from consideration. USDA inadvertently failed to revise the minimum biobased content for this item when that product was withdrawn.

USDA has reevaluated the proposed minimum biobased content based on the additional data and on public comments. At this time, USDA has biobased content data for 12 tested products (5, 16, 26, 27, 29, 52, 61, 67, 76, 81, 98, and 100 percent biobased content) within this item. There is a significant break in the range of data points between the 29 percent and the 52 percent products. USDA considered whether the products with biobased contents below this break and those above it could be included in two separate subcategories. USDA found that there was not sufficient information on product performance or applicability to justify creating subcategories. As a result the minimum biobased content for this item has been set at 49 percent based on the product with a tested biobased content of 52 percent. As more information is developed on the biobased content of products within this item and on the associated performance of those products, USDA will revisit this item to determine if the minimum biobased content needs to be revised or if it is appropriate to develop subcategories.

Greases

Comment: One commenter stated that the definitions of greases, multipurpose grease, rail track greases, and greases not elsewhere specified need to be modified to make them better understood. Another commenter pointed out that the definition of greases was ''fine as far as it goes,'' but pointed out that there are greases that are thickened with polymers and other forms of solids. The commenter pointed to a class of grease thickened with Polyurea (this type of grease is found in the drive axles on front wheel drive cars) and noted that this was a very large market.

Response: USDA agrees that the various other compounds cited by the one commenter can be constituents in the formulation of a biobased grease. While the definition proposed for ''greases'' did not preclude these other substances, USDA has modified the definition slightly to accommodate the commenter's suggestion.

With regard to the definitions of multipurpose grease and rail track grease, USDA continues to believe that the proposed definitions are sufficient to define the types of greases that are covered by the two items. Therefore, USDA did not make any changes to these two definitions.

With regard to greases not elsewhere specified, USDA has also not changed the definition from what was proposed. Products that fall within this category are greases that cannot be classified under any of the other four subcategory definitions. USDA believes that the proposed definition is clear on this. As additional information becomes available on other types of greases, USDA will consider additional subcategories, thereby reducing the number of grease products that would fall into the ''greases not elsewhere specified'' subcategory by default (see the following comment and response).

Comment: One commenter recommended that USDA add additional subcategories for: (1) Heavy duty grease with EP (Extreme performance) additives for the very heavy loaded joints often found in heavy duty earthmoving equipment, (2) water resistant grease, and (3) greases for very high and very low temperatures. The commenter recognized that these subcategories would need to be investigated before minimum biobased contents could be established, but encouraged USDA to establish the subcategories because the need for these types of greases exist.

Response: USDA appreciates the commenter's suggestion for additional grease subcategories and will seek to collect information on these suggested subcategories for potential future designation. In the meantime, USDA notes that such greases would qualify for preferred procurement under the ''Greases not elsewhere specified'' subcategory if they meet the minimum biobased content of 75 percent set for the ''greases not elsewhere specified'' subcategory.

Comment: Two commenters submitted comments on the proposed minimum biobased content for greases. One commenter supported the provision of multiple biobased contents depending on the use of a grease product, but felt that, based on the information in the background document, it is not possible to determine whether some of the recommended content levels should be higher. Therefore, the commenter requested that USDA re-characterize the background data by use (e.g., food grade, multipurpose, rail track, etc.).

In addition, the commenter requested that for greases that will be exposed directly to the environment, such as rail track greases, USDA conduct further research and determine whether a higher biobased content level and a biodegradability requirement are appropriate in order to minimize adverse impacts on the environment.

The second commenter felt that most of the proposed minimum biobased contents were too high and that one was too low. The commenter recommended the following minimum biobased contents:

Food grade grease: 40 percent (vs. proposed 42 percent);

Multipurpose grease: 40 percent (vs. proposed 73 percent);

Rail track grease: 50 percent at least (vs. proposed 30 percent);

Truck grease: 50 percent (vs. proposed 72 percent); and

Greases not elsewhere specified: 50 percent (vs. proposed 75 percent).

This commenter also stated that, for four of the greases (i.e., multipurpose, food grade, truck, and greases not elsewhere specified), they would not be able to get the proper additives to make a high performance multipurpose or food grade grease or certain of their other greases because the required additives and thickeners are not biobased at this time.

Response: USDA agrees that the information in the background documentation could have made clearer which grease products were included in which grease subcategory. USDA has reorganized the background information to make this clear. Additional details on the subcategorization and the biobased contents for products within this item can be found in Chapter 2.0 of the document ''Technical Support for Final Rule—Round 3 Designated Items,'' which is available on the BioPreferred Web site.

USDA has re-evaluated the minimum biobased contents for each of the subcategories in this item. For the food grade greases subcategory only three data points are available (45, 62, and 95) and no further subcategorization can be supported by the data. Thus, the minimum biobased content remains at 42 percent, as proposed. For the multi-purpose greases subcategory, the tested biobased contents are all within a narrow range (75, 76, 76, and 76 percent). The minimum biobased content is set at 72 percent based on the product with the 75 percent biobased content, which is a new test data point received after proposal. For the truck greases subcategory, the tested biobased contents are also within a narrow range (74, 75, 77, and 77 percent). The minimum biobased content is set at 71 percent based on the product with the 74 percent biobased content, which is a new test data point received after proposal. For the greases not elsewhere specified subcategory, the tested biobased contents are somewhat more

widely spread than the previous subcategories but are still within a reasonably close range (78, 87, 95, and 96 percent). USDA found no justification in the data to support further subdividing this subcategory and the minimum biobased content remains at the proposed level of 75 percent.

For rail track greases, the tested biobased contents are 33, 33, 39, 51, 66, and 66 percent and USDA has identified only two manufacturers of rail track greases. One manufacturer produces two rail track greases for use in cold temperature (both at 33 percent biobased content), two multi-season/all season rail track greases (39 percent and 51 percent biobased content), and one summer rail track grease (66 percent biobased content). The other manufacturer produces a rail track grease that can be used under a wide range of temperatures.

USDA believes that with sufficient information it would make sense to subdivide rail track greases. Based on the current information, USDA could subdivide rail track greases into three subcategories—winter/arctic greases, all season greases, and summer greases. If this were done, the minimum biobased contents would be, respectively, 30, 36, and 63 percent. Because only one manufacturer has been identified to date for two of these three potential subcategories, USDA would defer the effective preferred procurement dates for two of the three subcategories (i.e., for winter rail track greases and summer rail track greases).

USDA does not believe that the above option is in the best interest of the BioPreferred Program at this time. Instead, USDA believes that the preferred procurement program under the BioPreferred Program is better served at this time by not subcategorizing rail track greases. By establishing a minimum biobased content at 30 percent (as proposed), all rail track greases would be available for preferred procurement (i.e., there would be no deferred effective dates for preferred procurement). This option allows the purchasing agency at least two manufacturers from which to select their product to meet their needs. If a purchasing agency needs a ''summer'' rail track grease, the purchasing agency would not select a winter or arctic rail track grease, but instead would have the option of selecting one of the ''all season'' rail track greases or a summer grease. Similarly, if a purchasing agency needs a ''winter'' rail track grease, it would have the option of selecting one of the winter rail track greases or one of the ''all season'' rail track greases. Thus, USDA is setting the minimum biobased content for rail track greases at 30 percent, as was proposed. As additional information is obtained on more biobased rail track grease products, USDA will re-evaluate this subcategory with regard to further subcategorization and the minimum biobased content.

Lastly, one of the commenters requested that USDA consider whether biodegradability should be included as a requirement for greases, in particularly for rail track greases. USDA agrees with the commenter that the level of biodegradability should be considered when purchasing greases or other products that may be released into the environment during their use or disposal. As discussed earlier in this preamble, USDA is requiring biodegradability as a prerequisite for some designated items when concern about the disposal of the items is a key criterion. USDA believes, however, that performance is the key factor in a purchaser's decision as to which product within this designated item to purchase. In the case of items where USDA judges performance to be the key decision-making factor for purchasers, USDA will not require biodegradability as a prerequisite for participation in the preferred procurement program. Therefore, USDA is not requiring biodegradability as a requirement for greases.

Dust Suppressants

Comment: One commenter stated that the OSHA Hazard Communication Standard for dust suppressants does not convey whether the product does, in fact, suppress dust.

Response: USDA agrees with the commenter. This OSHA standard, which was cited in the background document for one of the manufacturer's products, is designed to ensure that information about health and physical hazards of chemicals and associated protective measures is disseminated to people in the workplace, and does not address performance standards for these products. Therefore, when evaluating the performance of dust suppressants, this particular standard is not relevant.

Although USDA received no public comments related to the proposed minimum biobased content for dust suppressants, the proposed value was re-evaluated as part of USDA's review of all biobased content data. For this item, five biobased content tests were available (69, 88, 89, 98, and 100 percent). Because there is a significant break in the data between the 69 percent product and the 88 percent product, USDA reviewed the product performance information to determine if there was sufficient justification for creating subcategories or for setting the minimum biobased content based on the one product with a biobased content below 88 percent. No unique performance characteristics or applications were identified that would justify either subcategorization or setting the minimum biobased content based on the 69 percent product. Therefore, the minimum biobased content for this item is set at 85 percent, based on the product with the 88 percent tested biobased content.

Carpets

Comment: One commenter proposed the following definition for carpet to better reflect the various ways carpets are made: Floor coverings composed of woven, tufted, or knitted fiber and a backing system.

Response: USDA agrees with the commenter and has revised the definition accordingly in the final rule.

Comment: One commenter asked if any of the tested carpet samples had biobased content in the face. The commenter pointed out that a carpet manufactured by Interface had 15 percent biobased content in its face.

Response: One of the carpet samples evaluated by USDA did have biobased material in the carpet face. The biobased content of this sample was 37 percent.

Comment: Four commenters suggested that USDA set minimum biobased content requirements separately for backing and face used in carpets. A fifth commenter suggested that for now USDA proceed as proposed, but that USDA continue to collect additional biobased content data on carpet backing and carpet face fiber as these products become available, because carpet fiber and carpet backing can come from very different biobased material sources and it may make sense in the future to treat them separately.

One commenter suggested setting separate minimum biobased content requirements for backing and face because the technology to produce biobased backings is considerably advanced over that of face fiber. In situations where a Federal buyer may be able to use a natural fiber faced carpet product, the commenter recommended that this be encouraged separately.

One of the other commenters suggested that USDA create three subcategories as follows:

Fiber face (broadloom)—materials that are used to make the face of carpet produced in widths generally wider than six feet.

Fiber face (modular)—materials that are used to make the face of carpet produced in squares generally varying

in measurements from 18 inches to 36 inches.

Backing Systems—includes primary, secondary and attached cushion.

According to this commenter, such an approach would be compatible with the way Federal agencies make carpet purchasing decisions; that is, in selecting carpets, agencies have to decide if they want broadloom or carpet tile, and then what type of face fiber (e.g., polyester, nylon, wool), type of pile (e.g., cut, loop), the weight of the face, the color and pattern, and the backing systems. All of these aspects of a carpet have to fit together to achieve the performance that the purchaser needs. Further, because buyers assemble a set of specifications when they purchase carpet, having subcategories of designated biobased item for carpet would better inform potential buyers about the availability of biobased content in various parts of the carpet construction and in various carpet types (e.g., broadloom and tiles).

Response: USDA has not changed the definition of the designated item for the final rule. USDA acknowledges that the commenters have provided valid reasons why subcategorization of this designated item may be appropriate at some point. However, given the current state of development of biobased products within this designated item, USDA does not believe that sufficient data are available to support such a subcategorization. USDA will continue to gather and review information that could be used to support subcategorization of this designated item and the establishment of different minimum biobased content requirements in the future.

Comment: One commenter felt that the proposed minimum biobased content (7 percent) was reasonable at this time, while two commenters recommend that the minimum biobased content for carpets be raised. One commenter stated that setting the initial minimum biobased content based on the lower end of the samples tested to date will provide more potential products and will encourage more widespread use of biobased products. The commenter pointed out that carpet containing biobased material is still very much in a development stage and the proposed level should help stimulate more development of biobased carpets.

The two other commenters recommended raising the minimum biobased content to a minimum of 50 percent. These commenters felt that such a minimum level was necessary for many of the proposed items in order to further the goal of the program.

Response: USDA reviewed the biobased content data for carpets (10, 10, 23, 24, 31, 35, and 37 percent) and found that the biobased content of the products that have been tested increases as the ''weight'' of the carpet increases. In most of these products the biobased material is used as the carpet backing and the thicker the backing, the higher the biobased content. The product with 37 percent biobased content also has a small amount of biobased material incorporated into the carpet face. USDA considered the possibility of creating subcategories within this item based on performance features (such as durability) but does not have sufficient data to justify subcategorization at this time. Because there are no significant breaks in the range of data points and the overall range is small, USDA has retained the proposed 7 percent minimum biobased content for this item. USDA will continue to gather information on this item and will consider creating subcategories in a future rulemaking.

Comment: One commenter stated that the Standard Title column in the Performance Standards document for carpeting does not address how well the carpet will wear. Another commenter stated that NSF International's Sustainable Carpet Assessment Draft Standard (Draft Standard NSF 140–2005) should be mentioned. The commenter pointed out that this has been published as a draft ANSI standard, and products can be certified to the draft standard. The commenter also pointed out that the state of California has adopted the gold and platinum levels of certification under this standard as their state purchasing specification.

Response: USDA has not identified applicable performance standards for carpet wear. However, ASTM D3181 has been identified as a test method that can be used to measure carpet wear. While this method does not specify an ''acceptable'' level of performance, it does define a standardized test procedure that can be used to develop carpet wear data that can then be used to compare expected wear between different carpet samples. USDA will add information on both the ASTM D3181 test method and the NSF International's Sustainable Carpet Assessment Draft Standard (Draft Standard NSF 140–2005) to the information available on the BioPreferred Web site for this designated item.

Comment: Three commenters urged USDA to have biobased procurement preference take priority over recycled content preference for carpets where carpet backing is made from recycled polyvinyl chloride (PVC). One of the commenters made this request because, according to the commenter, PVC has serious health impacts throughout its life cycle—notably the production of dioxin in manufacture and disposal and release of phthalates. This commenter pointed out that (1) dioxin reduction is a goal that the U.S. government has committed to through its signing of the Stockholm Treaty on Persistent Organic Pollutants and (2) neither issue is captured and compared by BEES analyses.

The other two commenters similarly stated that the production of PVC has serious environmental health impacts that are not captured in the BEES analysis (such as dioxin production, reproductive toxicity, and neurotoxicity). The commenters stated that this is one clear case where biobased materials are preferable to recycled content.

A fourth commenter noted that the CPG Guidelines for carpet currently apply only to: (1) Carpet with a polyester face, and (2) separate detached ''cushion'' placed under the carpet during installation. Therefore, according to the commenter, there currently would not be an overlap between CPG guidelines for polyester face and detached cushion and biobased content in carpet backing systems (including attached cushion). The commenter also made numerous other points, presented in the remainder of this paragraph, concerning the relationship between the CPG program and the preferred procurement program under the BioPreferred Program. The commenter stated that EPA's proposed CPG guidelines for nylon carpet face and backing with a recovered vinyl material content would not overlap or conflict with biobased content in a carpet's polyurethane backing system (including attached cushion). Furthermore, EPA Guidelines would not require a buyer to purchase a carpet with a vinyl backing just because it is a CPG item. EPA has stated that a CPG recommendation does not preclude a procuring agency from purchasing carpet made of other materials (e.g., polyurethane backing system versus vinyl backing). For performance reasons, a Federal buyer may specify a polyurethane backing system because it has a number of performance advantages. For polyurethane laminate, these include preventing delamination and increasing product life, lower VOC levels, being compatible with low VOC adhesives used in installation, and creating a function liquid barrier for ease of cleaning (including the possibility of wick-back staining and adverse

moisture effects). Attached polyurethane cushion offers the additional benefits of lessening standing and walking fatigue by reducing heel strike and leg muscle response, reducing excess workplace sounds, resisting crushing and extending carpet life, and increasing thermal insulation. Furthermore, there are polyurethane backing systems commercially available that contain both biobased and recycled/recovered material. In addition, it would be possible to make a carpet that had a face with recycled/recovered fiber content and a backing system with biobased content.

Finally, a fifth commenter stated that EPA proposed a designation for nylon carpet, is working on finalizing that designation, and requested that USDA check on the status of EPA's final rule for nylon carpet and adjust the above preamble and regulation language for the final rule accordingly.

Response: USDA does not have the statutory authority to require that a preference be given to a biobased product over a competing recycled content product. However, USDA agrees that there are cases where the manufacture, use, and disposal of biobased products results in an overall benefit to the environment when compared to recycled content products. In the information that USDA has provided in the preamble to the proposed rule (71 FR 47591), we point out that Federal agencies may ask manufacturers for information on a product's environmental and human health measures as determined by the BEES analysis. They can then use this information to make a more informed decision on which product meets their goals and needs. In sum, USDA encourages Federal agencies to consider the overall environmental and human health impacts when evaluating the performance of recycled content products and biobased products.

USDA also points out that there may be cases where the specific features of the two products eliminates the ''appearance'' of an overlap between biobased and recycled content products. As one commenter notes, the CPG guidelines for recycled content carpet apply to carpet with a polyester face and a separate detached cushion. The biobased carpets upon which USDA designation of the item is based primarily used the biobased material in the carpet backing. Also, as the commenter points out, there may be important performance considerations in choosing a carpet ''system.'' Thus, even though there may be the appearance of an overlap between the two preference programs, Federal agencies may not find a conflict once all of their performance criteria have been considered.

Prior to publishing this notice, USDA checked the status of the EPA's proposed designation of nylon carpet for the CPG program. As of the date of publication of this notice, EPA had not finalized the designation of nylon carpet.

Carpet and Upholstery Cleaners

Comment: One commenter stated that the proposed minimum biobased content of 34 percent for carpet upholstery cleaners is low and suggested that the word ''biobased'' implies a minimum biobased content of 51 percent.

Response: Where there is no other information available, USDA believes that it is not unreasonable to consider products as ''biobased'' if they are composed predominantly of biobased materials; that is, at least 50 percent of the product is biobased. However, for some products a 50 or 51 percent minimum biobased content may result in a product that is not viable. Furthermore, a 50 or 51 percent minimum biobased content could discourage the development of new biobased products or the continued development of existing biobased products.

During the investigation of potential items for designation, USDA has identified many items where biobased product development has not reached the point where these products can be manufactured successfully with a biobased content of greater than 50 percent. USDA believes that the designation of items where biobased products exist, even at the lower levels such as in the carpet and upholstery cleaners item, will not only create a demand for the existing products but will encourage the development of additional products with higher biobased contents.

USDA has re-evaluated the products within this item and has decided that the creation of two subcategories within this item is justified. Three of the 12 products for which USDA has information are described and marketed as ''spot'' or ''stain'' removers and the other nine products are marketed simply as carpet and upholstery cleaners, or general purpose cleaners. The tested biobased contents of the spot removers are 10, 15, and 19 percent. USDA has set the minimum biobased content for the spot removers subcategory at 7 percent, based on the product with a tested biobased content of 10 percent, because the range of the data points is so narrow.

For the general purpose cleaners subcategory, the tested biobased contents are 37, 54, 57, 66, 67, 79, 80, 82, and 98 percent. USDA reviewed the product information to determine whether specific performance or applicability features were claimed by any of the products. The two products with 57 and 66 percent biobased content were found to be formulated without any volatile organic compounds (VOC), while many of the other products were not. Because the absence of VOC is considered to be a desirable feature, and because no other significant performance features were found, USDA decided to set the minimum biobased content at a level that these two products would meet. Therefore, USDA has set the minimum biobased content at 54 percent based on the product with a tested biobased content of 57 percent. As new products are developed and as existing products are reformulated with higher biobased contents, USDA will continue to gather and review data and assess the possibility of raising the minimum biobased content for these subcategories.

Comment: One commenter noted that the Green Seal standard for industrial and institutional cleaners (GS 37) includes carpet cleaners and should be mentioned.

Response: USDA appreciates the information provided by the commenter and will add the information on GS 37 to the list of applicable test methods and performance standards found on the BioPreferred Web site for this item.

Comment: One commenter provided information on health and environmental aspects of carpet cleaning in response to USDA's request for such information on any of the proposed designated items. Most of the information provided by the commenter dealt with water versus dry cleaning methods.

Response: USDA appreciates the information provided by the commenter and will review it for potential addition to the technical information on carpet and upholstery cleaners on the BioPreferred Web site.

V. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

This action has been determined significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We are not able to quantify the annual economic effect associated with this final rule. As discussed in the proposed rule, USDA made extensive efforts to obtain information on the

Federal agencies' usage within the ten designated items, including their subcategories. These efforts were largely unsuccessful. Therefore attempts to quantify the economic impact of this rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing designated items if costs are ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of this rulemaking. This assessment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased). Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable costs.

1. Summary of Impacts

This rulemaking is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by this rule. The rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Rule

The designation of these ten items, including their subcategories, provides the benefits outlined in the objectives of section 9002: To increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas; and to substitute products with a possibly more benign or beneficial environmental impact, as compared to the use of fossil energy-based products. On a national and regional level, this rule can result in expanding and strengthening markets for biobased materials used in these items.

3. Costs of the Rule

Like the benefits, the costs of this rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Procurement costs for Federal agencies may rise as they evaluate the availability and relative cost of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

When an agency issues a final rule following a proposed rule, the Regulatory Flexibility Act (RFA, 5 U.S.C. 601–612) requires the agency to prepare a final regulatory flexibility analysis. 5 U.S.C. 604. However, the requirement for a final regulatory flexibility analysis does not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

USDA evaluated the potential impacts of its designation of these items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal Procurement of Biobased Products under section 9002 of FSRIA applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, this rule will not have a significant economic impact on small governmental jurisdictions. USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers. Conversely, the preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. However, this rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items under certain conditions relating to the availability, performance, or cost of biobased items. This rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, the economic impacts of this rule are not expected to be significant.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market products within the items and their subcategories designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses affected by this rulemaking is not expected to be substantial.

After considering the economic impacts of this rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of biobased materials can translate into economic growth and

increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

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

Today's rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this rule is currently approved under OMB control number 0503–0011.

J. Government Paperwork Elimination Act Compliance

The Office of Energy Policy and New Uses is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504 note), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated item. For information pertinent to GPEA compliance related to this rule, please contact Marvin Duncan at (202) 401–0461.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

■ For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Add §§ 2902.25 through 2902.34 to subpart B to read as follows:

§ 2902.25 2-Cycle engine oils.

(a) *Definition.* Lubricants designed for use in 2-cycle engines to provide lubrication, decreased spark plug fouling, reduced deposit formation, and/or reduced engine wear.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 34 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased 2-cycle engine oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased 2-cycle engine oils.

§ 2902.26 Lip care products.

(a) *Definition.* Personal care products formulated to replenish the moisture and/or prevent drying of the lips.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 82 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased lip care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased lip care products.

§ 2902.27 Films.

(a) *Definition.* (1) Products that are used in packaging, wrappings, linings, and other similar applications.

(2) Films for which preferred procurement applies are:

(i) *Semi-durable films.* Films that are designed to resist water, ammonia, and other compounds, to be re-used, and to not readily biodegrade. Products in this item are typically used in the production of bags and packaging materials.

(ii) *Non-durable films.* Films that are intended for single use for short-term storage or protection before being discarded. Non-durable films that are designed to have longer lives when used are included in this item.

(b) *Minimum biobased content.* The minimum biobased content for all films shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Semi-durable films—45 percent.

(2) Non-durable films—85 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased semi-durable and non-durable films. By that date, Federal

agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased semi-durable and non-durable films.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within the semi-durable films subcategory may overlap with the EPA-designated recovered content product: Plastic trash bags. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated plastic trash bags and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased semi-durable film products within this designated item can compete with plastic trash bag products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated plastic trash bags containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.16. EPA provides recovered materials content recommendations for plastic trash bags in the May 1, 1995, Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations can be found on EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

§ 2902.28 Stationary equipment hydraulic fluids.

(a) *Definition.* Fluids formulated for use in stationary hydraulic equipment systems that have various mechanical parts, such as cylinders, pumps, valves, pistons, and gears, that are used for the transmission of power (and also for lubrication and/or wear, rust, and oxidation protection).

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 44 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased stationary equipment hydraulic fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased stationary equipment hydraulic fluids.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oils and which product should be afforded the preference in purchasing.

Note to paragraph (d): Stationary equipment hydraulic fluid products within this designated item can compete with hydraulic fluid products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oils containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11. EPA provides recovered materials content recommendations for re-refined lubricating oils in the May 1, 1995, Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

§ 2902.29 Disposable cutlery.

(a) *Definition.* Hand-held, disposable utensils designed for one-time use in eating food.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 48 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased disposable cutlery. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased disposable cutlery.

§ 2902.30 Glass cleaners.

(a) *Definition.* Cleaning products designed specifically for use in cleaning glass surfaces, such as windows, mirrors, car windows, and computer monitors.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 49 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the cleaner must be determined before dilution.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased glass cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased glass cleaners.

§ 2902.31 Greases.

(a) *Definitions.* (1) Lubricants composed of oils thickened to a semisolid or solid consistency using soaps, polymers or other solids, or other thickeners.

(2) Greases for which preferred procurement applies are:

(i) *Food grade greases.* Lubricants that are designed for use on food-processing equipment as a protective anti-rust film, as a release agent on gaskets or seals of tank closures, or on machine parts and equipment in locations in which there is exposure of the lubricated part to food.

(ii) *Multipurpose greases.* Lubricants that are designed for general use.

(iii) *Rail track greases.* Lubricants that are designed for use on railroad tracks or heavy crane tracks.

(iv) *Truck greases.* Lubricants that are designed for use on the fifth wheel of tractor trailer trucks onto which the semi-trailer rests and pivots.

(v) *Greases not elsewhere specified.* Lubricants that meet the general

definition of greases as defined in paragraph (a)(1) of this section, but are not otherwise covered by paragraphs (a)(2)(i) through (iv) of this section.

(b) *Minimum biobased content.* The minimum biobased content for all greases shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Food grade grease—42 percent.

(2) Multipurpose grease—72 percent.

(3) Rail track grease—30 percent.

(4) Truck grease—71 percent.

(5) Greases not elsewhere specified—75 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased greases. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased greases.

§ 2902.32 Dust suppressants.

(a) *Definition.* Products formulated to reduce or eliminate the spread of dust associated with gravel roads, dirt parking lots, or similar sources of dust, including products used in equivalent indoor applications.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 85 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. If the finished product is to be diluted before use, the biobased content of the suppressant must be determined before dilution.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dust suppressants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased dust suppressants.

§ 2902.33 Carpets.

(a) *Definition.* Floor coverings composed of woven, tufted, or knitted fiber and a backing system.

(b) *Minimum biobased content.* The preferred procurement product must have a biobased content of at least 7 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased carpet. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased carpet.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products that fall under this item may, in some cases, overlap with the EPA-designated recovered content product: Carpets (polyester). USDA is requesting that manufacturers of these qualifying biobased products provide information for the BioPreferred Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated carpets (polyester) and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased carpets within this designated item can compete with polyester carpet products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated carpets (polyester) containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12. EPA provides recovered materials content recommendations for carpets (polyester) in the May 1, 1995, Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations can be found on EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

§ 2902.34 Carpet and upholstery cleaners.

(a) *Definition.* (1) Cleaning products formulated specifically for use in cleaning carpets and upholstery, through a dry or wet process, found in locations such as houses, cars, and workplaces.

(2) Carpet and upholstery cleaners for which preferred procurement applies are:

(i) *General purpose cleaners.* Carpet and upholstery cleaners formulated for use in cleaning large areas such as the carpet in an entire room or the upholstery on an entire piece of furniture.

(ii) *Spot removers.* Carpet and upholstery cleaners formulated for use in removing spots or stains in a small confined area.

(b) *Minimum biobased content.* The minimum biobased content for all carpet and upholstery cleaners shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) General purpose cleaners—54 percent.

(2) Spot removers—7 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased carpet and upholstery cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased carpet and upholstery cleaners.

Dated: May 2, 2008.

Harry Baumes,

Associate Director, Office of Energy Policy and New Uses, U.S. Department of Agriculture.

[FR Doc. E8–10109 Filed 5–13–08; 8:45 am]

BILLING CODE 3410–GL–P

Federal Register

Wednesday,
May 14, 2008

Part V

Department of Agriculture

Office of Energy Policy and New Uses

7 CFR Part 2902

Designation of Biobased Items for Federal Procurement; Final Rule

DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA32

Designation of Biobased Items for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending the guidelines for designating biobased products for Federal procurement, to add eight sections to designate items, including subcategories, within which biobased products will be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002. USDA also is establishing minimum biobased content for each of these items and subcategories.

DATES: This rule is effective June 13, 2008.

FOR FURTHER INFORMATION CONTACT: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815; e-mail: *mduncan@oce.usda.gov*; phone (202) 401–0461. Information regarding the Federal Procurement of Biobased Products (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov*.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Changes
IV. Discussion of Comments
V. Regulatory Information
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act (RFA)
C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
D. Executive Order 12988: Civil Justice Reform
E. Executive Order 13132: Federalism
F. Unfunded Mandates Reform Act of 1995
G. Executive Order 12372: Intergovernmental Review of Federal Programs
H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
I. Paperwork Reduction Act
J. Government Paperwork Elimination Act Compliance

I. Authority

These items, including their subcategories, are designated under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

As part of the Federal Procurement of Biobased Products, USDA published on October 11, 2006, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of 10 items for the preferred procurement of biobased products by Federal agencies (referred hereafter in this FR notice as the ''preferred procurement program''). This proposed rule can be found at 71 FR 59862. This rulemaking is referred to in this preamble as Round 4 (RIN 0503–AA32).

The Round 4 proposed rule proposed designating the following ten items, including their subcategories, for the preferred procurement program: Bathroom and spa cleaners; [1] clothing products; [2] concrete and asphalt release fluids; general purpose de-icers; [3] durable plastic films; [4] firearm lubricants; floor strippers; laundry products, including pretreatment/spot removers and general purpose laundry products as subcategories; metalworking fluids—straight oils; [5] and wood and concrete sealers.

Today's final rule designates the following eight items, including subcategories, within which biobased products will be afforded Federal procurement preference: Bathroom and spa cleaners; concrete and asphalt release fluids; general purpose de-icers; firearm lubricants; floor strippers; laundry products, including pretreatment/spot removers and general purpose laundry products as subcategories; metalworking fluids, including straight oils, general purpose soluble, semi-synthetic, and synthetic oils, and high performance soluble, semi-synthetic, and synthetic oils as subcategories; and wood and concrete sealers, including penetrating liquid sealers and membrane concrete sealers as subcategories. USDA has determined that each of the items, including the subcategories within them, being designated under today's rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: To improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

When USDA designates by rulemaking an item (a generic grouping of products) for preferred procurement under the BioPreferred Program, manufacturers of all products under the umbrella of that item that meet the requirements to qualify for preferred procurement can claim that status for their products. To qualify for preferred procurement, a product must be within a designated item and must contain at least the minimum biobased content established for the designated item. When the designation of specific items is finalized, USDA will invite the manufacturers of these qualifying products to post information on the product, contacts, and performance testing on its BioPreferred Web site, *http://www.biopreferred.gov*. Procuring agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated item. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items, including their subcategories, where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more.

Subcategorization. Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are groups of products within the item that meet different markets and uses and/or different performance specifications. For example, within the designated item ''hand cleaners and sanitizers,'' some products are required to meet performance specifications for

[1] At proposal this item was named ''bath and tile cleaners.'' Based on public comments received, and as explained in section IV of this preamble, USDA has renamed this item as ''bathroom and spa cleaners.''

[2] Based on public comments received, and as explained in section IV of this preamble, this proposed item has been withdrawn from the final rule.

[3] At proposal this item was named ''de-icers.'' Based on public comments received, and as explained in this preamble, USDA has renamed this item as ''general purpose de-icers.''

[4] Based on public comments received, and as explained in section IV of this preamble, this proposed item is now a subcategory under the designated item ''films,'' which is included in the Round 3 final rulemaking.

[5] At proposal this item was named ''cutting, drilling, and tapping oils.'' Based on public comments received, and as explained in section IV of this preamble, USDA has renamed this item as ''metalworking fluids'' and has included three subcategories.

sanitizing, while other products do not need to meet these specifications. Where such subgroups, or subcategories, exist, USDA intends to create subcategories. Thus, for example, for the designated item ''hand cleaners and sanitizers,'' USDA determined that it was reasonable to create a ''hand cleaner'' subcategory and a ''hand sanitizer'' subcategory. Sanitizing specifications would be applicable to the later subcategory, but not the former. In sum, USDA looks at the products within each item to evaluate whether there are groups of products within the item that meet different performance specifications and, where USDA finds this type of difference, it intends to create subcategories.

For some items, however, USDA may not have sufficient information at the time of proposal to create subcategories within an item. For example, USDA may know that there are different performance specifications that de-icing products are required to meet, but it has only information on one type of de-icing product. In such instances, USDA may either designate the item without creating subcategories (i.e., defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the item until additional information is obtained on products within these other subcategories.

Within today's rulemaking, USDA has created subcategories within three items—laundry products, metalworking fluids, and wood and concrete sealers. For laundry products, the subcategories are: (1) Pretreatment/spot removers and (2) general purpose laundry products. For metalworking fluids, the subcategories are: (1) Straight oils, (2) general purpose soluble, semi-synthetic, and synthetic oils, and (3) high performance soluble, semi-synthetic, and synthetic oils. For wood and concrete sealers, the subcategories are: (1) Penetrating liquid sealers and (2) membrane concrete sealers.

Minimum Biobased Contents. The minimum biobased contents being established with today's rulemaking are based on products for which USDA has biobased content test data. In addition to considering the biobased content test data for each item, USDA also considers other factors when establishing the minimum biobased content. These other factors include: Public comments received on the proposed minimum biobased contents; product performance information to justify the inclusion of products at lower levels of biobased content; and the range, groupings, and breaks in the biobased content test data array. Consideration of this information allows USDA to establish minimum biobased contents on a broad set of factors to assist the Federal procurement community in its decision to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, USDA must rely on biobased product manufacturers to voluntarily submit product information and, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated item. As USDA obtains additional data on the biobased contents for products within these eight designated items and their subcategories, USDA will evaluate whether the minimum biobased content for a designated item or subcategory will be revised.

USDA anticipates that the minimum biobased content of an item or subcategory that is based on a single product is more likely to change as additional products in those items and subcategories are identified and tested. In today's rulemaking, none of the minimum biobased contents are based on a single tested product.

For all items and subcategories where additional information indicates that it is appropriate to revise a minimum biobased content established under today's rulemaking, USDA will propose the change in a notice in the **Federal Register** to allow public comment on the proposed revised minimum biobased content. USDA will then consider the public comments and issue a final rulemaking on the minimum biobased content.

Preference compliance date. Because USDA has identified only one manufacturer of products within the high performance soluble, semi-synthetic, and synthetic oils subcategory, the preference compliance date is deferred until USDA identifies two or more manufacturers of products in this subcategory. When it identifies two or more manufacturers, USDA will publish a document in the **Federal Register** announcing that Federal agencies will have one year from the date of publication of that announcement to give procurement preference to biobased metalworking fluids in the high performance soluble, semi-synthetic, and synthetic oils subcategory.

Future Designations. In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within items. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing and for the BEES analytical tool. Based on these results, USDA will then propose new items for designation for preferred procurement.

As stated in the preamble to the first six items designated for preferred procurement (71 FR 13686, March 16, 2006), USDA plans to identify approximately 10 items in each future rulemaking. USDA has developed a preliminary list of items for future designation. This list is available on the BioPreferred Web site. While this list presents an initial prioritization of items for designation, USDA cannot identify with any certainty which items will be presented in each of the future rulemakings. Items may be added or dropped and the information necessary to designate an item may take more time to obtain than an item lower on the prioritization list.

Exemptions. In earlier item designation rules, USDA created exemptions from the preferred procurement program's requirements for procurements involving combat or combat-related missions and for spacecraft systems and launch support equipment. Since publication of those final rules in the **Federal Register**, and in response to comments from the Department of Defense (DoD) (see General Comments, below), USDA has decided to create ''blanket'' exemptions for all items used in products or systems designed or procured for combat or combat-related missions, which will apply to all items designated for the procurement preference. These ''blanket'' exemptions can be found in subpart A of part 2902. Because these blanket exemptions are included in subpart A of part 2902, it is unnecessary to repeat them in the individual item designations. Accordingly, in order to avoid repetition, this final rule removes all the exemption references contained in individual item designations.

III. Summary of Changes

As the result of comments received on the proposed rule (see section IV), USDA made changes to the rule, which are summarized below.

Item withdrawn. The proposed ''clothing products'' item has been withdrawn from the group of items being designated for preferred procurement in today's final rulemaking. USDA has determined that sufficient data are not available to support the designation of this item at this time. At proposal, USDA had information on clothing products made of polylactic acid (PLA), one type of

biobased synthetic fiber. USDA is also aware that other types of biobased synthetic fibers could be used for clothing products but does not have sufficient information to include these products in the evaluation of this item. Because there is potentially a wide variation in the biobased contents, performance, and life cycle costs between clothing products made of PLA and those made of other biobased synthetic fibers, USDA believes that the designation of this item should be delayed until additional products can be obtained and analyzed.

Item names. The names for four of the proposed items were revised. ''Bath and tile cleaners'' is now ''bathroom and spa cleaners.'' ''De-icers'' is now ''general purpose de-icers.'' ''Durable plastic films'' was renamed ''durable films'' and is now a subcategory under the designated item ''films,'' which is included in the Round 3 final rulemaking. ''Cutting, drilling and tapping oils'' was renamed ''metalworking fluids—straight oils'' and is now a subcategory under the designated item ''metalworking fluids'' in today's final rulemaking.

Item definitions. Except for ''concrete and asphalt release fluids'' and ''floor strippers,'' the definitions for the other items were modified to varying degrees. The definitions for metalworking fluids and wood and concrete sealers were modified in order to address the addition of subcategories (as discussed in the following paragraph).

Subcategories. In addition to finalizing the proposed subcategories under the ''laundry products'' item, subcategories were created for two items. Metalworking fluids was subcategorized into (1) straight oils, (2) general purpose soluble, semi-synthetic, and synthetic oils and (3) high performance soluble, semi-synthetic, and synthetic oils. Wood and concrete sealers was subcategorized into (1) penetrating liquid sealers and (2) membrane concrete sealers.

Minimum biobased contents. Several of the proposed minimum biobased contents for the designated items have changed for the final rule in response to public comments and in consideration of available product performance information. As a result of the comments received regarding the proposed minimum biobased contents and the availability of additional biobased content tests for several items, USDA re-evaluated the proposed minimum biobased contents of all of the items.

Items for which the minimum biobased content was changed from the proposed level are presented here and the rationale for the changes is discussed in the section of this preamble presenting the item-specific comments and responses.

For general purpose de-icers, the minimum biobased content was changed from 97 percent to 93 percent.

For floor strippers, the minimum biobased content was changed from 79 percent to 78 percent.

For laundry products, the minimum biobased content of the pretreatment/spot removers subcategory was changed from 8 percent to 46 percent.

For metalworking fluids, the minimum biobased content for the high performance soluble, semi-synthetic, and synthetic oils subcategory was set at 40 percent and the minimum biobased content for the general purpose soluble, semi-synthetic, and synthetic oils subcategory was set at 57 percent. For the straight oils subcategory, the minimum biobased content was set at 66 percent.

For wood and concrete sealers, the proposed minimum biobased content of 79 percent was retained for the penetrating liquid sealers subcategory and the minimum biobased content for the membrane concrete sealers subcategory was set at 11 percent.

Preference compliance date. For the high performance soluble, semi-synthetic, and synthetic metalworking fluids subcategory, the preference compliance date is deferred until USDA identifies two or more manufacturers in the subcategory. When it identifies two or more manufacturers, USDA will publish a document in the **Federal Register** announcing that Federal agencies will have one year from the date of publication of that announcement to give procurement preference to biobased high performance soluble, semi-synthetic, and synthetic metalworking fluids.

IV. Discussion of Comments

USDA solicited comments on the proposed rule for 60 days ending on December 11, 2006. USDA received comments from 11 commenters by that date. The comments were from individual manufacturers, trade organizations, and Federal agencies.

The comments contained in this **Federal Register** notice address general comments related to the preferred procurement program under the BioPreferred Program and specific comments related to Round 4 items. In addition to the information provided in the responses to public comments presented in this preamble, USDA has prepared a technical support document titled ''Technical Support for Final Rule—Round 4 Designated Items,'' which contains documentation of USDA's efforts to research and respond to public comments. The technical support document is available on the BioPreferred Web site. The technical support document can be located by clicking on the Proposed and Final Regulations link on the left side of the BioPreferred Web site's home page (*http://www.biopreferred.gov*). Click on Supporting Documentation under Round 4 Designation under Final Rules. This will bring you to the link to the technical support document.

The technical support document includes, but is not limited to: (1) Information on whether the standards presented in the preamble to the proposed rule are test methods, performance standards, or ''other'' (e.g., a certification by a trade association or council, a classification system) (Chapter 1.0), (2) BEES impact values for each item (Appendix A), and (3) a tabular and graphical presentation of the BEES environmental performance scores for each item (Appendix B). This information is being presented in the technical support document as the result of general comments received on the proposed rules for Rounds 2 and 3. The technical support document for Round 4 includes additional information as identified in the remainder of this preamble.

General Comments

Several of the commenters expressed appreciation for USDA's effort in designating items for preferred procurement. While these comments are not presented within this preamble, USDA thanks the commenters for such comments.

Minimum Biobased Content

Comment: Several commenters have expressed concern about the approach USDA used to determine minimum biobased contents. One commenter recommended that, rather than setting the threshold level below the lowest percentage observed in the lowest end product in the survey, USDA reward the top half or top two thirds of the respondents, at least where the spread is more than 20 percentage points. Two other commenters recommended that USDA consider a minimum threshold of 50 percent biobased content given that products with biobased contents above 50 percent are available in all categories.

Response: In response to these public comments and ongoing discussions with other Federal agencies, and because several additional biobased content test results were obtained after proposal, USDA re-evaluated the proposed minimum biobased contents for each of

the proposed items. In re-evaluating the minimum biobased contents, USDA considered factors including the number of, and the distribution of, the test data points as well as the product manufacturer's claims related to performance, biodegradability, and range of applicability.

In those cases where all of the products' biobased contents were within a narrow range and no data were available to distinguish significant performance differences among the products, USDA set the minimum biobased content at the level that would allow preferred procurement for all of the products for which data were available.

For items where the products' biobased contents showed a wider range and included one or more significant breaks in the range, USDA reviewed the product information to determine if there were performance or applicability differences among the products that could be used for creating subcategories based on the groups of products that have similar biobased contents. For example, if the biobased contents of half of the products within an item were in the 30 to 50 percent range and the other half were in the 80 to 95 percent range, USDA considered whether the product information supported the creation of two subcategories. Information that was considered to be supportive of subcategorization were claims of product features such as ''special applications,'' ''high temperature applications,'' or ''single-use versus multiple-use.'' In those cases where the biobased content and other product information supported subcategorization, USDA has created subcategories in this final rule.

In other cases, USDA has considered subcategorization for an item based upon initial performance information, but USDA does not currently have sufficient data to justify creating subcategories. Where that is the case, USDA has generally set the minimum biobased content based on the group of products with the higher biobased contents. For these items, USDA will continue to gather data on products within the item and will create subcategories in a future rulemaking if sufficient data are obtained.

For some items, there was a significant range in the reported biobased contents but the data points were evenly spread over the entire range. In those cases, if there were no data to distinguish the features of any grouping or subset of the products, USDA has generally set the minimum biobased content based on the product with the lowest biobased content in order to allow procuring agencies the widest selection of products from which to select those that best meet their needs. As additional product performance information becomes available and as additional products within these items become available with higher biobased contents, USDA will consider increasing the minimum biobased content or creating subcategories where performance characteristics or application use justify subcategorizing.

As a result of the re-evaluation, many of the proposed minimum biobased contents have been revised for the final rule. These revisions will be presented and discussed in the item specific sections later in this preamble. For three items, USDA reviewed the biobased content data but did not find sufficient justification for revising the proposed minimum biobased content level. For bathroom and spa cleaners item, 8 biobased content test results were available (16, 77, 78, 82, 83, 98, 99, and 100 percent). With the exception of the 16 percent product, this is a fairly narrow range of data points with a noticeable break between the 83 percent and the 98 percent products. USDA investigated the 16 percent product but could find no basis for creating a subcategory or for considering setting the minimum biobased content based on this product. At proposal, USDA found that the products with 77 and 83 percent biobased content met Green Chemical Specifications that the remaining products do not claim to meet. In order to include these products in the preferred procurement program, USDA proposed setting the minimum biobased content at 74 percent, based on the product with a biobased content of 77 percent. No public comments or additional data were received to support changing the proposed level. As a result, the proposed minimum biobased content of 74 percent was retained for the final rule.

For the concrete and asphalt release fluids item, USDA reviewed the biobased content data (90, 91, 92, 93, 94, 94, 96, 96, and 98 percent) and found that because the range of the data points is so narrow and does not include any breaks, there is no justification for revising the proposed 87 percent minimum biobased content.

For the firearm lubricants item, USDA proposed a minimum biobased content of 49 percent. Three biobased content data points (52, 53, 95) are available. USDA considered subcategorizing this item into two subcategories (general purpose and cold weather) but decided that not enough data were available to justify the subcategorization. The manufacturer of one of the three products claims that the product is formulated for use in cold weather applications, but the other products are also described as unique performance products. Because of the uncertainty regarding product performance claims, USDA has decided to set the minimum biobased content of the item at 49 percent, as proposed, and to continue to gather information that will be used in considering subcategorization in a future rulemaking.

Terminology

Comment: One commenter stated that the biobased products procurement program, as proposed, may create a confusing picture of what the program is intended to cover because the terms ''biobased,'' ''biodegradable,'' and ''compostable'' are used at times interchangeably. The commenter asked whether Federal purchasing agents understand the term ''biobased'' and that a biobased product is not necessarily biodegradable. The commenter pointed out that compostability most often only occurs when a product that is designed to be compostable is properly managed in a composting facility. According to the commenter, there are very limited numbers of commercial composting facilities in the U.S. The commenter also asked why some of the biobased items are designated as ''biodegradable'' and others are not.

Response: USDA agrees that there can be confusion with regard to the three terms mentioned by the commenter. A ''biobased'' product is a product that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials or forestry materials. A biobased product may or may not be biodegradable and/or compostable. In simple terms, ''biodegradable'' generally means a product is capable of decomposing into simple compounds under natural conditions (either aerobic or anaerobic) by microorganisms. ''Compostable'' generally means a product is capable of biological decomposition under controlled aerobic conditions, such as found in a compost pile or compost bin, by microorganisms or soil invertebrates. Therefore, all biodegradable products would be compostable, but not all compostable products are biodegradable.

As discussed earlier in this preamble, USDA believes that the relationship between performance and biodegradability of an item must be considered before biodegradability is included as a prerequisite for a designated item to receive preferred

procurement under the BioPreferred Program. In the case of items where USDA judges performance to be the key decision-making factor for purchasers, USDA will not require biodegradability as a prerequisite for receiving preferred procurement. In the case of items where USDA judges disposal to be as important as performance, USDA will require biodegradability as a prerequisite for receiving preferred procurement. This is why some items will be required to be biodegradable and others will not in order to receive preferred procurement under the BioPreferred Program. Although USDA is not requiring products in any of the items and subcategories being designated in today's rulemaking to be biodegradable, USDA intends to promote biobased products that are also biodegradable as part of the BioPreferred Program.

Prequalification of Biobased Materials

Comment: Two commenters recommended that USDA develop a program for prequalifying the biobased material that will form the basis of biobased products. The commenters point out that biobased products are made from biobased materials. According to the commenters, testing and qualifying biobased materials will greatly accelerate the designation process for preferred procurement—if a product is made from a prequalified biobased material, it is then a simple matter for the manufacturer of the bioproduct to provide information to USDA on its biobased composition and, if verification of manufacturer supplied compositional information is needed, the ASTM biobased content test can always be conducted as needed. The commenters also suggested making prequalified biobased materials part of the ''U.S.D.A. Certified'' labeling program. When part of the labeling program, manufacturers would be able, according to the commenter, to contact biomaterial suppliers for information on the performance and other characteristics to determine the most appropriate biomaterials for their particular application. According to the commenters, this would expedite the development of biobased products consistent with the Congressional intent of FSRIA.

Response: USDA agrees that there is merit in the concept of prequalifying biobased materials that are used to manufacture biobased products for preferred procurement. However, as noted in a response to public comments on the first six items designated for preferred procurement (71 FR 13702), section 9002 of FSRIA requires USDA to designate ''products'' for preferred procurement. Section 9001 of FSRIA defines ''biobased products'' as ''a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials or forestry materials.'' Based on this definition, USDA does not believe it has the authority to consider ''biobased material used in the manufacture of biobased products'' to be ''products.'' USDA is, however, gathering information on biobased intermediate feedstocks and developing a list of these materials. USDA will provide this information on the BioPreferred Web site. USDA also notes that NIST currently includes soybeans, corn, wheat, rice, cotton, canola, potatoes, and wool as feedstocks when conducting the BEES life cycle analysis for biobased products.

USDA has considered the commenter's recommendation to make prequalified biobased materials part of the ''U.S.D.A. Certified'' labeling program in developing the proposed rule for that program.

Overlap With EPA's Comprehensive Procurement Guideline (CPG)

Comment: Two commenters recommended that USDA's Guidelines Designating Biobased Products for Federal Procurement be upgraded to include the proposal in this rulemaking for handling the ''overlap'' between the recycled content and biobased content programs.

Response: While USDA appreciates the commenters' suggestion on revising the Guidelines to reflect the overlap potential between biobased products and products with recycled content, USDA will continue to discuss such overlap within each of the designated item rulemakings on an item-by-item basis. USDA believes that the discussion on overlap is more meaningful when presented in individual notices for designated items where such overlap exists or may exist.

Environmental and Health Information

Comment: Two commenters recommended that USDA continue to emphasize the potential of biobased products to reduce greenhouse gas emissions as part of the preferred procurement program.

Response: USDA agrees with the commenters that the potential for biobased products to reduce greenhouse gas emissions is an important attribute of which purchasers and others need to be aware. USDA will continue to identify this potential in preambles and in the background information on the BioPreferred Web site. USDA encourages the commenters, and others, to provide USDA with ''cradle-to-grave'' studies that demonstrate this potential attribute. USDA would then consider putting such results on the BioPreferred Web site.

Purchase of Biobased Products by Federal Agencies

Comment: One commenter recommended that information on the following products be provided in the final rule for the benefit of Federal agency purchasers implementing both this round of biobased products and earlier biobased product designations: BioRenewables Glass Cleaner, NSN 7930–00–NIB–0331 (2 liter) and 7930–00–NIB–0330 (gallon); BioRenewables Restroom Cleaner, NSN 7930–00–NIB–0437; BioRenewables Graffiti Remover SAC, NSN 7930–00–NIB–0433 (quart) and 7930–00–NIB–0434 (gallon); BioRenewables Waterless Hand Cleaner, NSN 8520–00–NIB–0093; BioRenewables Waterless Plus Hand Cleaner, NSN 8520–00–NIB–0094; TriBase Multi Purpose Cleaner, NSN 7930–00–NIB–0329; Lite'n Foamy Sunflower Fresh foaming hand, hair, and body wash.

Response: USDA will include these products, offered through the National Industries for the Blind, in the product information provided on the BioPreferred Web site. Also note that the National Stock Numbers (NSN) provided by the commenter have changed since the comment was submitted. The revised NSN for the products are as follows: BioRenewables Glass Cleaner, NSN 7930–01–555–2898 (32 oz) and 7930–01–555–3384 (gallon); BioRenewables Restroom Cleaner, NSN 7930–01–555–2900 (32 oz); BioRenewables Graffiti Remover SAC, NSN 7930–01–555–3382 (32 oz) and 7930–01–555–2899 (gallon); TriBase Multi Purpose Cleaner, NSN 7930–01–555–2901 (gallon); Lite'n Foamy Sunflower Fresh foaming hand, hair, and body wash, NSN 8520–01–555–2903.

Comment: One commenter urged USDA to clarify in the final rule that it is not requiring procuring agencies to limit their choices to biobased products that fall under the items for designation in this proposed rule in order to avoid the unintended consequence of severely limiting product selection and material selection options. The commenter pointed out that a product should be reasonably available, meet USDA's requirements for performance for the

application intended and be available at a reasonable price.

Response: USDA agrees with the commenter that Federal agencies are not limited to considering biobased products when making purchasing decisions under the BioPreferred Program for biobased products. Even though biobased products are given preferred procurement, purchasing agencies can buy other competing products when biobased products are not readily available, are not available at a reasonable cost, or do not meet Agency performance standards. USDA believes that this is clearly stated for the current rulemaking and will continue to make it clear in future rulemakings as well.

Information Accuracy

Comment: One commenter, noting that USDA stated that its attempts to gather data were ''largely unsuccessful,'' urged USDA to re-examine and improve upon its prior efforts to gather complete, technically sound information on products within designated items and to use that information to further refine the program in the future.

Response: USDA uses the phrase ''largely unsuccessful'' in the context of its efforts to obtain information on the amount of products within designated items that Federal agencies are using (for example, see section IV.A, Executive Order 12866 in this preamble) and not on the information associated with the products within each item. Information on the usage of products would assist USDA to make estimates of the potential economic impact of the rule.

USDA has in place a procedure to gather technical information on products within each item it proposed for designation. As USDA proposes additional items for designation, it seeks to improve this process with each successive rulemaking to ensure the information it has is technically sound. One area in which USDA is using the improved information is in the development of subcategories within items. There will always be some uncertainty in the data obtained, but USDA will continue to propose items for designation for preferred procurement with the data it has in hand. USDA encourages the provision of additional information on products within items prior to their being designated for preferred procurement. The items being considered for preferred procurement can be found on the BioPreferred Web site.

Publicly Available Information

Comment: One commenter suggested that the data that form the basis for USDA's decisions and their source be available to the public. The commenter noted, as one example, that USDA intends to post public comments on the ''positive environmental and human health attributes'' of products on its Web site, and make the comments available to Federal procurement agencies to ''* * * assist them in making 'best value' purchasing decisions.''

Response: Since the first round of six items were designated for preferred procurement, USDA has provided significantly more data on each item being proposed for preferred procurement on the BioPreferred Web site. At the BioPreferred Web site, technical information is provided on products within the items. The BioPreferred Web site can be accessed by the public at *http://www.biopreferred.gov*.

USDA is concerned that the commenter might believe that USDA is using comments received on the ''positive'' attributes of biobased products as a basis for designating an item for preferred procurement, while ignoring potential ''negative'' attributes. This is not the case. The availability of information on the environmental and health attributes and life costs of items is part of the basis for proposing an item for preferred procurement. USDA is using the BEES analysis, which is ''neutral'' in regards to whether an environmental impact of a biobased product is ''positive'' or ''negative,'' to provide some of this information.

Finally, the statute authorizing the preferred procurement program for biobased products requires USDA to, in part, provide information on ''environmental and health benefits'' of such materials and items. Thus, USDA has a statutory obligation to make such information on the positive environmental and human health attributes available.

One way USDA is implementing this requirement is by posting public comments on the positive environmental and human health attributes of products on the BioPreferred Web site. Given the infancy of most biobased product markets, this type of information is often not generally known and providing access to such information, provided it is documented, is important to the success of the BioPreferred Program. If such information is anecdotal, it will be so indicated.

Recycling

Comment: Several commenters were concerned about the effect of biobased products on existing recycling operations.

One commenter requested that USDA evaluate and address the effect that biobased polymers used for durable films will have on current recycling streams and markets. According to the commenter, to the best of their knowledge, no technology exists to screen out biobased products during the recycling process.

Another commenter voiced concern over the introduction of biobased plastics, such as PLA, into the recycling stream because such products cannot be mixed with conventional plastics, such as PET, because the materials are not compatible for recycling processes. The commenter noted that PLA itself can be recycled, but that the recycling industry infrastructure is not currently configured to implement segregation collection and recycling of PLA plastics and there are no well-established manufacture buy-back type programs to incentivize and facilitate local or regional composting and recycling to turn PLA back into PLA.

The third commenter noted that the impacts of interest for the presence of biopolymers are on (1) the reclamation process and (2) on the appearance and functionality of the recycled PET and HDPE plastic products. The commenter then provided technical detail on the characteristics of biobased polymers and PET and HDPE to illustrate the reasons why such recycling incompatibility exists. This commenter then made the following conclusions: (1) Biopolymers are unlikely to justify an independent recycling business any time soon; (2) Biopolymers could be a technical nuisance to HDPE reclaimers, creating a yield loss with some economic cost; (3) Biopolymers could be a technical problem for PET reclaimers, creating degraded PET product quality and serious economic cost; (4) Biopolymers may be an opportunity for current reclaimers if the value exceeds costs and the presence does not disrupt current operations. Until critical mass is achieved, biopolymers will likely represent some level of cost and technical challenges to reclaimers and must pay their own way in collection, sorting, and processing. The third commenter stated that biopolymers should target product applications not currently included for recycling. Some biopolymers are targeted for packaging applications that are not typically recycled, such as food storage containers, bowls, and blister packaging.

These packages may become included with bales of bottles destined for recycling. Some parties have advocated the use of biopolymers for packaging applications such as juice and other beverage containers that are frequently recycled. As such, the impact of the USDA program on existing recycling streams and programs needs to be considered.

Response: The purpose of the BioPreferred Program is to encourage the purchase of biobased products, including products that are commonly recycled. However, like the commenter, USDA is concerned that such products are disposed of in an environmentally responsible manner. USDA has consulted with EPA and with representatives of the Association of Post-Consumer Plastic Recyclers (APCPR) to discuss this issue. APCPR explained that their primary concern with attempts to place PLA or other biobased plastics in existing recycling streams related to the negative impacts that these biobased plastics have on the recycling of PET. They pointed out that over seven billion pounds of PET are used annually in the country and that the recycling of PET has been adopted on a large-scale basis. There are two primary concerns related to the introduction of biobased plastics into the PET recycling stream. First, the presence of biobased plastics even in very small amounts (less than 1 percent) causes the resulting recycled plastic to lose the clarity which is demanded in the largest market for these products (''soda'' and water bottles). Even a slight haze in the final product is unacceptable to the bottling industry. The second concern relates to the actual recycling technology. PET is separated from HDPE and other petroleum-based plastics by floatation, PET floats in water and the others do not. Most biobased plastics also float, however, making the separation of PET from biobased plastics using floatation technology impossible. Thus, if there are biobased plastics in the recycling stream they remain with the PET stream. Following separation, the PET is shredded and then placed in dryers to remove the moisture. Because biobased plastics melt at a temperature that is much lower than the melting temperature of PET, the biobased plastics tend to melt in the PET dryers. Recyclers have indicated that the presence of even 0.1 percent of biobased plastics in the shredded stream can cause the dryers to ''gum up'' and results in the rejection of the contaminated PET.

APCPR pointed out that an optical-type technology for separating biobased plastics from PET is available, but that it is very expensive. Because there is currently such a small amount of biobased plastics available for recycling, there is no economic incentive for recyclers to purchase the equipment necessary to separate it from PET. APCPR further explained that for the recycling of biobased plastics to become economically viable there needs to be both a readily available supply of used material and a significant market for the recovered plastic, neither of which exists today.

APCPR also pointed out that biobased polymers used for other applications, such as ''clam shell'' containers and other therma-form products, do not present a problem for the recycling of those products. They also noted that composting in commercial composting operations is a viable alternative to the recycling of biobased polymers.

USDA encourages procuring agents and those involved in recycling to provide education material to potential purchasers and users on environmentally preferred disposal of such products. The APCPR Web site (*http://www.plasticsrecycling.org*) presents technical information on plastics recycling and procuring agents are urged to visit the site for more information. In addition, USDA will post relevant information in this regard on the BioPreferred Web site to assist manufacturers, purchasers, and users become aware of the potential impacts of biobased plastics on recycling and on the preferred disposable methods for such products.

Comment: One commenter stated that to be successfully recycled a significant critical mass must be reached and that many resins, including various biopolymers, are not and are not likely soon to be present in sufficient quantities to justify free-standing recycling. The commenter believes that each resin must be self-supporting and not rely on subsidy from other resins for successful recycling. According to the commenter, although PVC is normally removed from the PET recycle stream as a matter of course, considerable development would be needed to make this possibility a working reality for other polymer bottles. If the ''other'' polymer, be it a biopolymer or petroleum-derived polymer, is not removed, then the impacts of potential contamination must be considered. Like many variants in the recycling stream, the effects of inclusion of ''other'' resins starts as a nuisance, rises to a problem with higher levels of occurrence, and finally becomes an opportunity when critical mass is achieved.

Response: As discussed in the response to the previous comment, USDA recognizes the challenges presented to the plastic resin recycling industry by the increased use of biopolymers. USDA will post relevant information on the BioPreferred Web site to assist manufacturers, purchasers, and users become aware of the potential impacts and the preferred disposable methods for biopolymer-based products.

Comment: One commenter made several recommendations on how USDA should address recycling in the purchase of biobased packaging materials.

First, the commenter recommended that USDA stress that it is not requiring procuring agencies to limit their choices to biopolymer-based packaging that is incompatible with current reclamation. The commenter believes that to do so is consistent with other guidance USDA provides with regard to other ''green'' programs.

Second, the commenter also recommended that, beyond the life cycle of the product itself, USDA ask agencies to consider the impact of the introduction of a new or non-traditional polymer for a specific application on existing recycling streams. The commenter believes that containers being recycled are as valuable to sustainability as containers being made of renewable material.

Third, for the reason stated above, the commenter further asked that USDA establish sustainable solid waste management (i.e., recycling) as one of the product performance standards for procuring agencies to request information on and consider. The commenter considers that the definition of sustainable solid waste management must include the economic ability of items to be processed for recycling and sold profitably. Similarly, an item that meets sustainable solid waste management criteria must not significantly degrade the ongoing, successful recycling of other items. In closing, the commenter stated that packaging material should be selected if it meets the functional and aesthetic requirements for the intended application, is commercially available and competitively priced, and does not disrupt existing, sustainable solid waste management programs.

Response: While USDA is concerned with all aspects of the BioPreferred Program, its statutory authority does not extend to include regulating the disposal, recovery, or recycling of biobased products. USDA encourages Federal procuring agencies to consider the impact that proper disposal of biobased products may have when they

are making decisions on the purchase of such products. As discussed in the previous responses, USDA will attempt to provide information on the disposal of biobased products to procuring agencies via its BioPreferred Web site.

Exemptions

Comment: One commenter requested that the rule reflect exemptions for all items used in products and systems designed or procured for combat or combat-related missions and that this exemption be extended to all services and products contracted for combat or combat-related missions. The commenter pointed out that USDA has stated that it is inappropriate to apply the preferred procurement requirement unless Department of Defense (DoD) has documented that such products can meet the performance requirements for such equipment and are available in sufficient supply to meet domestic and overseas deployment needs. According to the commenter, their experiences to date have reinforced that it is not practical at this time to conduct the testing and evaluation necessary for such performance documentation for all products used in combat. The commenter therefore recommended that the rule continue to reflect or include exemptions for all items used in products and systems designed or procured for combat or combat-related missions in sections 2902.37, 2902.39, 2902.40, and 2902.42. Sections 2902.36, 2902.38, 2902.41, 2902.43, 2902.44, and 2902.45 may at some future time be found to require a combat exemption for a specialized use we have not been able to determine at this time. The commenter suggested that the goals of the biobased preference program are better served if the focus in DoD is on product used for more conventional purposes (similar to commercially available items), rather than extending the requirements to combat uses. The commenter stated that DoD is being very proactive in encouraging the use of biobased products through both policy and research and development investments related to combat uses, however DoD is not in a position to support USDA selection of materials at this time.

Response: USDA has discussed, at length, with DoD the need for exempting from preferred procurement items whose products are used in combat or combat-related situations. This discussion has included whether there is a need for an exemption and, if so, whether an exemption should be on an item-by-item basis or whether a ''blanket'' exemption should be implemented. After such discussions, USDA is exempting from preferred procurement all items used in products or systems designed or procured for combat or combat-related missions. The exemption is stated in the Guidelines (subpart A) rather than under each item designation. USDA believes it is inappropriate to apply the biobased purchasing requirement to tactical equipment at this time. However, USDA reserves the right to withdraw such exemptions, on an item-by-item basis, as biobased products are demonstrated to meet all of the performance requirements of DoD in tactical situations.

Comment: Two commenters stated that the proposed exemptions for critical applications are unnecessary given the provisions of the Guidelines, noting that no product, biobased or not, should be used in any critical application if it does not meet performance requirements. The commenter is concerned that proposing an exemption that limits the use of biobased products to ''more conventional applications'' implies that biobased products are inferior in their performance characteristics to the incumbent product. According to the commenter, not only is this not the case, but it sends the wrong message regarding the potential benefits of and uses for biobased products. The commenters note that they are aware of applications in the clothing (military uniforms and other clothing) and de-icers (airport runways) where the introduction of a biobased ingredient into these products could result in not only equal performance but potentially enhanced performance. The commenters state that performance testing is currently in progress to support the intended uses for these products. Recognizing that the biobased products industry is in its infancy, the commenters believe that proposing exemptions for critical performance applications because there is a current lack of performance testing data to support some of these applications is both unnecessary, as discussed above, and counter to the intent of the Farm Bill of using federal procurement to pull biobased products into the marketplace.

Response: USDA agrees with the commenters that providing exemptions could imply that biobased products are inferior to non-biobased products. USDA can only emphasize that these exemptions are not intended to convey such meaning. USDA points out, however, that the statute does allow agencies the ability to not purchase a biobased product if it does not meet applicable performance standards. Because so many biobased products are in their infancy, more effort is required on the part of their manufacturers to demonstrate that the biobased products perform as well as their non-biobased counterparts, whether in conventional or non-conventional applications.

USDA also agrees that all Federal agencies have the same ''off ramps'' available to them in determining whether or not to purchase biobased products within a designated item. USDA has received repeated requests from both DoD and NASA for exemptions. DoD is particularly concerned about the use of biobased products in combat or combat-related situations and NASA about the use of any biobased product in critical mission areas. USDA has reached agreement with these agencies to provide ''blanket'' exemptions for both NASA and DoD.

USDA recognizes that such blanket exemptions could discourage manufacturers from developing biobased products for these two ''markets.'' However, if manufacturers of biobased products can demonstrate to the satisfaction of these two agencies that biobased products can meet all of their concerns, USDA would reconsider such exemptions on an item-by-item basis.

Biobased Content Testing

Comment: One commenter recommended that the ASTM active standard 06866–06 (standard test methods for determining the biobased content of natural range materials using radiocarbon and isotope ratio mass spectrometry analysis) replace the historical D6866–04.

Response: USDA agrees that the most recent and active ASTM standard needs to be used. In order to minimize the need to update the regulation, USDA has decided to simply refer to the base ASTM designation (in this case, ASTM 6866) and drop the year designation (in this case, the –04) and instead specify in the final rule that the ''current version'' of ASTM D6866 be used for determining biobased content.

Incidental Funding

Comment: One commenter noted that under a separate rulemaking USDA clarified that the procurement guidelines do not apply to purchases of designated items that are unrelated to or incidental to Federal funding. The commenter stated that ''incidental to federal funding'' should be defined or clarified. According to the commenter, because the Energy Policy Act of 2005 extended the biobased procurement preference program applicability to contractors of the federal government, the question of what constitutes an

incidental purchase becomes important and could benefit from additional clarification, either through regulations or guidance, to ensure federal agencies take a consistent approach. This area seems inherently open to a range of interpretation. For example, one could logically conclude that in a contract that requires submission of a report in paper format, the paper and the recycled material content of the paper would be incidental to the purpose of the contract (i.e., the reporting effort). However, the Federal Acquisition Regulations (FAR) actually contains a specific contract clause, 52.204–4, to ''encourage'' contractors to submit paper documents, such as offers, letters, or reports, printed or copied double-sided on 30 percent post-consumer recycled content paper. The commenter then provided other examples, which were identified to them by the Office of the Federal Environmental Executive.

In conclusion, the commenter recommended that USDA provide some additional regulatory language indicating when procurement is considered incidental to federal funding. The commenter offered the following example. Unless a material procurement meets all three of the following tests it would be considered incidental to the purpose of the contract: (1) The biobased material item is ultimately delivered to the federal government, or is consumed on the government facility as part of performing the contract; (2) The biobased material is not a subcomponent of a commercially available manufactured item (for example, the hydraulic fluid provided in a piece of equipment) unless the industry provides for procuring the item with a biobased component option; and (3) The presence or absence of the biobased material can reasonably be determined from technical data sheets or other available product information.

Response: The definition of ''procuring agency'' in FSRIA section 9001, as amended by the Energy Policy Act of 2005, makes it clear that the requirements of section 9002 apply to ''indirect purchases'' (i.e., purchases by contractors). However, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. For example, when a construction contractor purchases hydraulic fluid for maintenance service of construction equipment being used in the performance of a Federal building construction contract, that purchase is incidental to the purpose of the construction contract. The hydraulic fluid purchase would not be subject to the requirements of section 9002 or the guidelines, even though some of the monies received under the contract might be used to finance the purchase. USDA issued an Interim Final Rule on July 27, 2006 (71 FR 42572) amending the Guidelines at 7 CFR part 2902 to clarify that incidental purchases are excepted. Agencies may, however, encourage contractors to investigate biobased products in order to further develop markets for these products.

Need for Program

Comment: One commenter questioned the need for ''another mandatory preference program.'' According to the commenter, the proposed rule is ''diametrically opposed'' to the Federal Acquisition Reform Act, which is supposed to simplify the Government acquisition process. The commenter concludes that ''unless the manufacturers and vendors of the items listed in the proposed rule can price them competitively (since unreasonable price is an exception to the rule), no [contracting officer] worth their weight will give the program a second look.''

Response: USDA respectfully disagrees with the commenter's assessment of the need and possible outcome of the BioPreferred Program. The Congressional intent in establishing the statutory requirements of section 9002 were clearly spelled out in section 9002 and the subsequent Guidelines. The BioPreferred Program is not intended to make Federal procurement more complicated, only to ensure that procuring agencies give preference to biobased products that meet the cost, performance, and availability criteria. USDA is confident that manufacturers of biobased products will strive to develop and market products that meet these criteria, including cost competitive biobased products.

Qualifying Products and Country of Origin

Comment: One commenter expressed concern about the inability to verify that feedstocks (e.g., palm or palm kernel oil or tallows) used in surfactants originate from domestic sources or from designated countries. According to the commenter, the major sources of palm and palm kernel oil are Malaysia and the Philippines, neither of which is on the FAR list of designated countries and, to their knowledge, there is no production of palm or palm kernel oil in the U.S. or designated countries. Therefore, USDA should not assume feedstocks for biobased products are produced in the U.S. or in FAR-designated countries. The commenter, in referring to the inability of the ASTM D6866 to determine the country of origin of feedstock, stated that feedstock manufacturers will need to certify that the biobased material is produced in the U.S. or in FAR designated countries, and thus is a ''qualifying feedstock,'' and USDA will have to develop a monitoring process to ensure the accuracy of this self-certification.

Response: The commenter is correct in stating that manufacturers will need to self-certify that the biobased material in their qualifying products is produced in the U.S. or in FAR-designated countries. Manufacturers will be required to self-certify that their products meet the minimum biobased content for the designated item under which their product falls and that the product is produced from qualifying feedstock. USDA plans to develop an audit program to monitor compliance with both self-certifications.

Benefits of Rule Not Realized

Comment: One commenter stated that because most surfactants are produced using feedstocks that are not grown in the U.S. or in FAR-designated countries and because substitution of petrochemical-based surfactants such as LAS for biobased surfactants does not necessarily result in lower energy requirements, the proposed rule will neither provide the benefits of increasing domestic production of biobased products nor enhance U.S. energy security.

Response: USDA is aware that not all biobased products within every designated item will yield across-the-board gains in meeting the goals of the BioPreferred Program. The manufacture and use of some biobased products may result in significant reductions in the use of petroleum-derived feedstocks, thus resulting in an ''energy'' savings. The products addressed by the commenter may not yield these savings. However, USDA believes that the designation of items for preferred procurement will provide an incentive for manufacturers to research and develop biobased products that will qualify for the procurement preference. As the markets for additional biobased products develop, there will be added motivation for producers of feedstock materials (such as surfactants) to develop qualifying materials.

Item Specific Comments

Bathroom and Spa Cleaners (Formerly Bath and Tile Cleaners)

Comment: One commenter, in referring to the proposal statement concerning the need for Federal

agencies to compare the cradle-to-grave impacts of the manufacture, use, and disposal of biobased and non-biobased products, pointed out that cradle-to-grave assessments of petrochemical- and oleochemical-based (biobased) surfactants (cleaning agents) used in this item have been conducted using life-cycle inventory and risk assessment methodologies (Pittinger *et al.*, 1993). The commenter also referred to other, more extensive studies conducted in Europe. The commenter pointed out that these assessments found no consistent advantage for biobased versus non-biobased feedstock sources because all surfactants consume energy and raw materials in production and transportation and all release environmental emissions. The commenter then stated that risk assessments found no advantage to oleochemical feedstocks because these risk assessments demonstrate low environmental and health risk for the major surfactants and no major differences in the structures of the surfactants that can be produced with either oleochemical or petrochemical feedstocks, and thus no difference in biodegradation, ecotoxicity, or environmental safety.

A second commenter expressed concern that the applicable life-cycle studies which demonstrate no clear advantage for cleaning product ingredients derived from renewable resources were not referenced and recommended that these studies be considered for inclusion.

Response: As discussed in the response to the previous comment, USDA recognizes that the benefits of various biobased products are not the same. USDA has adopted the BEES life-cycle analysis as a means of providing purchasing agencies with information on the potential benefits and impacts of products within designated items. USDA will also post on the BioPreferred Web site any additional life-cycle studies that are identified. However, USDA has a statutory requirement to designate items for preferred procurement even though the life-cycle benefits of certain feedstock materials (such as surfactants) may be neutral or even less positive for some aspects of the analysis compared to petroleum-based products.

Comment: One commenter recommended that the following two standards developed by ASTM International be included in the ruling—D5343–061, Guide for Evaluating Cleaning Performance of Ceramic Tile Cleaners and D4488–951, Guide for Testing Cleaning Performance of Products Intended for Use on Resilient Flooring and Washable Walls.

Response: USDA will add these two ASTM standards to the list of performance standards identified on the BioPreferred Web site as applicable to the bath and tile cleaners designated item.

Comment: One commenter was concerned that USDA had overlooked many bath and tile cleaners and referred to a California Air Resources Board (CARB) survey which identified 338 tile cleaners sold in California. The commenter was very concerned that USDA's data collection methods are deficient and recommended that USDA conduct a very thorough evaluation of tile cleaners before finalizing the designation of biobased products. The commenter also stated that the BEES and biobased contents obtained may not be representative of all products on the market, representing instead only a small subset of products. The commenter recommended that the rulemaking demonstrate that the products evaluated are representative of the market for these products.

Response: USDA appreciates the information concerning the CARB study, which covered both biobased and non-biobased products. Because one of the purposes of the BioPreferred Program is to identify biobased products for potential preferred procurement, USDA's product investigation efforts did not seek out non-biobased products. USDA identified 16 manufacturers of biobased products within this item, with 29 biobased products being marketed. The range of biobased contents among the eight tested products is from 16 percent to 100 percent.

While USDA has in place a rigorous procedure for identifying products that are biobased, USDA recognizes that its procedure will not uncover all possible biobased products. Based on available data, USDA cannot determine if the samples that were voluntarily submitted by manufacturers are representative of all biobased products within this item. Regardless, USDA believes that it is reasonable to set minimum biobased contents based on the information it does have. If the commenter or others have additional information on the biobased content of other biobased products within this item, USDA encourages the commenter and others to submit that information to USDA. USDA will evaluate the additional information in relationship to the minimum biobased content for this designated item.

For this and all other items, USDA welcomes assistance in identifying manufacturers and their biobased products for the BioPreferred Program. A list of such items can be found on the BioPreferred Web site.

Comment: One commenter was concerned that not all of the products identified in the background information were appropriate to the definition of bath and tile cleaners and recommended that the category be clearly defined and restricted to bath and tile cleaners only. Products identified by the commenter were one described as a ''(product) that eliminates the need to add chemicals to hot tub and spa water'' and four described as toilet bowl cleaners.

Response: USDA acknowledges that some of the products listed in this item may not appear to be traditional ''bath and tile cleaners,'' as the category was described at proposal. After re-examining the products associated with this item, USDA believes that this group of products is better described as ''bathroom and spa cleaners.'' By defining this group of products as ''bathroom and spa cleaners,'' the four toilet bowl products identified by the commenter are more recognizably included in this item. With regard to the product referred to by the commenter as one that ''eliminates the need to add chemicals to hot tub and spa water,'' USDA notes that this product is intended to prevent residue buildup, a function of the eliminated chemicals. It is USDA's view that products that reduce the amount of cleaning required (e.g., by preventing buildup of residue) are properly included in this item.

On a general note, USDA points out that the manufacturers of the various products evaluated for each item decide where and how their products are marketed. Thus, if a manufacturer chooses to submit a product under a given item during the designation process for that item, USDA generally accepts that the manufacturer markets that product under that item. Ultimately, it is the responsibility of the purchasers to decide whether a given product will meet their needs.

Comment: One commenter recommended that this item be subdivided into at least two subcategories. According to the commenter, the formulation, concentration, product form, and other attributes of any product will be dependent on intended use and should be categorized as such. Therefore, the commenter recommended that ''General Purpose'' cleaners not be considered under this proposed rule because of their use in many cleaning scenarios.

Response: In considering the commenter's request to subcategorize

this item, USDA points out that this item (renamed ''bathroom and spa cleaners'' as discussed in the previous response) covers a wide variety of surfaces to be cleaned. Many products that fall within this item are designed to clean a wide variety of surfaces, while others are designed to clean more specific types of surfaces (e.g., fiberglass shower stalls). In addition, the range of biobased contents for all of the tested products (with the exception of the one product with a tested biobased content of 16 percent) is from 77 to 100 percent. USDA sees little benefit to subcategorizing this item when the proposed minimum biobased content of 74 percent (77 percent minus the 3 percentage points to account for test method variability) will allow all but one of the tested products to participate in the preferred procurement program. Therefore, USDA has decided not to subcategorize the item at this time. As additional information on products within this item is obtained, USDA will revisit the commenter's suggestion to subcategorize this item.

Clothing Products

Comment: Two commenters supported the proposed minimum biobased content of 6 percent for this item, stating that this minimum biobased content will help stimulate the continued development of biobased clothing products, which is still in a development stage as evidenced by the identification of only 3 manufacturers and 5 individual biobased products within this item. Both commenters suggested that obtaining more data for clothing products will help USDA to subcategorize this item and to set minimum biobased contents on a subcategory level.

Response: USDA thanks the commenters for their comments and their interest in the BioPreferred Program. As discussed earlier, USDA has decided to withdraw the clothing products item from this rulemaking. USDA will continue to gather data on biobased clothing products as more products are developed. When USDA obtains adequate data to support the designation of clothing products, to evaluate the need for subcategories with the item, and to establish the appropriate minimum biobased content for the item, another proposal notice will be published.

General Purpose De-Icers (Formerly De-Icers)

Comment: One commenter stated that USDA's proposal to set the minimum biobased content for de-icer products is not appropriate at this time. The commenter noted that USDA defined de-icers as ''agents that aid in the removal of snow and ice.'' According to the commenter, because of their different applications, higher performance de-icers are formulated to meet very specific performance requirements. These formulations are often based on performance standards, not only to de-ice, but also to meet other safety and equipment related needs. As such, these higher performance de-icers are usually blends of materials. The commenter concluded by stating that setting a minimum biobased content at 97 percent (essentially a 100 percent biobased product material) will exclude many applications for de-icers that contain or will contain biobased materials and products.

Response: USDA has revised the name of this item to clearly indicate that products that fall within this item are de-icers that are used in ''general purpose applications'' and not in specialized applications, such as the de-icing of airplanes and airport runways. To make the current designated item clearer in its intended coverage, USDA has added ''general purpose'' to the designated item name and references general purpose applications in the definition.

USDA has also revised the minimum biobased content for this item based on the receipt of additional biobased content data since proposal. The biobased contents of the sampled products are now 76, 96, 100, 100, and 100 percent. There is a significant break in the data between the 76 percent and the 96 percent products. USDA investigated the 76 percent product but did not find any performance or applicability claims that would justify creating a subcategory or setting the minimum biobased content based on that product. USDA is, therefore, setting the minimum biobased content for this item at 93 percent, rather than the 97 percent that was proposed. As noted earlier in this preamble, as USDA obtains more information on the biobased contents of other general purpose de-icer products, USDA will evaluate whether or not to revise the minimum biobased content for general purpose de-icers and, if appropriate, propose a change in the minimum biobased content.

USDA agrees with the commenter that de-icers used to de-ice airplanes and airport runways are specialized de-icers and should not be grouped with general purpose de-icers. As noted above, USDA is designating this item under today's rulemaking as ''general purpose de-icers'' and is specifically excluding from this item at this time de-icer products used to de-ice airplanes or airport runways. As suggested by the commenter, USDA will consider creating at a later date one or more subcategories within this item to address unique performance applications as information on de-icer products designed for those applications is available. If and when USDA designates specialized de-icers for preferred procurement, USDA will revise this item as necessary, which may require renaming the item and creating specific categories to cover general purpose de-icers and one or more subcategories, as needed, to cover specialized de-icers.

Lastly, USDA has revised the definition of de-icers to clarify that the item is referring to chemical de-icers, which can include such products as salts and fluids (e.g., alcohols). The item does not include mechanical methods (e.g., scraping) or methods that involve the application of heat (e.g., electric heating elements buried underneath surfaces).

Durable Plastic Films

Comment: One commenter stated that the definition of durable plastic films is vague and needs clarification.

Response: USDA reviewed the definition of the durable films item and the products intended to fall within the item and those that fall within non-durable films, an item proposed for designation for preferred procurement under another rulemaking on August 17, 2006 (Round 3, 71 FR 47590). USDA has decided to combine these two proposed items into one item named ''films'' with a subcategory for semi-durable films and a subcategory for non-durable films. The films designated item is included in the Round 3 final rulemaking. The key differentiation between the non-durable films and the semi-durable films subcategories is that the former are products that are designed and intended for single use, while the latter are designed and intended for reuse. USDA has added this ''re-use'' characteristic to the definition of semi-durable film.

Finally, USDA has dropped ''plastic'' from the name of this item. In the proposal notice for this item, this item was referred to as both ''durable films'' and ''durable plastic films.'' The intent was not to limit this item to ''durable plastic films.'' Therefore, USDA has dropped ''plastic'' from the name of this item.

Comment: One commenter stated that durable (plastic) films, which overlaps with the EPA-designated recovered content product: Plastic trash bags, is overly broad and needs more subcategories, similar to EPA's CPG

program. The commenter stated that this was needed because the minimum biobased content was set based on the testing of two products, but that the appropriate biobased content must be taken into account to ensure its performance and durability.

Two other commenters also stated that USDA needs to establish subcategories first and then establish a minimum biobased content for each of these subcategories. These two commenters were also concerned about the establishment of a minimum biobased content based on only two samples, which the commenters do not believe is representative of the many applications of the products within this item. The commenters stated that this category covers many applications and the selection of specific polymers used to make these films is very dependent on performance requirements for the specific application. The commenters pointed out as an example that durable plastic films are used for higher performance applications such as packaging for food and to achieve these performance requirements, durable films are often made from composites or layers of polymer films in order to meet the required barrier properties, resulting in multi-ingredient, multi-layered films. The commenters believe that setting a high minimum biobased content such as 61 percent will exclude these higher performance applications for the biobased polymers that will be used in these applications and that the minimum biobased content for some of these subcategories will be substantially lower than the one USDA is proposing. Therefore, the commenters believe that USDA's proposal to set the minimum biobased content for durable plastic films is not appropriate at this time.

Further, one commenter stated that USDA should not be setting, at this time, a minimum biobased content level for a product category as complex and diverse as durable plastic films. The commenter stated that USDA needs to establish appropriate subcategories for durable plastic films and then establish minimum biobased contents for each of these subcategories. The other option, according to this commenter, is to significantly lower the minimum biobased content level so higher performance films that contain biobased polymers can be considered for preferential procurement.

Response: USDA appreciates the potential complexity of the various products that this item covers, as described by the commenters, and, as discussed in the previous response, has established two subcategories within the films item.

Firearm Lubricants

Comment: One commenter recommended that USDA set two content levels for this item, one for general purpose and one for cold weather applications. The commenter stated that information in the preamble indicated that these two products had different formulations. The commenter also referred to the statute under which Federal agencies are to purchase USDA-designated biobased products containing the highest percentage of biobased products practicable. According to the commenter, it follows that USDA should recommend minimum biobased contents that are the highest practicable and, for this item, USDA should therefore either recommend a higher minimum biobased content or recommend multiple content levels based on differences in product usage or other characteristics.

Response: USDA agrees with the commenter that this item is a likely candidate for subcategorization. However, as discussed earlier in this preamble, USDA does not have sufficient information related to product formulation and performance to justify subcategorization at this time. Also, because only one manufacturer of a product that is described as a cold weather lubricant has been identified, the effective procurement date for that subcategory, if sufficient data were available to justify creating a subcategory, would be deferred until at least one additional manufacturer is identified. USDA will continue to gather information for this item and will create subcategories within the item in a future rulemaking if sufficient justification can be obtained.

Laundry Products

Comment: One commenter, in referring to the proposal statement concerning the need for Federal agencies to compare the cradle-to-grave impacts of the manufacture, use, and disposal of biobased and non-biobased products, pointed out that cradle-to-grave assessments of petrochemical and oleochemical-based (biobased) surfactants (cleaning agents) used in this item have been conducted using life-cycle inventory and risk assessment methodologies (Pittinger *et al.*, 1993). The commenter also referred to other, more extensive studies conducted in Europe. The commenter pointed out that these assessments found no consistent advantage for biobased versus non-biobased feedstock sources because all surfactants consume energy and raw materials in production and transportation and all release environmental emissions. The commenter then stated that risk assessments found no advantage to oleochemical feedstocks because these risk assessments demonstrate low environmental and health risk for the major surfactants and no major differences in the structures of the surfactants that can be produced with either oleochemical or petrochemical feedstocks, and thus no difference in biodegradation, ecotoxicity, or environmental safety.

Response: This commenter's concerns have been addressed by USDA in the section of this preamble that presents comments and responses related to the designated item for bathroom and spa cleaners.

Comment: One commenter recommended that the statement referring to the ''* * * skin-irritating residues and * * * toxic chemicals'' in the definition of this item be omitted from the ruling, as this statement has no bearing on the final ruling.

Response: USDA agrees with the commenter that the referenced statement is not needed in the rulemaking language and has removed it from the definition.

Comment: One commenter recommended the following ASTM guides be included in the ruling: D2960–51, Guide for Controlled Laundering Test Using Naturally Soiled Fabrics and Household Appliances; D5237–051, Guide for Evaluating Fabric Softeners; and D5548–0051, Guide for Evaluating Color Transfer or Color Loss of Dyed Fabrics in Laundering. The commenter also recommended that the American Home Appliance Manufacturers standards be included. According to the commenter, these ASTM standards are designed, approved, and used by laundry product manufacturers to evaluate product performance.

Response: USDA thanks the commenter for their input to the designation process and will add the information provided by the commenter to the list of test methods and performance standards for laundry products on the BioPreferred Web site.

Comment: One commenter recommended that USDA subcategorize laundry products by each of the product descriptions—(1) Laundry detergents, (2) bleach, (3) starch, (4) stain remover, (5) fabric softeners, etc. According to the commenter, the proposed subcategories of ''general purpose'' products and ''pretreatment/spot removers'' do not accurately reflect the differences in formulations, product form, and intended use of the various laundry products. The commenter also

recommended that fabric softeners be divided into washer and dryer products because of the differences in delivery system (liquid penetration versus deposition through a heated tumbling dryer).

Response: USDA agrees with the commenter that this item should be subcategorized and, based on current performance information, has retained the two proposed subcategories in the final rule. Under this rulemaking, USDA has created two subcategories: (1) Pretreatment/spot removers and (2) general purpose laundry products. USDA anticipates creating additional subcategories once sufficient information is obtained. USDA encourages the provision of additional information on other laundry products for which manufacturers believe additional subcategories should be developed.

For the two subcategories being designated in this rulemaking, USDA is setting the minimum biobased contents as follows:

For pretreatment/spot removers, USDA has 6 biobased content test results (11, 19, 49, 54, 54, and 83 percent). There are two significant breaks in the range of data, one between the 19 percent product and the 49 percent product and another between the 54 percent product and the 83 percent product. USDA found no product performance features to justify setting the minimum biobased content on the products with 11 and 19 percent biobased content. USDA also chose not to set the minimum biobased content on the one product with 83 percent biobased content because doing so would significantly limit the available product choices for federal procuring agencies. Because the majority of the remaining products were clustered around the middle of the range, USDA is setting the minimum biobased content for the pretreatment/spot removers subcategory at 46 percent.

For general purpose laundry products, four products were tested. Their biobased contents were 37, 39, 40, and 46 percent. USDA is setting the minimum biobased content for general purpose laundry products subcategory at 34 percent because the range of the data is narrow and there are no breaks in the data that would indicate that further subcategorization is justified.

As additional information is obtained, USDA will revisit this item to determine whether the minimum biobased content for either subcategory should be changed or if additional subcategories should be developed.

Additional information can be found in Chapter 3.0 of the Technical Support for Final Rule—Round 4 Designated Items, which can be found on the BioPreferred Web site.

Comment: One commenter recommended that a more thorough industry investigation be conducted prior to the publication of a final rule by conducting more analyses on products not found in the initial investigation. The commenter stated that they were concerned that USDA's collection methods were deficient because so few of products formed the basis of the proposed rule. The commenter referred to two CARB surveys which identified 92 laundry detergents, 360 spot removers, 56 prewash products, 68 brighteners, 47 detergent boosters, and 21 fabric wash products for sale in the state of California alone. The commenter was very concerned that USDA's data collection methods are deficient and recommended that USDA conduct a very thorough evaluation of laundry products. The commenter also stated that the BEES and biobased contents obtained may not be representative of all products on the market, as only five products were evaluated for biobased content and one for BEES analysis. The commenter recommended that testing be performed on at least one proposed category to accurately reflect the market for these products.

Response: USDA appreciates the information concerning the CARB study, which covered both biobased and non-biobased products. Because one of the purposes of the BioPreferred Program is to identify biobased products for potential preferred procurement, USDA's product investigation efforts did not seek out non-biobased products. USDA identified 17 different manufacturers of biobased products within this item (including both subcategories), with 45 biobased products being marketed.

While USDA has in place a rigorous procedure for identifying products that are biobased, USDA recognizes that its procedure will not uncover all possible biobased products. Even with the subcategorization of this item in the final designation, USDA does not know whether or not the biobased contents it has obtained are or are not representative of all biobased products within this item. Regardless, USDA believes that it is reasonable to set minimum biobased contents based on the information it does have. If the commenter or others have additional information on the biobased content of other biobased products within this item, USDA encourages the commenter and others to submit that information to USDA. USDA will evaluate the additional information in relationship to the minimum biobased content for this designated item.

For this and all other items, USDA welcomes assistance in identifying manufacturers and their biobased products for the BioPreferred Program. A list of such items can be found on the BioPreferred Web site.

Comment: One commenter was concerned that not all of the products identified in the background information were appropriate to the definition of laundry products and recommended that the category be clearly defined and restricted to laundry products only. The commenter identified one product whose product's description states, ''(product) for all your soft household surfaces, closets and storage areas. It is all natural with light but long-lasting fragrance for freshness on your carpets, sofas, draperies, etc. It is excellent when used to freshen drawers and closets.''

Response: USDA acknowledges that some of the products listed in this item may not appear to be traditional ''laundry products.'' The product referred to by the commenter is also described as a product that ''can be used as a fabric freshener when ironing.'' This product would not fall within the two subcategories being created under this rulemaking. However, if USDA were to create a ''fabric freshener'' subcategory under Laundry Products, such an item would be appropriately included.

On a general note, as mentioned earlier in this preamble, USDA points out that the manufacturers of the various products evaluated for each item decide where and how their products are marketed. Thus, if a manufacturer chooses to submit a product under a given item during the designation process for that item, USDA generally accepts that the manufacturer markets that product under that item. Ultimately, it is the responsibility of the purchasers to decide whether a given product will meet their needs.

Metalworking Fluids (Formerly Cutting, Drilling, and Tapping Oils)

Comment: One commenter recommended that USDA set two content levels for this item for various uses or viscosities. The commenter stated that information in the preamble and in the background information posted on the BioPreferred Web site indicated that the differences in biobased content reflected differences in use or viscosity. The commenter also referred to the statute under which Federal agencies are to purchase USDA-designated biobased products

containing the highest percentage of biobased products practicable. According to the commenter, it follows that USDA should recommend minimum biobased contents that are the highest practicable and, for this item, USDA should therefore either recommend a higher minimum biobased content or recommend multiple content levels based on differences in product usage or other characteristics.

One commenter stated that some products originally included in the metalworking fluids item are sold ''neat,'' but are formulated to be emulsifiable and are intended to be mixed with water prior to use. The commenter, therefore, recommended that the definition be revised to use the following language: ''This item applies only to neat oils, not to water emulsions or products intended to be emulsified with water prior to use.''

One commenter suggested that, based on the data in the background information, the minimum biobased content for proposed metalworking fluids item should be higher than the proposed 40 percent or that USDA establish multiple content levels reflecting differences in product use. Alternatively, the commenter suggested that USDA consider recommending a range, similar to the ranges the EPA recommends for recycled content products.

Response: As a result of these comments received on the proposed cutting, drilling, and tapping oils item and the Round 2 proposed metalworking fluids item, USDA has combined the two proposed items into a single item with subcategories. The following paragraphs present USDA's rationale for this change.

First, USDA notes that metalworking fluids are generally classified into four types: Straight oils, soluble oils (also called emulsified oils), semi-synthetic fluids, and synthetic fluids. (The source of these classifications came from the Occupational Safety and Health Administration's ''Metalworking Fluids: Safety and Health Best Practices'' Manual. See Appendix C in the document Technical Support for Final Rule—Round 4 Designated Items, which can be found on the BioPreferred Web site.) Of these, only straight oils are designed not to be diluted with water prior to use. To account for the four types of metalworking fluids, USDA has divided them into two groups of products. One group includes straight oils, which are used in metalworking operations where lubrication rather than cooling is the primary concern. Such metalworking operations include cutting, drilling, and tapping. The other group of products includes soluble, semi-synthetic, and synthetic oils that are formulated to be diluted with water prior to use.

Second, USDA re-examined the products contained in each of the proposed items. Almost all of the products within the proposed cutting, drilling, and tapping oils item are straight oils designed to be used to perform multiple metalworking operations, including cutting, drilling, and/or tapping. (See Chapter 4.0 of the Technical Support for Final Rule—Round 4 Designated Items, which can be found on the BioPreferred Web site.) In other words, these straight oil metalworking fluids are inherently multipurpose straight oils. Their particular formulations are not directly related to their intended use. Therefore, USDA does not believe it is reasonable to try to further subcategorize these straight oil products based on various uses or formulation, including viscosity, as suggested by the commenter.

USDA reviewed the products within the soluble, semi-synthetic, and synthetic oils group of products and agrees with the commenter's recommendation that these products be divided into two subcategories. Based on the variations in types of metal (e.g., steel versus aluminum) and processes (e.g., grinding versus cutting) that may be encountered in operations that use these metalworking fluids, USDA has divided soluble, semi-synthetic, and synthetic oils into two subcategories—''high performance'' and ''general purpose.'' USDA believes that by establishing these two subcategories of soluble, semi-synthetic, and synthetic oils, qualifying biobased products will be available to cover the range of procuring agencies' needs.

Third, USDA has set the minimum biobased contents for the three subcategories of metalworking fluids as follows. For the straight oils subcategory of metalworking fluids, USDA has biobased content data for 12 products, as follows: 69, 76, 76, 78, 87, 89, 94, 94, 96, 98, 100, and 100 percent. Because the range of these values is fairly narrow and because there are no obvious breaks in the data, USDA set the minimum biobased content at 66 percent, based on the 69 percent biobased product. For the general purpose soluble, semi-synthetic, and synthetic oils subcategory of metalworking fluids, USDA has biobased content for 14 products, as follows: 60, 66, 67, 67, 76, 77, 77, 79, 80, 84, 90, 98, 98, and 100 percent. As with the straight oils subcategory, there were no readily identifiable breaks in the data that would indicate a need for further subcategorizing these products. Therefore, USDA has set the minimum biobased content for this subcategory at 57 percent, based on the 60 percent biobased product. For the high performance soluble, semi-synthetic, and synthetic oils subcategory of metalworking fluids, the minimum biobased content was set at 40 percent because both of the tested products have biobased contents of 43 percent.

Wood and Concrete Sealers

Comment: One commenter stated that this item should be split into two categories—one for wood sealers and one for concrete sealers—and should use nomenclature, if possible, that conforms with that found in 40 CFR part 59, National VOC Emission Standards for Architectural Coatings. According to the commenter, 40 CFR Part 59 defines ''waterproofing sealer and treatment'' separately from ''wood preservative'' and also separately defines ''concrete protective coating.'' The commenter provided the following definitions:

- Concrete protective coating means a high-build coating, formulated and recommended for application in a single coat over concrete, plaster, or other cementitious surfaces. These coatings are formulated to be primerless, one-coat systems that can be applied over form oils and/or uncured concrete. These coatings prevent splitting of concrete in freezing temperatures by providing long-term protection from water and chloride ion intrusion.
- Waterproofing sealer and treatment means a coating formulated and recommended for application to a porous substrate for the primary purpose of preventing the penetration of water. Wood preservative means a coating formulated and recommended to protect exposed wood from decay or insect attack, registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, *et seq.*).

Typically, paint and sealing products are substrate-specific. Designating two substrates under one item increases the potential for confusion, complicates compliance with architectural coating VOC regulations, and has no advantage over designating them separately. When procuring architectural coatings, the commenter typically makes reference to commercial item descriptions based on Master Painter Institute (MPI) specifications. These specifications will typically address products intended for application to concrete substrates separately from products for application to wood. Biobased product vendors should be encouraged to conform any paint or sealant products to these specifications to facilitate purchasing. In

the commenter's experience, they would rarely apply a product to concrete solely for water resistance. More typically, sealers are applied that also provide resistance to oil and gasoline. The commenter also stated that, based on their experience, they would rarely apply a product to wood (e.g., to wood decking) that did not also confer slip resistance. This implies that procurement of the sealing products—as USDA is contemplating the definition—might not result in significant amounts of federal purchasing activity.

Response: At proposal, USDA had biobased content data on products designed for sealing wood, concrete, or both. Specifically, the biobased content data showed wood sealers with tested biobased contents of 82, 91, and 91 percent; a concrete sealer with a biobased content of 82 percent; and a wood and concrete sealer with a biobased content of 82 percent. Based on this data, USDA proposed a minimum biobased content of 79 percent for the item.

The products tested at proposal for their biobased contents were all formulated to work as penetrating liquids. Since proposal, USDA has obtained biobased content test results for several products formulated to work as membrane-type sealers and to be used for masonry substrates. The biobased contents for these products are 14, 22, 23, and 62 percent. Given the apparent difference in biobased content between the two formulations of sealers, USDA has developed two subcategories within this item based on product formulation rather than on substrate. These two subcategories are: (1) penetrating liquids and (2) membrane concrete sealers.

For the penetrating liquids subcategory, the current biobased content data points are 82, 82, 85, 88, and 91 percent. Because the range of these data points is very narrow and because three of the four data points are between 82 and 85 percent, USDA is setting a minimum biobased content of 79 percent for the penetrating liquids subcategory based on the 82 percent products.

For the membrane concrete sealers, the biobased content data points are 14, 22, 23, and 62 percent. There is a significant break in the data between the 23 percent product and the 62 percent product. USDA investigated the 62 percent product but does not have sufficient product performance information to support further subcategorization. Because three of the four data points range from 14 percent to 23 percent, and no further subcategorization can be supported, the minimum biobased content for the membrane concrete sealers subcategory is set at 11 percent.

V. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

This action has been determined significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We are not able to quantify the annual economic effect associated with this final rule. As discussed in the proposed rule, USDA made extensive efforts to obtain information on the Federal agencies' usage within the eight designated items, including their subcategories. These efforts were largely unsuccessful. Therefore attempts to quantify the economic impact of this rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing designated items if costs are ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of this rulemaking. This assessment was based primarily on the offsetting nature of the program (an increase in biobased products purchased with a corresponding decrease in petroleum products purchased). Consideration was also given to the fact that agencies may choose not procure designated items due to unreasonable costs.

1. Summary of Impacts

This rulemaking is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by this rule. The rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance and costs of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Rule

The designation of these eight items, including their subcategories, provides the benefits outlined in the objectives of section 9002: To increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas; and to substitute products with a possibly more benign or beneficial environmental impact, as compared to the use of fossil energy-based products. On a national and regional level, this rule can result in expanding and strengthening markets for biobased materials used in these items.

3. Costs of the Rule

Like the benefits, the costs of this rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Procurement costs for Federal agencies may rise as they evaluate the availability and relative cost of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

When an agency issues a final rule following a proposed rule, the Regulatory Flexibility Act (RFA, 5 U.S.C. 601–612) requires the agency to prepare a final regulatory flexibility analysis. 5 U.S.C. 604. However, the requirement for a final regulatory flexibility analysis does not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

USDA evaluated the potential impacts of its designation of these items to

determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal Procurement of Biobased Products under section 9002 of FSRIA applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, this rule will not have a significant economic impact on small governmental jurisdictions. USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers. Conversely, the preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. However, this rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items under certain conditions relating to the availability, performance, or cost of biobased items. This rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials. Thus, the economic impacts of this rule are not expected to be significant.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market products within the items and their subcategories designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses affected by this rulemaking is not expected to be substantial.

After considering the economic impacts of this rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of biobased materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

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

Today's rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this rule is currently approved under OMB control number 0503–0011.

J. Government Paperwork Elimination Act Compliance

The Office of Energy Policy and New Uses is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504 note), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated item. For information pertinent to GPEA compliance related to this rule, please contact Marvin Duncan at (202) 401–0461.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

■ For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Add §§ 2902.35 through 2902.42 to subpart B to read as follows:

§ 2902.35 Bathroom and spa cleaners.

(a) *Definition.* Products that are designed to clean and/or prevent deposits on surfaces found in bathrooms and spas including, but not necessarily limited to, bath tubs and spas, shower stalls, shower doors, shower curtains, and bathroom walls, floors, doors, and counter and sink tops. Products in this item may be designed to be applied to a specific type of surface or to multiple surface types. They are available both in concentrated and ready-to-use forms.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 74 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bathroom and spa cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bathroom and spa cleaners.

§ 2902.36 Concrete and asphalt release fluids.

(a) *Definition.* Products that are designed to provide a lubricating barrier between the composite surface materials (e.g., concrete or asphalt) and the container (e.g., wood or metal forms, truck beds, roller surfaces).

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 87 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete and asphalt release fluids. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased concrete and asphalt release fluids.

§ 2902.37 General purpose de-icers.

(a) *Definition.* Chemical products (e.g., salt, fluids) that are designed to aid in the removal of snow and/or ice, and/or in the prevention of the buildup of snow and/or ice, in general use applications by lowering the freezing point of water. Specialized de-icer products, such as those used to de-ice aircraft and airport runways, are not included.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 93 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased general purpose de-icers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased general purpose de-icers.

§ 2902.38 Firearm lubricants.

(a) *Definition.* Lubricants that are designed for use in firearms to reduce the friction and wear between the moving parts of a firearm, and to keep the weapon clean and prevent the formation of deposits that could cause the weapon to jam.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 49 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased firearm lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased firearm lubricants.

§ 2902.39 Floor strippers.

(a) *Definition.* Products that are formulated to loosen waxes, resins, or varnishes from floor surfaces. They can be in either liquid or gel form, and may also be used with or without mechanical assistance.

(b) *Minimum biobased content.* The preferred procurement product must have a minimum biobased content of at least 78 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased floor strippers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased floor strippers.

§ 2902.40 Laundry products.

(a) *Definitions.* (1) Products that are designed to clean, condition, or otherwise affect the quality of the laundered material. Such products include but are not limited to laundry detergents, bleach, stain removers, and fabric softeners.

(2) Laundry products for which preferred procurement applies are:

(i) *Pretreatment/spot removers.* These are laundry products specifically used to pretreat laundry to assist in the removal of spots and stains during laundering.

(ii) *General purpose laundry products.* These are laundry products used for regular cleaning activities.

(b) *Minimum biobased content.* The minimum biobased content shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the preferred procurement product are:

(1) Pretreatment/spot removers—46 percent.

(2) General purpose laundry products—34 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased laundry products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased laundry products.

§ 2902.41 Metalworking fluids.

(a) *Definition.* (1) Fluids that are designed to provide cooling, lubrication, corrosion prevention, and reduced wear on the contact parts of machinery used for metalworking operations such as cutting, drilling, grinding, machining, and tapping.

(2) Metalworking fluids for which preferred procurement applies are:

(i) *Straight oils.* Metalworking fluids that are not diluted with water prior to use and are generally used for metalworking processes that require lubrication rather than cooling.

(ii) *General purpose soluble, semi-synthetic, and synthetic oils.* Metalworking fluids formulated for use in a re-circulating fluid system to provide cooling, lubrication, and corrosion prevention when applied to metal feedstock during normal grinding and machining operations.

(iii) *High performance soluble, semi-synthetic, and synthetic oils.* Metalworking fluids formulated for use in a re-circulating fluid system to provide cooling, lubrication, and corrosion prevention when applied to metal feedstock during grinding and machining operations involving unusually high temperatures or corrosion potential.

(b) *Minimum biobased content.* The minimum biobased content shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the preferred procurement product are:

(1) Straight oils—66 percent.

(2) General purpose soluble, semi-synthetic, and synthetic oils—57 percent.

(3) High performance soluble, semi-synthetic, and synthetic oils—40 percent.

(c) *Preference compliance date.* (1) *Straight oils.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased metalworking fluids—straight oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased metalworking fluids—straight oils.

(2) *General purpose soluble, semi-synthetic, and synthetic oils.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased metalworking fluids—general purpose soluble, semi-synthetic, and synthetic oils. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased metalworking fluids—general purpose soluble, semi-synthetic, and synthetic oils.

(3) *High performance soluble, semi-synthetic, and synthetic oils.* Determination of the preference compliance date for metalworking fluids—high performance soluble, semi-synthetic, and synthetic oils is deferred until USDA identifies two or more manufacturers of biobased products within this subcategory. At that time, USDA will publish a document in the **Federal Register** announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased metalworking fluids—high performance soluble, semi-synthetic, and synthetic oils.

§ 2902.42 Wood and concrete sealers.

(a) *Definition.* (1) Products that are penetrating liquids formulated to protect wood and/or concrete, including masonry and fiber cement siding, from damage caused by insects, moisture, and decaying fungi and to make surfaces water resistant.

(2) Wood and concrete sealers for which preferred procurement applies are:

(i) *Penetrating liquids.* Wood and concrete sealers that are formulated to penetrate the outer surface of the substrate.

(ii) *Membrane concrete sealers.* Concrete sealers that are formulated to form a protective layer on the surface of the substrate.

(b) *Minimum biobased content.* The minimum biobased content shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the preferred procurement product are:

(1) Penetrating liquids—79 percent.

(2) Membrane concrete sealers—11 percent.

(c) *Preference compliance date.* No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wood and concrete sealers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased wood and concrete sealers.

Dated: May 2, 2008.

Harry Baumes,

Associate Director, Office of Energy Policy and New Uses, U.S. Department of Agriculture.

[FR Doc. E8–10116 Filed 5–13–08; 8:45 am]

BILLING CODE 3410–GL–P



Federal Register

Wednesday,
May 14, 2008

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 700

Magnuson-Stevens Act Provisions; Environmental Review Process for Fishery Management Actions; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 700

[Docket No. 070824479–8107–02]

RIN 0648–AV53

Magnuson-Stevens Act Provisions; Environmental Review Process for Fishery Management Actions

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would revise and update the NMFS procedures for complying with the National Environmental Policy Act (NEPA) in the context of fishery management actions developed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These regulations are modeled on the Council of Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA, 40 CFR parts 1500–1508, with specific revisions to the existing NMFS procedures made pursuant to the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA). The procedures are designed to conform to the timelines for review and approval of fishery management plans and plan amendments developed pursuant to the MSA. Further, these procedures are intended to integrate applicable environmental analytical procedures, including the timeframes for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to the MSA in order to provide for timely, clear, and concise analysis that is useful to decisionmakers and the public, reduce extraneous paperwork, and effectively involve the public.

DATES: Comments must be received by 5 p.m., EST, on August 12, 2008.

ADDRESSES: You may submit comments on this proposed rule or the associated Regulatory Impact Review (RIR), identified by 0648–AV53, by any of the following methods:

- *Mail:* Alan Risenhoover, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, SSMC 3, Silver Spring, MD 20910.
- *Fax:* (301) 713–0596.
- *E-mail: NEPAprocedures@noaa.gov.* Include in the subject line of the e-mail the following document identifier: ''MSA Environmental Review Procedures''
- *Federal e Rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Copies of the Regulatory Impact Review (RIR) prepared for this action may be obtained from Alan Risenhoover at the address above. Requests should indicate whether paper copies or electronic copies on CD–ROM are preferred. This document is also available at the following Web site: *http://www.nmfs.noaa.gov/msa2007/implementation.htm.*

FOR FURTHER INFORMATION CONTACT: Marian Macpherson at 251–751–0650, e-mail: *Marian.Macpherson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Marine Fisheries Service (NMFS) proposes new regulations to establish procedures by which NMFS and the regional Fishery Management Councils (FMCs), established under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), will comply with the National Environmental Policy Act (NEPA) when preparing fishery management actions pursuant to the MSA. NMFS issues this proposed rule to comply with the requirements of section 107 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA), Pub. L. 109–479. NMFS proposes specific provisions in the following areas.

1. Form of documentation: The proposed rule would retain the use of Environmental Assessments (EAs), Findings of No Significant Impact (FONSIs), and Categorical Exclusions (CEs) where appropriate, and would establish two new forms of documentation for actions with potentially significant environmental impacts: the Integrated Fishery Environmental Management Statement (IFEMS) and the Memorandum of Framework Compliance.

2. Roles and Responsibilities: This proposed rule would clarify the roles of the FMCs and NMFS in the development and approval of fishery management measures and actions.

3. Timelines and Flow of Process: The proposed rule would build flexibility into the timelines for complying with NEPA in order to allow for compliance with NEPA within an MSA context.

4. Alternatives to be Analyzed: This proposed rule would clarify what ''reasonable alternative'' and ''no action'' alternative mean in the context of fishery management.

5. Exempted Fishing Permits (EFPs): This proposed rule would establish a new CE for certain types of EFPs where impacts have been analyzed within an overarching analysis.

6. Incomplete or unavailable information: This proposed rule would clarify how NEPA's requirements concerning incomplete and unavailable information and conflicts of interest are applicable to MSA actions.

7. Emergency or interim rules: This proposed rule would allow for programmatic arrangement with the Council on Environmental Quality (CEQ) to address page limits of IFEMS and NEPA requirements for emergency and interim rules.

I. Statutory Overview

A. The Magnuson-Stevens Fishery Conservation and Management Act

The MSA, 16 U.S.C. 1801 *et seq.*, established a national program to manage and conserve the marine fisheries of the United States. Under this system, the United States exercises sovereign rights and exclusive fishery management authority as provided in 16 U.S.C. 1811. Specifically, the Secretary of Commerce (Secretary), acting through the NMFS, oversees and manages our nation's domestic fisheries through the development and implementation of fishery management plans and actions (e.g., fishery management plans (FMPs), amendments, frameworks, annual specifications, regulations, etc.). For most domestic fisheries, the MSA requires management decisions to be based on recommendations from unique advisory bodies, the FMCs. In certain circumstances, NMFS may develop management measures or actions on its own.

The MSA management system is unique insofar as Congress has authorized the FMCs to develop and recommend fishery management measures and actions to NMFS. Comprised of Federal, state, and territorial fishery management officials, participants in commercial and recreational fisheries, and other individuals with scientific experience or training in fishery conservation and

management, the FMCs' primary responsibility is to develop and recommend fishery management measures and actions for any fishery under their jurisdiction that is in need of conservation and management. Specifically, MSA section 302(h)(1) (16 U.S.C. 1852(h)(1)) requires FMCs to prepare and submit to NMFS FMPs for fisheries in need of conservation and management. Section 303(c) of the MSA requires FMCs to submit to NMFS regulations that the FMCs deem necessary and appropriate to implement the FMP. The MSA mandates an open, public process for the development of fishery management measures and actions through the FMC system.

The MSA establishes strict timelines and limited discretion for Secretarial review of FMC-recommended measures and actions. For FMPs and FMP amendments, upon receipt of an FMC's complete submission, NMFS must immediately commence a review of the recommendation to determine whether it is consistent with the national standards, other provisions of the MSA, and other applicable law. NMFS is also required immediately (within 5 days) to publish a notice in the **Federal Register** informing the public that the FMP or FMP amendment is available for a 60-day public review and comment period. Thereafter, NMFS evaluates the public comments received during the comment period. NMFS must also complete any necessary consultations with other federal agencies prior to the MSA's deadline for a final decision. If, after undertaking the requisite review, NMFS determines that the recommended FMP or FMP amendment complies with the standards and provisions of the MSA and is consistent with other applicable law, including NEPA, NMFS must approve it on behalf of the Secretary. If the recommendation does not comply with these requirements, NMFS must disapprove or partially approve it and provide the FMC with recommendations for actions the FMC could take to conform the FMP or FMP amendment to the applicable requirements. The MSA does not allow NMFS to substitute a different management alternative for that recommended by the FMC. If NMFS fails to notify the FMC within 30 days of the end of the comment period of the recommendation's approval, disapproval, or partial approval, the plan or amendment takes effect as if approved.

For proposed regulations recommended by an FMC to implement an FMP or FMP amendment, the MSA provides NMFS 15 days to review proposed regulations to determine consistency with the underlying FMP or FMP amendment before publishing the proposed regulations for a 15–60 day comment period. A final rule must be promulgated within 30 days of the close of the comment period on the proposed rule.

In certain situations, the MSA allows NMFS to develop fishery management measures and actions outside of the FMC process, subject to separate procedural requirements. For example, section 304(c) authorizes NMFS to prepare a Secretarial FMP or FMP amendment if: (1) A fishery is in need of conservation and management and the appropriate FMC fails to develop and submit, after a reasonable time, an FMP or FMP amendment; (2) NMFS disapproves or partially disapproves an FMP or FMP amendment, or disapproves a revised FMP or FMP amendment, and the FMC involved fails to submit a revised or further revised FMP or FMP amendment; or (3) NMFS is given authority to prepare an FMP or FMP amendment under section 304 of the MSA, such as FMPs or FMP amendments pertaining to any highly migratory species (HMS) fishery to which section 302(a)(3) of the MSA applies. Procedures for these types of ''Secretarial'' actions, which are specified in MSA section 304(c), (e) and (g), provide for public and FMC input into their development. Section 305(d) provides additional authority for NMFS, on behalf of the Secretary, to promulgate regulations necessary to carry out its responsibilities under the MSA.

In this proposed rule, the term ''fishery management measure'' refers to management strategies contained in FMPs, FMP amendments and regulations, including but not limited to closed areas, quotas, and size limits as contemplated in MSA section 303(a)(1) (16 U.S.C. 1853(a)(1)). The term ''fishery management action'' refers to actions NMFS takes to implement the measures contained in an FMP, including but not limited to the promulgation of regulations and the establishment of dates of closures as contemplated in MSA section 305(f) (16 U.S.C. 1855(f)). In developing and recommending an FMP, FMP amendment or regulation, FMCs may consider and include both measures and actions. The NEPA provisions described in this proposed rule are intended to cover all such recommendations.

B. NEPA's Relationship to the MSA Process

NEPA is the fundamental national charter for environmental protection. As the Supreme Court has noted, NEPA Section 102 (42 U.S.C. 4332) requires Federal agencies to examine the environmental effects of proposed Federal actions and to inform the public of the environmental impacts considered in an agency's decision-making process. See, e.g., *DOT* v. *Public Citizen,* 541 U.S. 752, 768 (2004). NEPA does not mandate a particular substantive outcome; rather, NEPA is a procedural statute, the purpose of which is to protect the environment by requiring Federal agencies to carefully weigh environmental considerations in their decision-making processes, including alternatives to their proposed actions, before taking final action. An essential element of the NEPA process, as highlighted in CEQ's regulations, is the requirement to make relevant environmental information available to the public and afford the public an opportunity to participate in the agency's decision-making process. Ultimately, NEPA is designed to ensure that Federal agencies utilize a sound and public process in making decisions that affect the environment, and to ensure that agencies consider the environmental impacts of, and alternatives to, their proposed actions.

Through these proposed regulations, NMFS seeks to better integrate NEPA into the unique FMC process established by the MSA. For MSA actions, the scope of NMFS's authority to modify FMC-recommended fishery management plans and plan amendments is narrow: NMFS may approve, disapprove, or partially approve a proposed FMP or FMP amendment recommended by the FMC, and the sole basis for disapproval of any such recommendation is that it is not consistent with applicable law, including NEPA, the MSA and its national standards. Applying NEPA solely to the Secretary's limited discretion under the MSA cannot foster the type of informed consideration of the effects of the action in light of reasonable alternatives that NEPA envisions. Because policy recommendations are developed and alternatives narrowed through the public forum of FMC meetings, it is important to integrate the analysis of alternatives and impacts for the NEPA analysis with the FMC's development of recommended management measures and actions. For this reason, NMFS addresses several key issues in this proposed rule: (1) The different roles of FMCs and NMFS under the MSA, as advisory bodies and decision-maker respectively, as those roles relate to NEPA's requirements; (2) the integration of statutory and regulatory timelines to provide for timely responses to fishery resource management needs; and (3) the

complexities of defining the appropriate range of alternatives for analysis.

C. MSRA Requires Revised and Updated Agency Procedures to Comply With NEPA

In December 2006, the U.S. Congress acted to amend the MSA through the MSRA, which was subsequently signed into law by the President on January 12, 2007. Pub. L. 109–479. The MSRA addresses a number of fisheries issues, but pertinent to this rulemaking is section 107, which imposes a requirement that NMFS better integrate and more closely align applicable environmental analytical procedures with the MSA's fishery management process.

Congress directed the Secretary, acting through NMFS, and in consultation with the FMCs and CEQ, to revise and update agency procedures to comply with NEPA. Congress stated that the procedures shall:

> (A) conform to the [MSA's] time lines for review and approval of fishery management plans and amendments under this section; and
>
> (B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork and effectively involving the public.

16 U.S.C. 1854(i)(1)(A) and (B).

Moreover, Congress stated that the revised and updated procedures are to be the sole environmental impact assessment procedures for fishery management actions (e.g., FMPs, FMP amendments, or other actions taken or approved pursuant to the MSA) used by the FMCs or NMFS. 16 U.S.C. 1854(i)(2). Finally, Congress authorized and directed NMFS, in cooperation with CEQ and the FMCs, to involve the affected public in the development of the revised procedures.

The MSRA's legislative history reveals Congress' interest in gaining efficiencies in the MSA's environmental review process. Specifically, the Senate Report accompanying the MSRA contained the following language: ''[t]he intent is not to exempt the Magnuson-Stevens Act from NEPA or any of its substantive environmental protections, including those in existing regulation, but to establish one consistent, timely, and predictable regulatory process for fishery management decisions * * * [t]he Committee intends section 107 to streamline this environmental review process in the context of fishery management.'' S. Rept. 109–229, at 8.

II. NMFS' Implementation Efforts

A. Consultations and Public Outreach

As required by the MSRA, NMFS has consulted with CEQ and the FMCs, and has initiated public involvement in the development of the revised procedures. In the spring of 2007, NMFS and the FMCs conducted two separate forms of outreach. NMFS posted a series of trigger questions on the Internet, soliciting public input on how the process should be revised. At about the same time, the FMCs' Council Coordinating Committee (CCC) developed a strawman proposal for revised procedures. Both the CCC strawman and NMFS' questions were posted on the agency's Web site for a 60-day public comment period. Moreover, each of the eight FMCs held public listening sessions at their respective FMC meetings between February and April 2007.

NMFS received a total of 1,660 comments, all but 8 of which were form letters that expressed general disapproval of the CCC strawman. The remaining eight comments were submitted by a variety of environmental and fishery-related organizations and reflected a wide range of opinions on the new procedures in general, the CCC strawman, and the trigger questions. The main topics addressed by the commenters were:

1. *Need for/Authority to Change Regulations/Guidance.* There is disagreement about the legislative intent of the MSRA with regard to revision of the agency's NEPA procedures, the need for changes to the NEPA procedures, the timeframes for public review of NEPA documents, and the adequacy of the existing process to meet NEPA requirements and fishery management needs.

2. *Roles of FMCs and NMFS.* There are opposing opinions about whether FMCs or NMFS should have the lead on conducting the NEPA process. One environmental organization proposed a specific alternative approach to that set forth in the CCC strawman.

3. *Using the FMC Process to comply with NEPA.* There is disagreement about the appropriateness of using the FMC process to comply with NEPA. A major concern is whether the public would be adequately included. Many suggestions were provided on how to make the FMC process more accessible.

4. *Reasonable Alternatives.* There is consensus that reasonable alternatives must be able to achieve the objectives of the management action. In addition, several specific suggestions were offered as to how to further define ''reasonable alternatives.''

5. *Tiering/Scaling the Level of Analysis.* There is agreement that not every action merits the same level of detail and length in its analysis and that some form of scaling is appropriate, but disagreement as to how to determine the appropriate level of analysis. Some commenters felt that the existing EA/EIS distinction adequately allows for determining the appropriate level of analysis based on an action's degree of significance. Other commenters suggested alternative approaches. Two commenters opposed applying specific criteria to determine the level and detail of analysis and indicated that the circumstances around each action would dictate what level of analysis is appropriate.

6. *Eliminating the EA/EIS Distinction.* Many commenters support keeping this distinction, although one commenter identified a potential benefit of avoiding litigation over which type of analysis should have been prepared.

7. *Reducing the Length of the Comment Period to 30 days.* There is disagreement as to whether longer or shorter comment periods are desirable, as well as on the effects of any change on streamlining and process.

8. *Scientific Research and Experimental Fishing.* The need to improve NEPA's application to scientific research and experimental fishing was pointed out.

At its May 2007 meeting the CCC decided to recommend its strawman to NMFS as the basic approach for the new process and made several additional comments and suggestions. Since May 2007, NMFS has consulted with CEQ and the CCC subcommittee to develop the environmental review procedures proposed in this rule.

B. Alternatives Considered by NMFS

In addition to conducting public outreach, NMFS engaged in an internal scoping process to consider the most appropriate means to revise and update the NEPA procedures to better integrate NEPA and MSA. NMFS examined a number of important issues during this process, which included, but were not limited to: NEPA's role in the fishery management context; ways to integrate the NEPA and MSA process to ensure successful implementation of MSA actions; mechanisms for improving public participation; whether NMFS, the FMCs, or both should prepare environmental analyses; and the type of environmental document and level of analysis applicable to a specific fishery management measure or action. As a

result, and after careful consideration of public comments on NMFS' trigger questions, the CCC subcommittee Strawman proposal and public input received at each of the Council listening sessions, NMFS developed an array of alternatives intended to achieve the following goals: (1) Ensure compliance with NEPA when developing and implementing fishery management measures and actions under the MSA; (2) Adhere to the principles of public involvement and agency accountability (i.e., requirements that agencies consider and respond to public comment) set forth in the existing CEQ regulations; (3) Integrate NEPA's requirements into the MSA public processes for developing and approving fishery management measures and actions; (4) To the extent appropriate, build on recommendations in the CCC Strawman document; (5) Appropriately align public participation in the NEPA process to reflect differences in the roles of the Regional Fishery Management Councils (FMCs) and NMFS in the development and approval of fishery management measures and actions and conducting the NEPA analysis; and (6) Conform the MSA and NEPA timelines to achieve greater efficiencies in fisheries management and allow rapid response to fishery management needs, while providing the public meaningful opportunity to influence policy decisions.

In developing these proposed procedures, NMFS attempted to determine where fishery-specific improvements could be gained while supplementing the key elements of the CEQ regulations that ensure opportunities for public participation and agency accountability. Some of the key features of the CEQ regulations centered around the early public scoping process, the opportunity for public comment on a draft analytical document, a revised final document that addresses public comment, a cooling-off period prior to the final decision, and a Record of Decision (ROD) documenting the agency's final decision. NMFS then considered whether the procedural aspects of these elements (such as timing, sequencing, and feedback mechanisms) could be implemented to provide more appropriate opportunities for public participation in the process for developing MSA measures and actions. Specifically, NMFS sought an approach that would: (1) Integrate NEPA's public participation opportunities with the FMC development of analyses and alternatives and NMFS' decisionmaking under the MSA; and (2) allow the MSA decision-making process to proceed in a timely manner to address real time fishery management needs.

NMFS identified alternatives for possible fisheries-specific improvements in several general categories: form of documentation; roles and responsibilities; timing and flow of process; and other elements (experimental fishing, emergencies, page limits, and the range of alternatives to be analyzed).

1. Form of Documentation

a. Single Integrated Document

Pursuant to NEPA, an EIS must be prepared for any major Federal action significantly affecting the quality of the human environment. An EA may be prepared as a first step to inform the determination of whether a proposed action would have a significant effect on the quality of the human environment, thereby requiring an EIS. Generally, the EIS is a more thorough analysis of impacts and alternatives than the EA. For development of FMPs by FMCs, however, this is not always the case. Development of FMPs or amendments under the MSA requires development of a comprehensive analysis that incorporates almost all of the content requirements for an EIS. In many cases, an FMC can relatively easily incorporate the additional EIS content requirements (i.e., cumulative impact analysis and reasonable range of alternatives) into the existing fishery management analysis.

Given these requirements, one possible approach would be to eliminate the EA/EIS distinction, ensure that content requirements of an EIS are included in the MSA analysis, and adjust the procedures and timing for completing an EIS through the FMC process. Rather than focusing on whether or not an action is ''significant,'' this approach would undertake the more comprehensive analysis and consideration of alternatives for every action. Among other things, this approach would ensure preparation of EIS-level documents in ''close call'' situations. This approach was recommended by the CCC in their strawman, which would have required a single analytical document labeled an Environmental Impact Analysis (EIA).

However, there was little support for this approach expressed through public comment. One of the most noted concerns expressed by the public focused on the potential difficulty in developing scaling criteria, and how EIAs would be tailored to allow an appropriate scaling of the analysis based on the scope of the proposed action. This approach could result in unnecessary analysis and delay for actions where an EA/FONSI is appropriate.

b. Status Quo

NMFS considered retaining the three main forms of documentation currently provided for in the CEQ regulations: The EIS, EA/FONSI, and CE. While these forms of documentation are familiar to the public, retaining them as they currently exist in the CEQ regulations would negate the opportunity for improvements to the NEPA process for MSA actions as intended by the MSRA.

c. New Forms of Documentation

The preferred alternative, as set forth in this proposed rule, would provide for four types of documentation based on the current EIS/EA structure, but tailored to address the unique needs of the fishery management process: (1) An IFEMS, which would be similar to an EIS but with more explicit integration of MSRA requirements, (2) an EA/FONSI, (3) a CE, and Determination of Categorical Exclusion, and (4) a Memorandum of Framework Compliance (this would allow NMFS and the FMCs to efficiently implement the NEPA process for actions (e.g., frameworks and annual specifications) that fall within the scope of a prior NEPA analysis). These documents, with the exception of the Memorandum of Framework Compliance, would have content requirements similar to those provided under existing NMFS procedures and caselaw, but with revisions to address specific fishery-related needs. In combination with the adjustments to process and timing described below, the intent of these revisions is to retain the flexibility to utilize an EA/FONSI or CE, where appropriate, but to make the process for completing an EIS-level document (i.e., IFEMS), and/or utilizing a Memorandum of Framework Compliance, better integrated with existing MSA timing and decision-making requirements.

2. Roles and Responsibilities

NMFS analyzed the MSA and NEPA statutory and regulatory requirements and identified several different ways of viewing the roles and responsibilities of NMFS and the FMCs in an integrated MSA/NEPA process.

a. FMCs Responsible for NEPA Compliance

One option would be to vest sole responsibility for preparing the NEPA analysis with the FMC and require that

the FMC develop the NEPA analysis during development of MSA management recommendations. This option would give the FMC full responsibility for completing the NEPA analysis. Under this scenario, the NEPA document would be primarily an FMC document. FMCs would be solely responsible for developing the final NEPA document prior to recommending management measures and actions to NMFS. The analysis would be prepared in accordance with the requirements for an EIS. NMFS would not participate substantially in the development of the document. The FMCs would be required to complete all required NEPA procedures, including the cooling-off period, prior to taking the final vote to recommend a measure or action. Because of the MSA's unique structure, based on the FMCs considering public input and making management recommendations to NMFS, and NMFS' subsequent decision to approve, disapprove, or partially approve any recommendation, this approach would effectively align NEPA's consideration of impacts and alternatives with the FMC's consideration of alternatives for recommendation to NMFS. However, NMFS is the Federal action agency ultimately responsible for NEPA compliance, and this option would not give NMFS involvement in the NEPA documentation and process to assure that NMFS satisfies its NEPA obligations.

b. NMFS Solely Responsible for NEPA

NMFS identified two approaches by which NMFS could comply with the mandates of NEPA without involving the FMCs. However, neither of these scenarios would result in the type of information sharing and public participation envisioned by NEPA and these proposed regulations.

(i) *Separating the NEPA Analysis From the FMC's Process.* Under this first scenario, NMFS, as the action agency, would conduct the NEPA analysis and prepare the appropriate NEPA document. NMFS would publish and make available the NEPA document separate from the FMC process, but if practicable NMFS could align its release of the document within the FMC process. NMFS, as a member of the FMC, could recommend NMFS's alternatives and NEPA analysis to the FMC as it considered alternatives prior to its final vote. However, NMFS has only one vote on each FMC and therefore could not ensure the range of alternatives NMFS analyzed in the NEPA document would be considered by the FMC as it developed its recommendation under the MSA. While the Secretary must disapprove a recommendation that does not comply with NEPA, MSRA directed NMFS to revise and update its procedures to integrate NEPA procedures with the procedure for the preparation and dissemination of fishery management plans, amendments, or other actions taken or approved pursuant to the MSA. NMFS did not adopt this alternative because it does not effectively integrate consideration of alternatives and impacts for the NEPA analysis and for the FMCs' development of management recommendations.

(ii) *NMFS Prepares the NEPA Analysis After the FMC Takes Final Action.* Under this scenario, NMFS would again conduct the NEPA analysis and prepare the appropriate NEPA document. However, the NEPA process would not commence until after the FMC takes a final vote on its recommendations. This option is based on the theory that there is no proposed Federal action to analyze until the FMC transmits its recommendation and the Secretary is required to take action on the FMC's recommendation. However, this approach does not effectively integrate the analysis of alternatives and impacts for the NEPA analysis with the FMCs' development of recommended management measures and actions. This option would require significant reductions in the amount of time available for public review and comment on the NEPA analysis for all fishery management measures and actions.

c. Preferred Alternative

The third alternative NMFS considered would modify the procedural requirements for conducting the NEPA analysis and preparing the appropriate NEPA document to accommodate the unique relationship between the FMCs and NMFS in the MSA context.

This alternative is intended to better align public input to FMC recommendations and NMFS authority for approval and implementation of fishery management measures and actions and would establish a regulatory requirement that FMCs consider public comments on an IFEMS before taking a final vote. It is based on an understanding of the role of the FMC as an advisory body that narrows alternatives and makes recommendations and which, therefore, should be informed by public comment. This alternative also recognizes that NMFS, after having provided input and guidance to the FMC for the development of the NEPA document, bears ultimate responsibility for compliance with both MSA and NEPA. The requirements of NMFS procedures implementing NEPA would be modified to accommodate the respective roles of the FMCs and NMFS in the NEPA process. This alternative would provide for more explicit integration of NEPA in the MSA decisionmaking process and maximize opportunities for public participation by providing opportunities for review and comment at by both FMC and NMFS, levels, while allowing flexibility to reduce comment periods for FMCs in certain circumstances to meet fishery management need.

3. Timing and Flow of Process

NMFS analyzed different ways to build flexibility and predictability into the timing requirements of the NEPA procedures to assure the appropriate level of NEPA analysis is prepared and to allow for the maximum amount of public participation during the FMCs' development of recommended management measures and actions.

a. CCC Strawman (Three-Meeting Minimum for IFEMS)

The CCC strawman includes a recommended process that would require a minimum of three FMC meetings to develop a management recommendation and associated NEPA documentation. Upon further consideration at its May 2007 meeting, however, the CCC determined that some management recommendations needing to be completed in fewer than three meetings would benefit from and/or require analysis in an EIS-level document and recommended that the revised procedures address this issue.

b. Preferred Alternative (Two-Meeting Minimum for IFEMS)

After analyzing the minimum timelines set forth in the CEQ regulations, the statutory timelines of the MSA, and the practical issues surrounding scheduling of FMC meetings and the logistics of completing the necessary steps to develop a fishery management recommendation, NMFS constructed an approach that would allow for the development of an IFEMS through a minimum two-meeting cycle, thus allowing for even the most time-constrained fishery management needs to be informed by an IFEMS.

This alternative would take into account the statutory structure of the MSA decision-making process and the need for the FMC recommendation to move forward through Secretarial review to an ultimate decision in order to respond to real-time fishery management needs. This alternative accommodates the typical FMC process

for development of a management recommendation with an EIS-level document, which usually involves an iterative process with the public in which several versions of a draft are shared and modified over the course of several FMC meetings prior to a final FMC vote. This alternative also recognizes that in some circumstances certain minimum time periods identified in the CEQ regulations may need to be reduced to allow the completion of an IFEMS in as few as two FMC meetings as described below.

For a smaller subset of fishery management needs, various factors (such as the timing of the availability of fishery statistics, the timing of the opening of the fishing season, judicially-imposed deadlines, and the schedule of FMC meetings) can interact to constrain the available time between identification of a management need and the time when a management measure needs to be effective. The intent of this proposed rule is to maintain the iterative and deliberative processes of the FMCs as they exist for addressing management needs in a situation not subject to such time constraints, but to allow enough flexibility so that the system can also accommodate an IFEMS in a time-constrained situation. This proposed rule (§ 700.604) would establish the following considerations for determining the appropriateness of reductions in minimum time periods for public comment:

(1) Whether there is a need for emergency action or interim measures to address overfishing;

(2) The potential long- and short-term harm to the fishery resource;

(3) The potential long- and short-term harm to the marine environment, including non-target and protected species;

(4) The potential long- and short-term harm to fishing communities;

(5) FMC meeting schedules and ability to respond;

(6) Degree of public need for the proposed action, including the consequences of delay;

(7) Time limits imposed on the agency by law, regulations, or Executive Order.

An important component of this approach would be supplementation of the requirement in the CEQ regulations linking the start of minimum time periods for public comments and the delay associated with the cooling off period to the Environmental Protection Agency's (EPA's) publication of the notice of availability (NOA). EPA publishes a notice in the **Federal Register** each Friday, listing all the EISs that were filed with EPA the previous week. In severely time-constrained fishery management situations, the time that is lost prior to EPA's weekly filing could be used by NMFS, the FMCs, and the public to complete better documents, to have a few more days of public comment, and/or to be able to complete an IFEMS on a very short deadline. The preferred alternative would allow NMFS to start the clock on the minimum time periods by filing the NOA of the IFEMS in the **Federal Register** as soon as the IFEMS is available to the public and filed with EPA. In such circumstances, the minimum time period could be calculated from the **Federal Register** publication date of the NMFS NOA. The EPA notice to follow would state that, pursuant to MSRA and EPA's authority to reduce prescribed periods for timing of agency action (40 CFR 1506.10(d)), EPA has reduce the applicable time according to the number of days provided for in preceding the NMFS NOA.

In addition to providing for time savings in time-constrained situations, this proposed change would allow NMFS to start the clock on the comment period on the NEPA document simultaneously with the start of the comment period on the proposed fishery management measure or action. Allowing the clocks for the two sets of comment periods to begin and run simultaneously would further integrate the requirements of NEPA and the MSA.

4. Other Elements (Experimental Fishing, Emergencies, Page Limits, and the Range of Alternatives To Be Analyzed)

a. Experimental Fishing

The public raised the issue that NEPA's requirements sometimes hinder the ability of research organizations to obtain EFPs. NMFS considered maintaining the status quo, as well as whether there may be opportunities to improve the current NEPA procedures with regard to EFPs. The preferred alternative would specify that, where experimental fishing activities proposed to be conducted under an EFP, and where the fish to be harvested have been accounted for in other analyses of the fishery such as by factoring a research set-aside into the allowable biological catch (ABC), optimum yield (OY), or fishing mortality, the activities could be eligible for a CE, as appropriate. Activities that are truly ''scientific research,'' as defined by 50 CFR 600.10, are not subject to regulation under the MSA and thus not subject to this rulemaking.

b. Emergencies and Interim Actions Pursuant to the MSA

NMFS possesses authority under section 305(c) of the MSA to promulgate emergency rules or interim measures. NMFS's must be able to respond quickly to emergency or overfishing situations while accommodating NEPA's requirements to ensure adequate public involvement and prepare the requisite analyses for a particular measure or action.

As part of this proposed rulemaking, NMFS considered two options to comply with NEPA in the context of section 305(c) emergency and interim actions. One option would have allowed NMFS to prepare an abbreviated NEPA analysis for the measure or action. The scope and degree of analysis would have been determined in light of the nature and timeframe in which to address the emergency. Further, if good cause existed to waive the requirements for notice and opportunity for public comment on the proposed rule under the Administrative Procedure Act, NMFS would have afforded an opportunity for public comment on the NEPA document after implementation of the emergency or interim measures. The preferred option, as described in § 700.701, would establish the option of developing programmatic alternative arrangements for NEPA compliance with CEQ for emergency or interim actions that may result in significant impacts. The intent is to limit such arrangements to specific types of emergency or interim actions that necessitate immediate attention and for which public involvement or detailed analyses would interfere with NMFS' ability to control the immediate impacts of the emergency. While this alternative would still allow for the use of ad hoc approaches where appropriate, it would allow flexibility to prepare planned and managed approaches that would avoid the inefficiencies and uncertainties of reactive, situation-specific arrangements.

c. Page Limits

CEQ's guidance for preparation of EISs states that the text ''shall normally be less than 150 pages,'' and for proposals of unusual scope or complexity ''shall normally be less than 300 pages.'' 40 CFR 1502.7. NMFS and FMC-generated NEPA documents sometimes exceed these expected page limits. It has been suggested that reducing the number of pages of MSA NEPA documents could improve the overall analytical quality and public accessibility and understanding of the documents. The complexity of the

alternatives that must be analyzed for fishery management actions and measures and the difficulty of sufficiently analyzing these alternatives in a relatively short document, however, may result in documents exceeding these page limits. NMFS proposes to consult with CEQ on a programmatic basis in those situations where page limits for NEPA analyses are exceeded.

d. The Range of Alternatives To Be Analyzed

A Federal agency's range of alternatives is reasonable if the alternatives meet an agency's stated purpose and need and, if they are consistent with an agency's statutory authorities and policy objectives. Although the range of alternatives should not be so narrowly defined so as to preclude meaningful consideration of alternate ways of accomplishing agency objectives, courts have afforded agencies much discretion to define what they consider to be reasonable in light of the controlling statute or purpose and need for the action. In some cases the lack of precisely drawn alternatives has led to overly complex NEPA documents.

The CCC Subcommittee commented, in the context of MSA fishery management actions, that a literal interpretation of the requirement in CEQ's regulations that the EIS ''rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated,'' results in FMCs and NMFS analyzing alternatives that the FMC would never recommend, requires detailed analysis of every reasonable alternative suggested by the public, and results in an overapplication of NEPA's requirements. The CCC Subcommittee recommended striking the word ''all'' from before ''reasonable alternatives'' and clarifying that the requirement is to consider a ''reasonable range'' of reasonable alternatives. NMFS believes that clear guidance on the range of alternatives in the fishery management context would reduce the over-inclusion of alternatives that results in overly complex and voluminous alternatives analyses. The proposed rule would not eliminate the word ''all,'' but would encourage better analysis of an appropriate, not overly-inclusive, range of alternatives.

III. Proposed Changes to Existing NEPA Review Procedures

After consulting with the FMCs and CEQ, and carefully considering input from the public, NMFS is proposing to implement new regulations, to be published at 50 CFR part 700, establishing fisheries-specific procedures for NEPA compliance. This approach would replace the existing NMFS procedures for complying with NEPA in the context of fishery management under the MSA. These specific regulations for implementing NEPA in the context of fishery management under the MSA would supplement the general CEQ regulations implementing the procedural provisions of NEPA. While the CEQ definitions (40 CFR part 1508) and other generally applicable provisions of the CEQ regulations are not paraphrased or repeated, they would remain relevant and applicable. Based on public review and comment on these proposed regulations, CEQ will review the final NMFS regulations for conformity with NEPA. 40 CFR 1507.3.

A. Form of Documentation

The proposed process would utilize four forms of documentation: The IFEMS, the EA/FONSI, the CE, and the Memorandum of Framework Compliance.

1. IFEMS

The IFEMS would be comparable to an EIS-level analysis. As the name indicates, it would integrate applicable environmental analyses into a single document.

The content of the IFEMS would be largely similar to that of an EIS. This proposed rule contains additional specificity concerning what constitutes a reasonable range of alternatives, including the ''no action'' alternative, how incomplete or unavailable information should be treated for purposes of fishery management, and a specific requirement to consider cumulative impacts. The proposed process would also allow for the timing and procedures associated with the IFEMS to be modified from those CEQ has established for EISs.

While the NEPA-related contents of the IFEMS would be similar to the EIS, the procedural requirements would be different. The proposed name change from EIS to IFEMS is intended to make clear that the requirements applicable to an IFEMS are distinct from those applicable to an EIS, especially in terms of procedure and timing, but also regarding the identification of alternatives, how to deal with incomplete information, and the requirement to analyze cumulative impacts. Existing FMPs and EISs would not need to be amended to comply with the new IFEMS requirement. IFEMS would only need to be developed for new actions or to take advantage of new frameworking measures.

This proposed rule would also establish categories of actions that would normally require an IFEMS, such as new FMPs, and FMP amendments with significant impacts (§ 700.103). These categories are expected to assist with agency and FMC planning and inform public expectations on the appropriate level of NEPA documentation. For example, when initiating analysis of a new action, an FMC or NMFS would be able to quickly determine which level analysis would most likely be applicable to that type of action. However, the determination of significance for a particular action would still ultimately be based on the application of the significance criteria.

2. EA/FONSI

The EA/FONSI would still be available for use based on the ''significance'' test as is currently the case. In addition, the proposed revisions would establish certain categories of actions that would normally qualify for this level of analysis, such as emergency actions and annual specifications or frameworks not covered by a Memorandum of Framework Compliance as described below. The effect of these categories would also be to assist with agency and FMC planning and inform public expectations. However, the determination of significance for a particular action would still ultimately be based on the application of the significance criteria.

In addition, new § 700.401(d) would authorize the use of a FONSI for an action that may have significant or unknown effects, as long as the significance and effects have been analyzed previously. This provision is intended to address situations such as recurrent annual management measures, the effects of which are significant or unknown, and which therefore do not qualify for a CE, but nevertheless do not require a new EIS every year given the previous analysis.

3. CE (and Determination of Categorical Exclusion (DCE)) (§§ 700.105 and 700.702)

The current CEQ guidance defines CEs and encourages agencies to use them. The proposed revisions include a new section on CEs that would establish a new form of documentation (DCE). The proposed revisions would also establish a new CE category for experimental fishing activities permitted under an EFP, where the fish to be harvested have been accounted for in other analyses of the FMP, such as by factoring a research set-aside into the

ABC, OY, or fishing mortality. In addition, the proposed revisions would establish, by regulation, other categories of actions that would qualify for a CE and which are currently contained in NOAA's Administrative Order that provides internal agency guidance on administering NEPA (NOA 216–6).

4. Framework Implementation Procedures and the Memorandum of Framework Compliance (§ 700.104)

This section would allow the NEPA process for fishery management to be streamlined for measures or actions that have been previously analyzed by the FMCs or NMFS. Specifically, this proposal would allow FMCs or NMFS to establish Framework Implementation Procedures (FIPs), i.e., formal mechanisms to allow actions to be undertaken pursuant to a previously planned and constructed management regime without requiring additional NEPA analysis. In its simplest terms, the goal of a FIP is to provide that, when the environmental impacts of fishery management measures have been analyzed in a broad parent document, subsequent actions to implement these measures, e.g., a framework action, annual specifications, or harvest limits, would not need further NEPA analysis, so long as the impacts of a subsequent action fall within the range of effects considered by the broad parent document.

The proposed use of FIPs would allow FMCs and NMFS to integrate NEPA's requirements into an existing MSA management tool that provides for advance planning and rapid response to real-time fishery management needs. Many FMPs include provisions, known as ''frameworks,'' that permit a class of actions to be undertaken pursuant to procedures described under the FMP without requiring an amendment to the underlying FMP. The FMP or FMP amendment that establishes these procedures often includes extensive analysis of a range of measures and actions that are anticipated to be taken in the future through the use of these framework procedures. The FIP provisions proposed in this rule would allow an FMC or NMFS to utilize the same sort of advance planning for analysis of environmental impacts. FIPs could be used for a variety of fishery management measures and actions, including traditional framework actions, annual specifications, and other fishery management actions, as appropriate.

To establish a FIP, the FMCs or NMFS would include procedures in an FMP that comply with the requirements specified in § 700.104(a) of the proposed regulations. For example, the FIP would need to specify criteria that would trigger the requirement to supplement a prior analysis if a new IFEMS or EA for the subsequent fishery management action would be needed.

This proposed rule would also establish a Framework Compliance Evaluation process to evaluate whether a fishery management action taken pursuant to an FIP established under an FMP requires additional action-specific analysis. At a minimum, the Framework Compliance Evaluation would serve two purposes: First, to identify the applicable underlying NEPA document(s) for the subsequent fishery management action; and second, to determine whether the underlying NEPA document(s) can support the action (i.e., whether the action and its anticipated effects fall within the scope of the prior analysis) or whether the NEPA analysis requires supplementation due to new information or because the effects of the subsequent action have not been previously analyzed.

The Framework Compliance Evaluation would result in one of two outcomes, as specified in § 700.104(c) and (d): (1) The development of a Memorandum of Framework Compliance that documents briefly how the fishery management action taken pursuant to a FIP falls within the scope of a prior NEPA analysis; or (2) the determination that supplementation of the prior NEPA analysis is needed to satisfy NMFS's NEPA obligation for the subsequent fishery management action.

B. The Role of the FMCs and NMFS in the NEPA Process

The proposed approach recognizes that the MSA created a unique structure for Federal fisheries management, under which both the FMCs and NMFS have important roles. The FMCs are advisory bodies that develop management alternatives and make recommendations that NMFS must approve or partially approve unless they are inconsistent with applicable law. Given the primary role FMCs play in the development of fishery management measures and actions, FMC decisions should be directly informed by public comment, and the MSA's public process requirements address this need. For its part, NMFS has the authority to approve and implement fishery management measures and actions and bears ultimate responsibility for compliance with the MSA and NEPA. To account for these different roles, portions of the proposed procedures would differ from the current NMFS procedures with respect to the requirements for public participation and consideration of and responses to public comment by NMFS and the FMCs.

This proposed rule would establish new duties and opportunities intended to ensure both that public input relevant to the development of alternatives and policy recommendations is provided to the FMC when the FMC is developing its recommendations, and that NMFS considers and responds to comments addressing its decision to approve, disapprove, or partially approve an FMC recommendation, which includes consideration of NEPA compliance. This proposed rule would establish: a new requirement for FMCs to consider public comments on draft IFEMSs prior to voting to recommend a measure or action for Secretarial review; flexibility to reduce the public comment period on IFEMSs to fit a two-meeting cycle where necessary; additional requirements for consideration and response to public comments by NMFS (including a new comment period on the Final IFEMS and a new requirement to respond to comments on the Final IFEMS in the ROD, as appropriate); and flexibility for NMFS to reduce the cooling-off period where necessary.

In light of the important role the FMCs play in the MSA process, public comment regarding scope of analysis, alternatives, and impacts should appropriately be directed to the FMCs during the development of recommended management measures and actions. However, NMFS recognizes that this requirement could affect the FMCs' ability to respond rapidly to a fishery management need in some cases. Because integrating NEPA requirements into the FMC process requires assurances that public input can be considered prior to narrowing the range of alternatives, this proposed rule attempts to balance opportunities for public input with the need for rapid response to management needs. Therefore, this proposed rule includes modifications to timing and process as discussed further in section C below.

C. Timing and Process

This proposed rule would establish a process for conducting the necessary NEPA analyses within the context of the FMC process. For EAs and CEs, the procedures currently used by the FMCs would not be affected. Likewise, there would not be significant changes to the existing process for Secretarial and HMS actions. Therefore, this discussion focuses on the proposed process by which an IFEMS would be prepared for an FMC-initiated action.

The key concept behind the proposed changes in procedure is that the opportunities for public participation

and the requirements for comment and response have been revised to align with the MSA process and to reflect the respective roles of the FMCs and NMFS under the MSA, as discussed above. To allow the process to flow, as envisioned under the MSA, from FMC recommendation to an ultimate final agency action by NMFS, flexibility would be built into the procedural timelines.

As described in the discussion of roles in section B. above, this proposed rule strikes a balance between creating additional NEPA procedures required for the FMCs and where appropriate allowing for reductions of time for public review and input. While it imposes new duties on the FMCs to consider public input before voting, it does so in a manner intended to allow the process to continue moving forward to a decision point at the NMFS level. It is vital that FMCs and NMFS retain the ability to respond rapidly to fishery management needs. It is important to note that the public would be given as much time to review the draft as the FMC members and that any reduction in time must be supported by one of the criteria enumerated in these proposed regulations.

To offset any potentially shortened public review period on the draft during the development of FMC recommendations, this proposed rule would add additional public input requirements for NMFS. This would include a new comment period on a Final IFEMS, and a new requirement to respond to comments on the Final IFEMS in the ROD.

The goal of the proposal is to make the process flexible enough to allow adequate public involvement, but to allow for adjustments when necessary to meet a time-sensitive resource management need. The minimum time period in which an FMC recommendation supported by an IFEMS could be completed under the proposed regulations would be over the course of two FMC meetings.

For FMC-initiated actions, the process would flow as follows:

1. Scoping

The basic scoping approach for FMC-initiated actions would be based on the MSA process. Generally, the initial scoping notice would be published in the **Federal Register** as part of an FMC's meeting agenda notice, and no less than 14 days in advance of the FMC meeting. This provision would not limit the ability of an FMC or NMFS to publish a scoping notice earlier in the process. In addition to the FMC meeting, other scoping activities could also be conducted by the FMC or NMFS. NMFS would have to ensure that the scoping process meets the purposes of scoping as proposed to be set forth at § 700.108. The scoping notice would be required to be titled and formatted in a manner that provides the public with adequate notice of the NEPA-related scoping process. For NMFS-initiated actions, including HMS actions, NMFS would initiate scoping via a **Federal Register** notice and would provide notice of scoping activities, if any, conducted in conjunction with HMS Advisory Panel meetings or other meetings held by NMFS.

While the intent is to utilize the existing FMC processes to the extent practicable, the proposed regulations would allow scoping to be satisfied by many different mechanisms, including: FMC or NMFS planning meetings and public hearings; requests for public comment on public hearing documents; discussion papers; and other versions of decision and background environmental documents. Scoping meetings should adequately inform interested parties of the proposed action and alternatives to facilitate substantive participation in the development of the management measures and environmental document. If the proposed action has already been subject to a lengthy development process that has included early and meaningful opportunity for public participation in the development of the proposed action, those prior activities may be used as part of meeting the scoping components of these environmental review procedures.

Note that, in order to get the scoping notice out as early as possible, the FMC may not identify alternatives prior to publication of the notice. In this case, it would be sufficient to indicate that alternatives will be identified through the FMC process and that the public will have an opportunity to provide input through the FMC process.

NMFS, working with the FMCs, will develop guidance on the appropriate format and content for scoping notices.

In addition, the proposed rule includes a requirement at § 700.112 that, with respect to any responsibilities not clearly assigned by this rule, NMFS and the FMC would assign these responsibilities prior to completion of the scoping process.

2. Draft IFEMS

The draft IFEMS would be circulated for public comment for at least 45 days prior to the FMC voting to recommend an action to NMFS, unless any of the considerations in § 700.604(b)(2) are met. The FMC would be required to consider public comment on the IFEMS prior to voting to recommend the action. At a minimum, the notice of its availability would be required to be published no later than with the agenda notice for the upcoming FMC meeting at which FMC action would take place.

Under the proposed rule, the allowable public comment period on a draft IFEMS might, in extraordinary circumstances, be only 14 days, compared to CEQ's required minimum time period of 45 days for public comment on draft EISs (DEISs). It is important to note, however, that the draft IFEMS informs the FMCs in their development of recommended management measures and actions. In light of the unique role the FMCs play, the draft IFEMS would be specifically designed to link NEPA's considerations to the FMC process of developing recommended management measures and actions under the MSA.

3. Public Comment

In order to ensure that the public has a meaningful opportunity to participate in the NEPA process as the FMC develops its recommended management measures and actions, as well as ensure that the FMC is well-informed when making its MSA recommendations, the FMC would be required to consider public comment on the draft IFEMS prior to voting to make a final recommendation to the Secretary. Because FMC meetings are public meetings and transcripts are kept, there would be a record of how the FMC addresses comments. The FMC's vote would also provide evidence of how the FMC responded to comments. In addition, this proposed rule would require the final IFEMS to document how both the FMC and NMFS responded to comments on the draft (§ 700.304).

Likewise, the commenting public would need to raise comments pertinent to the FMC's analysis, such as the scope of the analysis, the alternatives considered, and the expected environmental impacts, to the FMC prior to its vote. The proposed regulations state that NMFS is not obligated to respond to comments relevant to the draft IFEMS that are raised for the first time during Secretarial review. (See § 700.305(d)). The proposed regulations are intended to encourage the public to seek any change in the policy recommendation or alternatives considered before the FMC's vote when this can and should appropriately be done via the FMC process. Therefore, the proposal highlights the obligations of the interested public to raise pertinent comments at appropriate points in the

process. As discussed below, comments relevant to the draft IFEMS raised for the first time when the action is under MSA Secretarial review will be considered only in light of the Secretary's decision on the proposal's ultimately approvability, which includes compliance with NEPA and other applicable law.

4. Vote

The FMC would vote to recommend action. Depending on the outcome of the vote, either a final IFEMS or a supplemental IFEMS could be prepared. A final IFEMS could be prepared and submitted with the transmittal package to begin Secretarial review if the FMC voted to recommend: (1) An alternative considered and analyzed in the draft IFEMS; (2) a hybrid of the alternatives analyzed in the draft; or (3) another alternative not specifically analyzed in the draft IFEMS, but otherwise within the range of the alternatives analyzed in the draft. If, however, the FMC voted to recommend a completely new alternative (''outside the box'' alternative) that was not previously analyzed, there would be a requirement for additional analysis, but the proposed approach would offer some flexibility in determining how to proceed as described below.

5. Supplemental IFEMS

Section 700.203(b)(5) is intended to address the question of how to allow the FMC's recommended action to move forward towards submission to NMFS for decision, while assuring meaningful opportunity for the public to comment on the NEPA analysis both as the FMC develops its recommendation and as NMFS reviews the recommended action. Because the FMC process culminates in a vote from the FMCs, the FMCs rarely have a preferred alternative fully fleshed out prior to their vote. At FMC meetings, after hearing public testimony, an FMC may vote to recommend an action that is a modification of alternatives or combinations of alternatives specifically analyzed. Unless the impacts are beyond the scope of the analysis the FMC considered, these types of changes should not require a new draft IFEMS, but rather can be fully assessed in a final IFEMS and distributed for additional public comment before NMFS's final decision. The intention is to prevent the FMC from becoming trapped in a cycle of preparing a revised analysis to address the new alternative and conducting another vote, which again results in a completely new alternative, leading to yet another round of analysis and voting. On occasion, this cycle can lead to gridlock such that necessary and appropriate conservation and management measures or actions are inordinately delayed. If, however, the FMC selects a completely new alternative beyond the scope of the draft IFEMS, the public must be provided an opportunity to review a supplemental IFEMS.

As described below, the proposed approach would give the FMCs and NMFS some flexibility in determining how to proceed when an unanalyzed alternative is selected by the FMC. The FMC could choose to take public comment on the supplemental IFEMS through the FMC process or to transmit the supplemental IFEMS to NMFS and have NMFS take public comment on it during Secretarial review of the proposed action.

The FMC could decide to supplement the analysis, take public comment at the FMC level, and then submit the final IFEMS to NMFS with the transmittal package for the MSA recommendation(s). The supplemental document would be distributed to the public as another ''draft'' IFEMS and would comply with timing and commenting provisions regarding drafts. This approach would allow the FMC to maintain control of their analysis in the MSA process, and would allow a new vote at the FMC level prior to Secretarial review in the event that the supplemental analysis identified impacts that caused the FMC members to change their votes.

Alternatively, the supplemental IFEMS could be prepared and submitted with the transmittal package for the MSA recommendation(s). NMFS would then request comment on the supplement during the Secretarial review period. This approach also contemplates that the supplemental IFEMS would be treated as another ''draft'' IFEMS and would comply with timing and commenting regarding drafts. There are many drawbacks to this approach, and NMFS anticipates that it would be used rarely, if ever, and only to address extraordinary circumstances. The FMC would not have the ability to revise its recommendation based on the results of the supplemental IFEMS. In addition, because of the limited time available for an additional notice and comment opportunity during the MSA's Secretarial review period, this approach would involve extremely tight turn-arounds due to the MSA's statutory time periods. This type of scheduling would involve severe workload burdens on staff and would involve a high risk of failure to meet the statutory deadline. However, in certain circumstances requiring the need for rapid response, this approach may be appropriate.

To allow for the necessary steps to be completed within the mandatory review periods, when NMFS is reviewing an FMC-recommended regulation with a supplemental IFEMS on the MSA clock (MSA sec. 304(b)), the proposed rule would allow the minimum NEPA time periods to be adjusted to run concurrently with the comment period on the proposed regulation, if justified.

The FMCs and NMFS should continually evaluate the adequacy of existing IFEMS that cover ongoing management activities.

6. Final IFEMS

For fishery management actions developed through the FMC process, the final IFEMS would: Describe the public comments received through the FMC public process; describe any changes made through the FMC public process, either to the analysis or to the proposed action; and describe any additional modifications to the alternative recommended as the proposed action by the FMC.

7. Transmittal

When the package is complete, it would be ''transmitted'' to NMFS to initiate the MSA statutory review time periods.

8. Cooling Off Period and Comment Period for a Final IFEMS

a. For a final IFEMS submitted with the transmittal package, NMFS would publish in the **Federal Register** an NOA of the Final IFEMS as part of the appropriate notice of proposed rulemaking or NOA of a proposed FMP or FMP amendment and solicit public comment on the IFEMS, along with public comment on the FMC's recommended action. This would represent a new opportunity for public comment not provided for under CEQ NEPA regulations or current NMFS NEPA procedures. Comments would address the Secretary's decision to approve, disapprove, or partially approve the recommended action, which requires consideration of consistency with applicable law such as the MSA and NEPA. The reason for providing a new opportunity for comment on the final IFEMS is to assure that, as the Federal action agency, NMFS provides the public an opportunity to participate in its decision-making. In addition, this provision would better align the MSA public comment opportunities during Secretarial review with those for the NEPA analysis.

As discussed above, this proposed rule would require comments relevant to the FMCs' NEPA analysis to be raised via the FMC process. Therefore, comments on the final IFEMS should address issues relevant to NMFS' decision on the FMC's recommendation, such as compliance with the MSA, its National Standards, and other applicable law including NEPA. If comments requesting a change in the FMC's policy recommendation or otherwise relevant to the draft IFEMS are not made initially during the FMC process, but could have been, the Secretary would not be required to consider them at a later stage.

Comments would be addressed in the ROD as provided for in the regulations (see § 700.502(b)(4)). The Final IFEMS would also need to be filed with the EPA, and NMFS' publication of the NOA for the IFEMS would initiate the 30-day cooling-off period (which could be reduced to 15 days under certain circumstances).

b. If a Supplemental IFEMS is submitted with the transmittal package, a Final IFEMS would need to subsequently be prepared and circulated for a period of public comment (which could be reduced to 15 days if the action is a regulatory amendment) during Secretarial review. Publication of the Final IFEMS would initiate the 30-day cooling-off period (which could be reduced to 15 days if necessary to complete the Final IFEMS within the MSA's Secretarial review period).

9. ROD

In the ROD, NMFS would respond to comments received on the Final IFEMS. However, as described below, NMFS would not be required to respond to comments raised for the first time with respect to a Final IFEMS if such comments were required to be raised with respect to a draft IFEMS pursuant to § 700.303(b) and § 700.304(d).

10. Public Comment and Agency Response Under the New Process

As discussed above, in order to inform the development of the NEPA document and fishery management alternatives considered by the FMCs, comments relevant to the draft IFEMS, such as comments on the statement of purpose and need, range of alternatives, and evaluation of environmental impacts, would need to be raised prior to the FMC's vote to recommend a measure or action to NMFS. Because section 304 of the MSA limits NMFS' discretion to approval, partial approval, or disapproval of FMC-recommended actions, the proposed rule is intended to discourage the public from seeking a policy change for the first time at the NMFS level when this should appropriately be done via the FMC process. Therefore, the proposal highlights the obligations of the interested public to raise pertinent comments at appropriate points in the process. Comments raised for the first time when the action is under MSA Secretarial review would be considered only in light of the Secretary's decision whether to approve the proposal, which includes compliance with NEPA and other applicable law. Recommendations for additional or revised policy approaches not presented to the FMC are inappropriate at this time.

D. Alternatives To Be Analyzed

Through this proposed rule, NMFS clarifies that ''reasonable alternatives'' are those derived from the statement of purpose and need of the action and that satisfy, in whole, or substantial part, the objectives of the proposed Federal action. Alternatives that are impractical or ineffective are not ''reasonable alternatives.'' This means that alternatives that are not consistent with the MSA and its national standards are not reasonable.

With regard to the range of alternatives to be considered, the proposed rule uses the same language as the CEQ regulations requiring that the IFEMS ''rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.'' The new language explicitly linking the scope of reasonable alternatives to the statement of purpose and need, in combination with existing language regarding the elimination of alternatives from detailed study, should provide more clarity to NMFS and FMCs that detailed analysis of alternatives not linked to the purpose of the action is unnecessary. As a result, NMFS and the FMCs will be better able to reduce the over-inclusion of alternatives that results in overly complex and voluminous alternatives analyses.

These proposed regulations would also clarify NEPA's requirement to consider the ''no action'' alternative in the context of fishery management actions. For purposes of the MSA, unless a fishery is regulated, at least with regard to approved gear types, fishing is unrestricted. However, FMPs vary in the way management measures are implemented. In some FMPs, management measures sunset at the end of a certain time period, in others they have annual expirations, and in others they are effective until modified or removed. Thus, a literal interpretation of the term ''no action'' could sometimes result in an unregulated, open access fishery. Other times ''no action'' could mean a complete closure of the fishery. Still other times, it could mean something in between. NMFS proposes to clarify that the ''no action'' alternative does not mean the literal result of no Federal action. Rather, in a fishery management context, the no action alternative means the presumption that the fishery would continue being prosecuted in the same manner that it is being prosecuted at the time the development of the IFEMS is initiated. This interpretation produces a reasonable approximation of a baseline for purposes of NEPA's comparative analysis. Thus ''no action'' does not mean the literal management regime that would result if no Federal action were taken (such as sunsetting of measures resulting in open access, or complete closure of the fishery). Rather it means presumed continuation of management at the current baseline. However, in cases where it is reasonable to consider open access or complete closure alternatives, the analysis should include these as part of the reasonable range.

NMFS notes however that the selection of alternatives for the purposes of NEPA compliance may be more limited than the selection of alternatives pursuant to other analytical requirements, including the Regulatory Flexibility Act, Executive Order 12866 and OMB Circular A–4, and the Unfunded Mandates Act. Pursuant to these authorities, the agency may consider alternatives that are inconsistent with the MSA or the National Standards, in the same way that the ''no action'' alternative may be inconsistent with statutory requirements. In addition, NMFS and the FMC may include in their analyses alternatives that are not ''reasonable alternatives'' at the time of the scoping decision for other reasons.

E. Experimental Fishing

The preferred alternative would specify that, in cases where experimental fishing activities are proposed to be conducted under an EFP, and where the fish to be harvested have been accounted for in other analyses of the FMP, such as by factoring a research set-aside into the ABC, OY, or fishing mortality, the proposed activities would be eligible for a CE.

F. Incomplete/Unavailable Information

Pursuant to the mandates of section 301(a)(2) of the MSA, NMFS and the FMCs are required to utilize the ''best

available scientific information'' in developing fishery management measures and actions. Case law has held that the MSA does not require NMFS or the FMCs to generate new information not already available (see, e.g., *Recreational Fishing Alliance* v. *Evans*, 172 F. Supp. 2d 35 (D.D.C. Sep 20, 2001), *Southern Offshore Fishing Ass'n* v. *Daley*, 995 F. Supp. 1411 (D.D.C. 1998), *Blue Water Fisherman's Ass'n* v. *Mineta*, 122 F. Supp. 2d 150 (D.D.C. 2000), *A.M.L. Intern., Inc.* v. *Daley*, 107 F. Supp. 2d 90 (D. Mass. 2000)). However, to maintain consistency with the existing CEQ regulations, this proposed rule would include a requirement that:

> NMFS shall identify incomplete information that is relevant to reasonably foreseeable significant adverse impacts and that is essential to a reasoned choice among alternatives and determine the overall costs and benefits of obtaining it. If NMFS finds that the overall costs of obtaining the information are not exorbitant, NMFS shall ensure that the information is obtained and include the information in the IFEMS. (§ 700.220)

MSA National Standard 2 requires FMCs and NMFS to base their decisions on the best scientific information available. In light of the MSA's statutory provisions, in determining whether the costs of obtaining such information are ''exorbitant,'' NMFS must consider the availability of appropriated funds and research priorities identified by the agency, the FMC Science and Statistical Committees and FMCs pursuant to section 302(h)(7) of the MSA. It is also necessary to consider the cost of delaying an action to seek additional information. In addition, NMFS recognizes that the nature of the stock assessment process creates a dynamic flow of information, and that fishery management will always involve uncertainty. Therefore, the relevance of unavailable information must be considered within this context. § 700.220(c) would also specify that, if the uncertainties have already been analyzed in a prior analysis, subsequent analyses would cite to the previous analyses on the issue of unavailable information.

G. Emergency and Interim Actions

This proposed rule would allow for the development of programmatic alternative arrangements for NEPA compliance with CEQ for emergency or interim actions that may result in significant impacts. The intent is to limit such arrangements to specific types of emergency or interim actions that necessitate immediate attention and for which public involvement or detailed analyses would interfere with NMFS's ability to control the immediate impacts of the emergency. For emergencies or interim actions that will not result in significant impacts, NMFS would prepare an EA and FONSI. In the event the nature and scope of the emergency requires immediate promulgation of regulations and NMFS has not completed the EA and FONSI, NMFS would be required to publish the draft EA and FONSI with the final rule and subsequently complete the NEPA analysis prior to the expiration or extension of the emergency or interim rules' effective period.

H. Page Limits/Contents

This proposed rule would require that NMFS consult with CEQ on a programmatic basis in those situations where recommended page limits are exceeded. The intent would be to assess the effectiveness of these documents and the reasons why a particular document or documents exceed the recommended limit and determine the feasibility of complying with this recommended goal.

I. Conflicts of Interest

The proposed rule would clarify the conflicts of interest safeguards that apply when NMFS or the FMC selects a contractor to work on an analysis. It would require contractors to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project. If the NEPA document is prepared by contract, this proposed rule would require the responsible Federal official to provide guidance to contractors, to participate in the preparation of the contracted document, and to independently evaluate the IFEMS prior to its approval and take responsibility for its scope and contents. This proposed rule would also clarify that, to the extent that members of an FMC are involved in development of an IFEMS, they must comply with the rules regarding conflicts of interest as set forth in section 302(j) of the MSA, 15 CFR 14.42, 15 CFR 24.36(b), and 40 CFR 1506.5(c).

Relationship to the CEQ Implementing Regulations

NMFS proposes these regulations as a customization of and a supplement to the CEQ NEPA implementing regulations at 40 CFR Parts 1500–1508. Readers familiar with the CEQ regulations will find many similarities, and in some places restatement of CEQ language into these regulations. However, where there are differences between the two, NMFS intends that these more specific regulations will be followed (in place of the general CEQ regulations) for fishery management actions. Similarly, for issues where these regulations are silent, the CEQ regulations continue to apply to fishery management actions where relevant.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

The proposed rule would implement a new environmental review process under the National Environmental Policy Act (NEPA) for fishery management actions pursuant to the MSA.

This rulemaking is being conducted pursuant to section 304(i) of the MSA, which requires the Secretary of Commerce, in consultation with CEQ and the FMCs, to revise and update the NMFS procedures for compliance with NEPA for actions taken pursuant to the MSA. The purpose of the legislation is to conform the environmental review procedures to the time lines for review and approval of fishery management actions, and integrate applicable environmental analytical procedures with the procedure for preparation and dissemination of fishery management actions.

The proposed rule is procedural in nature and is intended solely for internal agency and FMC use when preparing NEPA analyses for fishery management actions. Moreover, the proposed rule does not mandate that small entities behave in a particular way or regulate existing or future activities of an economic nature. Thus, the Department of Commerce does not anticipate that any small entities would be affected, directly or indirectly, by this proposed action.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 700

Administrative practice and procedure, Environmental protection, Fisheries, Intergovernmental relations.

Dated: May 2, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR Chapter VI by adding part 700 to read as follows:

PART 700—ENVIRONMENTAL REVIEW PROCESS FOR FISHERY MANAGEMENT ACTIONS

Subpart A—General

Sec.
700.1 Policy.
700.2 Authority.
700.3 Definitions.
700.4 NMFS capability to comply.
700.5 Agency procedures.
700.6 Elimination of duplication with State and local procedures.
700.7 Effective date and applicability.

Subpart B—NEPA and Fishery Management Planning

700.101 Apply NEPA throughout the fishery management process.
700.102 When to prepare an environmental assessment.
700.103 When to prepare an IFEMS.
700.104 Using a memorandum of framework compliance pursuant to a framework implementation procedure.
700.105 Using a Categorical Exclusion.
700.106 Lead agencies.
700.107 Cooperating agencies.
700.108 Scoping.
700.109 Time limits.
700.110 Adoption.
700.111 Combining documents.
700.112 Assignment of tasks.

Subpart C—Integrated Fishery and Environmental Management Statement

700.201 Purpose of the IFEMS.
700.202 Implementation.
700.203 Timing.
700.204 Interdisciplinary preparation.
700.205 Page limits.
700.206 Writing.
700.207 Phases of analysis; draft, final, and supplemental IFEMSs.
700.208 Recommended format.
700.209 Cover sheet.
700.210 Summary.
700.211 Purpose and need.
700.212 Alternatives including the proposed action.
700.213 Affected environment.
700.214 Environmental consequences.
700.215 List of preparers.
700.216 Preparation of an appendix.
700.217 Circulation of the IFEMS.
700.218 Tiering.
700.219 Incorporation by reference.
700.220 Incomplete or unavailable information.
700.221 Cost-benefit analysis.
700.222 Methodology and scientific accuracy.
700.223 Environmental review and consultation requirements.

Subpart D—Public Participation

700.301 Public outreach.
700.302 Inviting comment on the IFEMS.
700.303 Opportunity to comment.
700.304 Specificity of comments.
700.305 Response to comments.

Subpart E—Fishery Conservation and Management Actions That Significantly Affect the Quality of the Human Environment

700.401 Determining the significance of NMFS's actions.
700.402 Guidance on significance determinations.

Subpart F—NEPA and Fishery Management Decisionmaking

700.501 Fishery management decisionmaking procedures.
700.502 Record of decision.
700.503 Implementing the decision.

Subpart G—Additional Requirements and Limitations

700.601 Limitations on fishery management actions during MSA–NEPA process.
700.602 NMFS responsibility for environmental documents produced by a third-party.
700.603 Filing requirements.
700.604 Minimum time periods for agency action.

Subpart H—Emergencies and Categorical Exclusions

700.701 Emergencies.
700.702 Categorical exclusions.

Authority: 16 U.S.C. 1854(i).

Subpart A—Policy and Authority

§ 700.1 Policy.

(a) The National Marine Fisheries Service (NMFS) and the Fishery Management Councils (FMCs) shall to the fullest extent possible:

(1) Integrate the requirements of the National Environmental Policy Act (NEPA) and other planning and environmental review procedures required by law with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) procedures for preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to the MSA in order to provide for timely, clear, and concise analysis.

(2) Implement procedures to make the NEPA and MSA processes more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental documents shall be concise, clear, and to the point, and shall be supported by the best available scientific information and evidence that NMFS has made the necessary environmental analyses.

(3) Encourage and facilitate public involvement in decisions which affect the quality of the human environment, utilizing, to the extent practicable, the public involvement procedures set out in the MSA.

(4) Apply NEPA through the MSA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(b) In the development of fishery management actions pursuant to the MSA NMFS and the FMCs shall:

(1) Integrate the requirements of NEPA early and throughout the MSA's fisheries conservation and management process to insure implementation of NEPA's policies and the standards of the MSA while eliminating unnecessary delay in environmental impact assessment and fisheries conservation and management decisions.

(2) Provide for consideration of environmental impacts, alternatives, and public comments at key points in the process to inform both the FMC's development of recommendations to the Secretary and the Secretary's decision whether to approve and implement the fishery management action.

(3) Identify at an early stage the significant environmental issues deserving of detailed study and deemphasizing insignificant issues, thereby narrowing the scope of the environmental document accordingly.

(4) Provide for appropriate time limits on the processes provided by this part.

(c) NMFS shall use all practicable means, consistent with the requirements of the MSA, NEPA, and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

§ 700.2 Authority.

This part is applicable to and binding on NMFS and the FMCs, and other interested agencies and members of the public for implementing the procedural provisions of NEPA, as amended (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*), in the context of fishery management actions except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the MSA as amended (Pub. L. 109–479, sec. 107), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by

Executive Order 11991, May 24, 1977). The regulations apply to NMFS compliance with the whole of NEPA section 102. The provisions of NEPA, the MSA, and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. Subject to the limitations in MSA section 305(f), judicial review of NMFS' compliance with these regulations shall not occur before NMFS has promulgated regulations with a final Integrated Fishery Environmental Management Statement (IFEMS), has made a finding of no significant impact (when such a finding will result in action affecting the environment), or has made a Determination of Categorical Exclusion, or takes action that will result in irreparable injury. Any trivial violation of these regulations shall not give rise to any independent cause of action.

§ 700.3 Definitions.

For the purposes of this part, all terms defined in the regulations implementing NEPA established by the Council for Environmental Quality at 40 CFR part 1508 apply where relevant. The following definitions supplement these definitions.

(a) *Amendment.* A change to an FMP (FMP amendment) or to an FMP's implementing regulations (regulatory amendment). For purposes of Secretarial review and procedure, the MSA treats an FMP amendment the same as an FMP (MSA section 304(a)). An amendment is different from a Framework Action in that a Framework Action is an action provided for within the structure of an existing FMP or regulatory scheme. An amendment is a change to the underlying FMP or regulatory scheme itself. See also the definitions of FMPs and Framework Actions, below.

(b) *Emergency action.* A fishery management emergency action is an action taken pursuant to section 305(c) of the MSA, that responds to a situation that: Results from recent, unforeseen events or recently discovered circumstances; presents serious conservation or management problems in the fishery, including loss of life or serious injury; and can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

(c) *Environmental document.* An EA, FONSI, draft IFEMS, supplement to a draft IFEMS, final IFEMS, supplement to a final IFEMS, or a Record of Decision (ROD). The memorandum issued to document a CE (''DCE'') or Framework Compliance Evaluation is also considered an environmental document.

(d) *Integrated Fishery and Environmental Management Statement (IFEMS).* The analysis undertaken, to:

(1) Identify the scope of issues related to a conservation and management need;

(2) Make decisions that are based on understanding the environmental consequences of the proposed action; and

(3) Determine the necessary steps for NEPA compliance.

(e) *Fishery Management Plan (FMP).* A management plan for a federal fishery or fisheries developed and implemented pursuant to the MSA. The MSA establishes certain components that each FMP must include and sets up required policy considerations with which FMPs must comply (national standards). An FMP may include some measures that are implemented as regulations and others that are not. The MSA establishes separate timelines and review tracks for regulatory versus nonregulatory measures.

(f) *Framework implementation procedure.* A Framework Implementation Procedure is a procedure established under an FMP that allows actions to be undertaken pursuant to a previously planned and constructed management regime without requiring additional environmental analysis. The types of measures that could fall within a Framework Implementation Procedure may include traditional framework actions, annual specifications and other fishery management actions, as appropriate. The intent of a Framework Implementation Procedure is to facilitate the adjustment of management measures within the scope and criteria established by an underlying management regime and analysis to provide for real time management of fisheries. A Framework Implementation Procedure achieves this goal by developing early broad-based analysis of management approaches and impacts that provide a foundation that specified subsequent actions, or categories of actions, may rely on. As long as subsequent management actions and their environmental effects fall within the scope of a prior analysis, no additional action-specific analysis would be necessary.

(g) *Framework Compliance Evaluation (FCE).* Documentation to determine whether an existing NEPA document remains adequate to support a fishery management action undertaken pursuant to a Framework Implementation Procedure. The FCE will culminate in either a determination that the existing NEPA analysis must be supplemented or preparation of a Memorandum of Framework Compliance for the file. Section 700.104 establishes a process for the development of an FCE.

(h) *Determination of Categorical Exclusion.* A memorandum for the record providing the specific rationale that a fishery management action qualifies for a Categorical Exclusion under § 700.701.

§ 700.4 NMFS capability to comply.

NMFS shall ensure that it is capable (in terms of personnel and other resources) of complying with the requirements enumerated herein. Such compliance may include use of other's resources, but NMFS shall itself have sufficient capability to evaluate what others do for it. NMFS shall:

(a) Fulfill the requirements of section 102(2)(A) of NEPA to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. NMFS shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Ensure preparation of adequate IFEMSs pursuant to section 102(2)(C).

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to IFEMSs.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I) of NEPA, and of Executive Order 11514, Protection and Enhancement of Environmental Quality, section 2.

§ 700.5 Agency procedures.

NMFS and the FMCs shall periodically review, and revise as necessary, their procedures to comply with the requirements set forth in the regulations in this part.

§ 700.6 Elimination of duplication with State and local procedures.

(a) NMFS and the FMCs shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(b) NMFS and the FMCs shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, including through development of joint environmental documents. In such cases NMFS and one or more State or local agencies may be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, NMFS shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(c) Where applicable, to better integrate environmental documents into State or local planning processes, environmental documents shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the environmental document should describe the extent to which NMFS would reconcile its proposed action with the plan or law.

§ 700.7 Effective date and applicability.

The effective date of this part is [*INSERT DATE 30 days from publication of the final rule in the* **Federal Register**]. This part shall apply to fishery management actions initiated by NMFS or the FMCs after this effective date. NMFS or an FMC may also apply these regulations to actions already under development if NMFS or the FMC determines it is appropriate. No completed environmental documents need be redone by reasons of this part.

Subpart B—NEPA and Fishery Management Planning

§ 700.101 Apply NEPA throughout the fishery management process.

NMFS and the FMCs shall integrate the NEPA process at the earliest possible time and throughout fisheries conservation and management planning to ensure that planning and decisions reflect environmental values and the purposes and policies of the MSA including the MSA's national standards, to avoid delays later in the process, and to head off potential conflicts. NMFS and the FMCs shall:

(a) Comply with the mandates of section 102(2)(A) of the NEPA, to ''utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment,'' and National Standard 2 of the MSA (section 301(a)(2)).

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be made readily available and reviewed at the same time as other fisheries conservation and management planning and decision documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the NEPA.

§ 700.102 When to prepare an environmental assessment.

(a) An environmental assessment will normally be prepared for the following types of actions:

(1) Framework actions or annual specifications taken pursuant to a fishery management plan and tiered to an IFEMS, EIS, or prior EA that are not covered by a CE or Memorandum of Framework Analysis; and

(2) Emergency and interim actions under MSA section 305(c) developed in accordance with § 604 of this part.

(b) An environmental assessment is not necessary if NMFS or an FMC has decided to prepare an IFEMS or an environmental impact statement (EIS), or if NMFS has determined a DCE or Memorandum of Framework Analysis applies.

(c) NMFS or an FMC may prepare an environmental assessment on any action at any time in order to assist fisheries conservation and management planning and decisionmaking.

(d) An EA is required for a proposal for fishery management action that is not analyzed in an IFEMS or EIS and is not appropriately included in a categorical exclusion (§ 700.702).

§ 700.103 When to prepare an IFEMS.

(a) In determining whether to prepare an IFEMS, NMFS, in consultation with the relevant FMC and considering the principles set forth in NOAA Administrative Order (NAO) 216–06 section 6.02, shall determine whether the proposal is one which normally requires an IFEMS, including:

(1) Development of new fisheries management plans;

(2) Amendment of existing fisheries management plans that have significant environmental effects; and

(3) Other actions determined to be significant in accordance with the criteria set forth in subpart E of this part.

(b) If the proposed action is not covered by paragraph (a) of this section and is not covered by a category of actions that NMFS has found normally do not require either an environmental impact statement or an environmental assessment (categorical exclusion § 700.702), NMFS or the relevant FMC shall prepare an environmental assessment (§ 700.102). NMFS and the FMCs where relevant, shall involve environmental agencies and the public, to the extent practicable, in preparing assessments required by § 700.102.

(c) NMFS, working with the FMC where relevant, shall ensure that either NMFS or the FMC begins the scoping process (§ 700.108) if an IFEMS will be prepared.

§ 700.104 Utilizing a memorandum of framework compliance pursuant to a framework implementation procedure.

(a) An FMP may establish a Framework Implementation Procedure which provides a mechanism to allow actions to be undertaken pursuant to a previously planned and constructed management regime without requiring additional environmental analysis, as provided in this section. Such a procedure:

(1) Shall allow for an evaluation of whether a fishery management action taken pursuant to a Framework Implementation Procedure falls within the scope of a prior environmental document;

(2) Shall specify criteria that would trigger a requirement to supplement the prior analysis or would require an IFEMS or EA for the fishery management action taken pursuant to a Framework Implementation Procedure; and

(3) May specify criteria that would permit actions under revision or review to continue during supplementation or revision of the prior document, and, if so, establish criteria for determining when this is appropriate.

(b) A fishery management action taken pursuant to a Framework Implementation Procedure established under an FMP does not require additional action-specific analysis if NMFS determines through a Framework Compliance Evaluation that the management measures in the action and their environmental effects fall within the scope of a prior analysis. A Framework Compliance Evaluation shall:

(1) Identify the prior EIS, IFEMS, or EA that analyzed the impacts of the fishery management action proposed to be taken pursuant to the Framework Implementation Procedure;

(2) Identify new information, if any, relevant to the impacts of the fishery management action proposed to be taken pursuant to a Framework Implementation Procedure; and

(3) Evaluate whether the fishery management action proposed to be taken pursuant to a Framework Implementation Procedure falls within the scope of the prior analyses and whether new information, if any, requires supplementation.

(c) If the Framework Compliance Evaluation results in a determination that supplementation is not required, a Memorandum of Framework Compliance must be prepared for the file. A Memorandum of Framework Compliance is a concise (ordinarily 2 pages) document that briefly summarizes the fishery management action taken pursuant to a Framework Implementation Procedure, identifies the prior analyses that addressed the impacts of the action, and incorporates any other relevant discussion or analysis for the record.

(d) If the Framework Compliance Evaluation results in a determination that supplementation is required, appropriate supplemental analyses shall be conducted.

§ 700.105 Using a Categorical Exclusion.

(a) A fisheries management action may qualify for a Categorical Exclusions (CE) if NMFS determines that the action does not have the potential to pose individually and cumulatively significant effects to the quality of the human environment. NMFS will make this determination in accordance with 700.701.

(b) *Determination of Categorical Exclusion.* NMFS must document a determination that an action qualifies for a CE in a Determination of Categorical Exclusion (DCE). The DCE must state the specific rationale behind why the action qualified for a categorical exclusion. For FMC-initiated actions, the DCE must be included in the record available for public comment on the action. In addition, NMFS must include the DCE in its final decision documents for the action.

§ 700.106 Lead agencies.

NMFS shall be the lead Federal agency for the purpose of preparing the IFEMS and shall, where applicable, designate co-lead agencies consistent with the provisions of 40 CFR 1501.5.

§ 700.107 Cooperating agencies.

Upon request of NMFS, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement, may be a cooperating agency upon request of NMFS. An agency may request NMFS to designate it a cooperating agency.

(a) NMFS shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time;

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency; and

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency has the same responsibilities under this part it does under 40 CFR 1501.6.

§ 700.108 Scoping.

(a) NMFS and each FMC shall ensure that the MSA fishery management process includes an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping.

(1) *FMC-initiated actions.* Scoping shall be based on the MSA's public process for the development of fishery management actions by FMCs and shall be initiated by a publication in the **Federal Register** of a scoping notice. NMFS shall publish a scoping notice as soon as practicable after the decision to initiate development of a fishery management action. NMFS and FMCs may conduct scoping hearings as independent scoping hearings, or as part of an FMC's public meetings. If scoping is conducted as part of an FMC meeting, a scoping notice must, at a minimum, be included as a component of the appropriate FMC's next meeting agenda (MSA section 302(i)(2)(C)) and must be titled and formatted in a manner that provides the public with adequate notice of the NEPA-related scoping process.

(2) *NMFS-initiated actions.* For any fishery management action initiated by NMFS, as soon as practicable after its decision to initiate development of a fishery management action and/or prepare an IFEMS, NMFS shall publish a scoping notice in the **Federal Register**. The **Federal Register** notice shall be titled and formatted in a manner that provides the public with adequate notice of the NEPA-related scoping process and scoping activities conducted in conjunction with meetings of advisory panels.

(b) As part of the scoping process for FMC-initiated actions:

(1) NMFS, working with the appropriate FMC, shall ensure that affected Federal, State, and local agencies, any affected Indian tribe, the proponents of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds) are invited to participate. NMFS, working with the appropriate FMC, shall ensure that the scoping process meets the purposes of scoping as set forth in 40 CFR 1501.7.

(2) NMFS and the appropriate FMC shall cooperate to determine the scope (40 CFR 1508.25(a)) and the significant issues to be analyzed in depth in the environmental document.

(3) NMFS and the appropriate FMC shall cooperate to identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 700.110), narrowing the discussion of these issues in the environmental document to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) NMFS and the appropriate FMC shall allocate assignments, with NMFS retaining responsibility for the final environmental document.

(5) NMFS and the appropriate FMC shall indicate any public environmental assessments, environmental impact statements, IFEMS, and other environmental documents which are being or will be prepared that are related to but are not part of the scope of the environmental document under consideration.

(6) NMFS and the appropriate FMC shall identify other environmental review and consultation requirements in order to integrate them with the environmental document as provided in § 700.223.

(7) NMFS and the appropriate FMC shall indicate the relationship between the timing of the preparation of environmental analyses and NMFS' and

the FMC's tentative planning and decisionmaking schedule.

(c) As part of the scoping process for a NMFS-initiated action, NMFS shall:

(1) Ensure that affected Federal, State, and local agencies, any affected Indian tribe, the proponents of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds) are invited to participate and ensure that the scoping process meets the purposes of scoping as set forth in 40 CFR 1501.7.

(2) Determine the scope (40 CFR 1508.25(a)) and the significant issues to be analyzed in depth in the environmental document.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 700.110), narrowing the discussion of these issues in the environmental document to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments, with NMFS retaining responsibility for the final environmental document.

(5) Indicate any public environmental assessments, environmental impact statements, IFEMS, and other environmental documents which are being or will be prepared that are related to but are not part of the scope of the environmental document under consideration.

(6) Identify other environmental review and consultation requirements in order to integrate them with the environmental document as provided in § 700.223.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and NMFS' tentative planning and decisionmaking schedule.

(d) As part of the scoping process NMFS or an FMC may:

(1) Set page limits on environmental documents (§ 700.205).

(2) Set time limits (§ 700.109).

(3) Hold an early scoping meeting or meetings which may be integrated with any other FMC meeting or other early planning meeting convened by NMFS or the FMC.

(e) For FMC-initiated actions, NMFS and the FMC shall cooperate to revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts. For NMFS-initiated actions, NMFS shall revise determinations made under paragraphs (a) and (c) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

§ 700.109 Time limits.

(a) For FMC-initiated actions, NMFS and FMCs shall cooperate to set time limits or targets appropriate to individual actions (consistent with the minimum time periods required by § 700.604) provided that the limits and targets are consistent with the purposes of NEPA and other essential considerations of national policy. For NMFS-initiated actions, NMFS shall set such time limits or targets.

(b) NMFS and the FMCs may:

(1) Consider the following factors in determining time limits or targets:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or targets for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an IFEMS (if not already decided).

(ii) Determination of the scope of the IFEMS.

(iii) Preparation of the draft IFEMS.

(iv) Review of any comments on the draft IFEMS from the public and agencies.

(v) Preparation of the final IFEMS.

(vi) Review of any comments on the final IFEMS.

(vii) Decision on the action based in part on the IFEMS.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request that NMFS set time limits.

§ 700.110 Adoption.

(a) NMFS may adopt a Federal draft or final environmental assessment, environmental impact statement, IFEMS, or portion thereof provided that the assessment or statement or portion thereof meets the standards for an adequate environmental document under these regulations.

(b) If the actions covered by the original environmental document and the proposed action are substantially the same, NMFS is not required to recirculate the other agency's final environmental document except as a final environmental document. Otherwise NMFS shall treat the environmental document as a draft and recirculate it.

§ 700.111 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other NMFS or FMC document to reduce duplication and paperwork.

§ 700.112 Assignment of tasks.

For the purposes of this part, where the language provides that NMFS and/or an FMC must take action, or where the language does not specify a particular entity to take action, NMFS and the appropriate FMC must establish which entity shall carry out such action. This clarification may be established through a Memorandum of Understanding for each environmental document individually or for classes of environmental documents, but in no case should scoping activities be considered complete until such clarification is made.

Subpart C—Integrated Fishery and Environmental Management Statement

§ 700.201 Purpose of the IFEMS.

A primary goal of the Integrated Fishery and Environmental Management Statement (IFEMS) is to better integrate the consideration of environmental impacts into the MSA's process for FMC and NMFS development of fishery management recommendations and actions, to more effectively align these considerations with the points in time where alternatives are being considered. The IFEMS will meet the policies and goals of NEPA and shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. NMFS and the FMCs shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. IFEMS shall be concise, clear, and to the point, and shall be supported by evidence that

the agency has made the necessary environmental analyses. An IFEMS is more than a disclosure document. It shall be used by NMFS and the FMCs in conjunction with other relevant material to plan actions and make decisions.

§ 700.202 Implementation.

To achieve the purposes set forth in § 700.201, NMFS and the FMCs shall prepare IFEMSs in the following manner:

(a) An IFEMS shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues.

(c) An IFEMS shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA, the MSA, and other applicable requirements. Length and level of detail should be proportional to potential environmental problems and the scope of the fishery management action under consideration.

(d) An IFEMS shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of NEPA and other environmental laws and policies.

(e) The range of alternatives discussed in an IFEMS shall encompass those to be considered by the Secretary.

(f) NMFS shall not commit resources prejudicing selection of alternatives before making a final decision (§ 700.601).

(g) An IFEMS shall serve as the means of assessing the environmental impact of proposed fishery management actions, rather than justifying decisions already made.

§ 700.203 Timing.

(a) In general, preparation of an IFEMS shall be commenced as close as possible to the time that NMFS or an FMC is developing fishery conservation and management measures and actions and considering alternatives so that the IFEMS can serve practically as an important contribution to the FMC deliberations and NMFS decisionmaking process and will not be used to rationalize or justify decisions already made. For recommendations initiated by an FMC, the FMC must use the draft IFEMS in its deliberations. Both the draft and final IFEMS, and the public comments thereon, inform the Secretary's final decision.

(b) *IFEMS for fishery management actions developed by an FMC.* (1) NMFS shall publish a Notice of Availability (NOA) of a draft IFEMS in the **Federal Register** no later than public release of the FMC's meeting agenda notice. NMFS shall ensure that the draft IFEMS is made available to the public at least 45 days in advance of the FMC meeting (unless this time frame is reduced under § 700.604(b)).

(2) The public shall have an opportunity to comment on the draft IFEMS both by attending the FMC meeting and by submitting written comments to the FMC.

(3) The FMC shall review the draft IFEMS and consider all public comments on the draft IFEMS prior to making the final FMC recommendation on a fishery management action.

(4) The FMC shall deliberate and vote in accordance with procedures adopted in accordance with § 700.501.

(5) After the FMC's vote, the IFEMS shall be revised as necessary to reflect the FMC's action and any necessary changes to the analysis. The final IFEMS must address all public comments and modifications that occurred through the council process and must be submitted with the recommended management measure or action to begin Secretarial review. If necessary, the FMC or NMFS shall supplement the draft IFEMS in accordance with § 700.207(c). In its final vote to recommend an action, an FMC may select combinations of parts of various alternatives analyzed in the draft IFEMS or a new alternative within the scope of those analyzed in the draft IFEMS. NMFS may accept this recommendation without further analysis or supplementation by the FMC.

(6) The final or supplemental IFEMS shall be transmitted to NMFS along with the FMC's proposed action.

(i) *Final IFEMS submitted with transmittal package.* NMFS shall publish in the **Federal Register** an NOA of the final IFEMS as part of the appropriate notice of proposed rulemaking or NOA of a proposed FMP or FMP amendment as required by MSA sections 304(a)(1)(B) and 304(b)(1)(A), and shall solicit public comment on the IFEMS along with public comment on the FMC's recommended action. Publication of the NOA initiates the 30 day period set forth at § 700.604(c).

(ii) *Supplemental IFEMS submitted with transmittal package.* NMFS shall publish in the **Federal Register** an NOA of any supplemental IFEMS as part of the appropriate notice of proposed rulemaking or notice of availability of a proposed FMP or FMP amendment as required by MSA sections 304(a)(1)(B) and 304(b)(1)(A), and shall solicit public comment on the supplemental IFEMS along with public comment on the FMC's recommended action. Prior to making a final decision on the proposed action, NMFS shall publish a final supplemental IFEMS that responds to public comments in accordance with § 700.604. Publication of the NOA initiates the 30 day period set forth at § 700.604(c).

(7) NMFS shall prepare and issue its Record of Decision (ROD) on the final IFEMS concurrently with its decision on the FMC-recommended action as provided for in § 700.502.

(c) *Fishery management actions developed by NMFS.* For FMPs, FMP amendments, and regulations developed by the Secretary pursuant to MSA sections 304(c), (e), and (g) (including HMS), and 305(d) the draft IFEMS shall be circulated for public comment in accordance with § 700.604(b).

The Final IFEMS shall respond to public comments received on the Draft and shall be published prior to the decision on the proposed action in accordance with § 700.604(c).

§ 700.204 Interdisciplinary preparation.

IFEMSs shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of NEPA). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 700.108).

§ 700.205 Page limits.

To the extent practicable, IFEMS shall comply with the non-binding page limits established for Environmental Impact Statements by 40 CFR 1502.7; NEPA-related text of final IFEMSs (e.g., paragraphs (d) through (g) of § 700.208) should be less than 150 pages (excluding maps, charts, and graphic displays of quantitative information), but may be up to 300 pages for proposals of unusual scope or complexity. NMFS and the FMC may use tiering, cross-referencing, and appendices to help minimize the size of the IFEMS. NMFS shall consult with CEQ on a programmatic basis if these page limits are regularly exceeded.

§ 700.206 Writing.

NMFS and the FMC must develop the IFEMS based on the best scientific information available, including analysis and supporting data from the natural and social sciences. Each IFEMS should use all appropriate techniques to clearly and accurately communicate with the public and with decisionmakers, including plain language, tables, and graphics, with particular emphasis on making complex

scientific or technical concepts understandable to the non-expert.

§ 700.207 Phases of analysis: Draft, final, and supplemental IFEMSs.

IFEMSs shall be prepared in two stages and shall be designed to be supplemented as necessary to address substantial changes in fishery conservation and management actions and significant new circumstances or information.

(a) *Drafts.* Draft IFEMSs shall be prepared in accordance with the scope decided upon in the scoping process. NMFS, and the FMC as appropriate, shall work with any cooperating agencies and shall obtain comments as required in subpart D of this part. The draft IFEMS must fulfill and satisfy to the fullest extent possible the requirements established for detailed statements in section 102(2)(C) of NEPA. If a draft IFEMS is so inadequate as to preclude meaningful analysis, a revised draft of the appropriate portion shall be prepared and circulated. All major points of view on the environmental impacts of the alternatives including the proposed action must be included in the draft IFEMS to the extent practicable.

(b) Final.—(1) *In general.* A Final IFEMS shall respond to comments as required in subpart D of this part. The IFEMS shall discuss at appropriate points any responsible opposing view which was not adequately discussed in the draft and shall indicate both NMFSs' and, for those actions initiated by an FMC, the FMC's response to the issues raised.

(2) *FMC-initiated actions.* For fishery management actions being developed through the FMC process, the final IFEMS will also: describe the public comments received through the FMC public process; describe any changes made through the FMC public process either to the analysis or to the proposed action; and describe any additional modifications to the alternative recommended as the proposed action by the FMC.

(c) *Supplements.* (1) NMFS or an FMC shall prepare supplements to a draft or final IFEMS if:

(i) There are substantial changes in an action that are relevant to environmental concerns (either prior to the Secretary's approval of the recommended proposal for agency action or during its implementation); or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts.

(2) NMFS or an FMC may also prepare supplements when NMFS or the FMC determine that the purposes of NEPA and the MSA will be furthered by doing so.

(3) NMFS or an FMC shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) A supplement to an IFEMS shall be prepared, circulated, and filed in the same fashion (exclusive of scoping) as a draft and final IFEMS.

(5) Preparation of a supplement to an IFEMS does not require suspension of ongoing fishery management actions, such as implementation of an FMP, covered by the IFEMS during the supplementation process.

(6) In the event that an FMC modifies the proposal and votes to recommend an alternative not within the range of alternatives analyzed in the draft IFEMS, the affected portions of the IFEMS shall be amended to include an analysis of the effects of the recommended action prior to transmission of the proposal for initiation of Secretarial review pursuant to the MSA. The supplemental draft IFEMS shall be available for public comment as specified in § 700.203(b).

§ 700.208 Recommended format.

NMFS and the FMCs shall use a format for IFEMSs which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for IFEMSs should be followed unless NMFS determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of NEPA).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA and additional requirements of the MSA and other applicable law as appropriate).

(h) List of preparers.

(i) List of Agencies, Organizations, and persons to whom copies of the IFEMS are sent.

(j) Index.

(k) Appendices (if any).

Note to § 700.208: The IFEMS will consist of, at a minimum, items outlined in paragraphs (d) through (g) of this section; shall be presented in a format which will encourage good analysis and clear presentation of the alternatives including the proposed action; and may also include such other elements as may be necessary to fulfill the requirements of the MSA and other applicable law. If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j) of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 700.208 through 700.216, in any appropriate format.

§ 700.209 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) Reference to NMFS as lead agency and the applicable FMC, as appropriate, and the list of cooperating agencies if applicable.

(b) The title of the proposed action that is the subject of the IFEMS (and if appropriate the titles of related cooperating agency actions), together with the geographic location where the action is located.

(c) The name, address, and telephone number of the person at the agency or FMC who can supply further information.

(d) A designation of the IFEMS as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the IFEMS.

(f) The date by which comments must be received, calculated in accordance with § 604 of this part.

§ 700.210 Summary.

Each IFEMS shall contain a summary which adequately and accurately summarizes the IFEMS. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary should not exceed 15 pages.

§ 700.211 Purpose and need.

The IFEMS shall briefly specify the underlying purpose and need to which the proposed fishery management actions and alternatives are responding.

§ 700.212 Alternatives including the proposed action.

In this section NMFS, and as appropriate, the FMCs shall:

(a) Based on the information and analysis presented in the sections on the Affected Environment (§ 700.213) and the Environmental Consequences (§ 700.214), present in the IFEMS the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the Secretary, NMFS, the FMCs and the public.

(b) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. For fishery management

actions, ''reasonable alternatives'' are those derived from the statement of purpose and need of the action, in context of the MSA's National Standards and requirements and requirements of other applicable laws, and which satisfy, in whole, or substantial part, the objectives of the proposed federal action. Alternatives that are impractical or would not achieve stated purposes and needs are not ''reasonable alternatives.''

(c) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(d) Include reasonable alternatives not within the jurisdiction of the lead agency.

(e) Include the alternative of no action. ''No action'' means continued management of the fishery as it is being prosecuted at the time development of the IFEMS is initiated, taking into account the underlying management regime with assumptions as to how it would continue being prosecuted into the future. ''No action'' does not mean the literal fishery management regime that would result in the absence of a Federal action.

(f) Identify the preferred alternative or alternatives, if one or more exists, in the draft IFEMS and identify such alternative in the final IFEMS unless MSA or other applicable law prohibits the expression of such a preference.

(g) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 700.213 Affected environment.

The IFEMS shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. This description shall be no longer than is necessary for the Secretary and the public to understand the effects of the alternatives. Data and analyses incorporated in an IFEMS shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or incorporated by reference to existing descriptions of the affected environment that NMFS regularly maintains and makes available to the public. NMFS shall avoid useless bulk in IFEMS and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an IFEMS.

§ 700.214 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 700.212. It shall consolidate the discussions of those elements required by sections 301 and 303 of MSA and sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the IFEMS and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of the fishery and other affected aspects of the human environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should the proposed fishery conservation and management measures be implemented. This section should not duplicate discussions in § 700.212. It shall include discussions of:

(a) Direct effects and their significance.

(b) Indirect and cumulative effects and their significance.

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, tribal and local plans, policies and controls for the area concerned. (See § 700.602(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 700.212 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Historic and cultural resources, and reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 700.212(f)).

§ 700.215 List of preparers.

The IFEMS shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the IFEMS or significant background papers, including basic components of the IFEMS (§§ 700.204 and 700.206). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified.

§ 700.216 Preparation of an appendix.

If NMFS or an FMC prepares an appendix to an IFEMS the appendix shall:

(a) Consist of material prepared in connection with an IFEMS (as distinct from material which is not so prepared and which is incorporated by reference (§ 700.219)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact assessment.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the IFEMS or be readily available on request.

§ 700.217 Circulation of the IFEMS.

NMFS shall ensure that the entire draft and final IFEMS, except for certain appendices as provided in § 700.216 and an unchanged IFEMS as provided in § 700.304, are circulated in a format that is readily accessible to decision-makers and the public.

§ 700.218 Tiering.

NMFS and the FMCs shall tier their environmental documents to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (40 CFR 1508.28). Whenever a broad IFEMS has been prepared (such as for a program, policy, or fishery management plan or amendment) and a subsequent IFEMS or environmental assessment is then prepared on an action included within the entire program, policy, or fishery management plan or plan amendment, the subsequent IFEMS or environmental assessment need only summarize the issues discussed in the broader IFEMS, incorporate discussions from the broader IFEMS by reference, and shall concentrate on the issues specific to the subsequent action. NMFS shall ensure that the broader IFEMS is maintained in locations and in a format that is readily accessible to decision-makers and the public, and the subsequent document shall state where the earlier document is available.

§ 700.219 Incorporation by reference.

NMFS and the FMCs shall incorporate material into an IFEMS by reference when the effect will be to reduce the length or complexity of the IFEMS without impeding agency and public review of the action. The incorporated material shall be cited in the IFEMS and its content briefly described and instructions on how the public can access the incorporated material provided in the IFEMS. Material that is incorporated by reference must be maintained in locations and in a format

that is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§ 700.220 Incomplete or unavailable information.

When NMFS or an FMC is evaluating reasonably foreseeable significant adverse effects on the human environment in an IFEMS and despite a review of the best available scientific information, there is incomplete or unavailable information, consistent with MSA section 303(a)(8) and National Standard 2, NMFS or the FMC shall make clear that such information is lacking.

(a) NMFS or the FMC shall identify incomplete information that is relevant to reasonably foreseeable significant adverse impacts and that is essential to a reasoned choice among alternatives and determine the overall costs and benefits of obtaining it. If NMFS finds that the overall costs, including the costs of delay, of obtaining the information are not exorbitant, NMFS shall ensure that the information is obtained and include the information in the IFEMS.

(b) If NMFS finds that the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the IFEMS shall include:

(1) A statement that such information is incomplete or unavailable;

(2) A statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;

(3) A summary of the best available scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and

(4) An evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, ''reasonably foreseeable'' includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) Any time an IFEMS considers and addresses incomplete or unavailable information, subsequent actions relating to the same uncertainties may reference the initial assessment or evaluation.

§ 700.221 Cost-benefit analysis.

To the extent that a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the IFEMS as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of NEPA the IFEMS shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with NEPA, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis. The IFEMS should separately indicate qualitative considerations that are not monetized and are likely to be relevant and important to a decision, including factors not related to environmental quality.

§ 700.222 Methodology and scientific accuracy.

NMFS and the FMCs shall insure the professional integrity, including scientific integrity, of the discussions and analyses in IFEMSs. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources upon which they relied for facts or conclusions in the IFEMS. Discussion of methodology may be placed in an appendix.

§ 700.223 Environmental review and consultation requirements.

(a) To the fullest extent possible, NMFS and the FMCs shall prepare draft IFEMSs concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and other environmental review laws and executive orders.

(b) The draft IFEMS shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft IFEMS shall so indicate.

Subpart D—Public Participation

§ 700.301 Public outreach.

For fishery management actions developed through the FMC process, NMFS and the FMCs shall solicit public involvement, including through the MSA's public FMC process. For fishery management actions developed by the Secretary, NMFS shall conduct similar outreach, including through existing MSA public processes. NMFS and the FMCs where applicable, shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures for fishery management actions.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases NMFS shall ensure that notice is mailed to those who have requested it on an individual action.

(2) In the case of an action identified by NMFS as having effects of national concern, notice shall include publication in the **Federal Register**, notice by mail to national organizations reasonably expected to be interested in the matter, and outreach via the Internet. When engaged in rulemaking, NMFS shall provide notice to national organizations who have requested that notice regularly be provided. NMFS shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses.

(ii) Notice to Indian tribes where tribal resources may be affected.

(iii) Notice following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons particularly in the major fishing ports of the region and in other major fishing ports having a direct interest in the affected fishery.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(x) Outreach via the Internet.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft IFEMS is to be considered at a public hearing, NMFS or the FMC should make the document available to the public at least 45 days in advance of FMC action. This time period may be reduced in accordance with criteria specified in § 700.608.

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental documents and other elements of the NEPA process.

(f) Make environmental documents, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552(a)(2)), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including CEQ.

§ 700.302 Inviting comment on the IFEMS.

(a) After preparation of a draft IFEMS and before preparation of a final IFEMS, NMFS shall ensure that NMFS or the FMC:

(1) Obtains the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards affecting fishery conservation and management.

(2) Requests the comments of:

(i) Appropriate State, tribal, and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes that may be affected or have special expertise;

(iii) Any agency which has requested that it receive environmental documents on actions of the kind proposed; and

(iv) Any affected FMC (as provided by MSA sections 304(c)(4) and 304(g)(1)).

(3) Requests comments from the public, affirmatively soliciting comments from those persons or organizations that may be interested or affected.

(b) *Comments on final.*NMFS shall request comments on a final IFEMS before making a final decision on whether to approve a proposed action except as provided in §§ 700.608 (minimum time periods) and 700.701 (emergencies). In any case, other agencies or persons may make comments before the Secretary makes a final decision under MSA Section 304. Public comment on the final IFEMS may address the sufficiency of compliance with NEPA to inform the Secretary's decision whether to approve, disapprove, or partially approve a fishery management plan, or amendment pursuant to MSA section 304(a)(3), or promulgate regulations pursuant to MSA section 304(b), as applicable.

§ 700.303 Opportunity to comment.

(a) *Comments of other agencies.* Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards are required (by 40 CFR 1503.2) to comment on IFEMSs within their jurisdiction, expertise, or authority. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the IFEMS, it should reply that it has no comment.

(b) *Comments of the interested public*—(1) *Fishery Management Actions developed by the FMCs.* For fishery management actions being developed through the FMC process, the interested public must provide any comments it may have relevant to the draft IFEMS, such as comments on the statement of purpose and need, range of alternatives, and evaluation of environmental impacts, to the FMC during the public comment period on the draft IFEMS by submitting written comments or during the appropriate FMC meeting by providing oral testimony.

(2) *NMFS actions.* For fishery management actions developed by NMFS, the interested public must provide any comments it may have relevant to the draft IFEMS, such as comments on the statement of purpose and need, range of alternatives, and evaluation of environmental impacts, to NMFS either through NMFS' scoping process or during the comment period on the draft IFEMS to allow NMFS to meaningfully consider and address all comments.

§ 700.304 Specificity of comments.

(a) NMFS and FMCs shall seek comments on an IFEMS that are as specific as possible and may address either the adequacy of the IFEMS or the merits of the alternatives discussed or both.

(b) NMFS and the FMC shall request that, when a commenting agency criticizes the predictive methodology used in the IFEMS, the commenting agency should describe the alternative methodology which it prefers and why.

(c) NMFS shall request that a cooperating agency specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it is required to specify any additional information it needs to comment adequately on the draft IFEMS' analysis of significant site-specific effects associated with any grant or approval decision for applicable permit, license, or related requirements or concurrences by that cooperating agency.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation is required (by 40 CFR 1503.3(d)) to specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§ 700.305 Response to comments.

(a) Comments received on the draft IFEMS shall be addressed in the final IFEMS as follows. The final IFEMS shall assess the comments both individually and collectively, shall document how both the FMC and NMFS considered them collectively and individually, and shall describe how both the FMC and NMFS responded. Possible responses are to:

(1) Modify the alternatives including the proposed action to the extent consistent with the MSA.

(2) Develop and evaluate alternatives not previously given serious consideration.

(3) Supplement, improve, or modify the analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further response, citing the sources, authorities, or reasons which support this position and, if appropriate, indicate those

circumstances which would trigger reappraisal or further response.

(b) All substantive comments received on the draft IFEMS should be attached to the final IFEMS whether or not the comment is thought to merit individual discussion in the text of the IFEMS. In the event that multiple copies of the same comment are submitted, such as a form letter, it will suffice to attach one representative copy of the comment and include one representative response.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, they may be written on errata sheets and attached to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 700.217). The entire document with a new cover sheet shall be filed as the final statement (§ 700.603).

(d) *Responses to comments on the final.* In the record of decision (ROD), NMFS will respond to comments received on the Final IFEMS as provided in § 700.502(b). NMFS is not required to respond to comments raised for the first time with respect to a Final IFEMS if such comments were required to be raised with respect to a draft IFEMS pursuant to § 700.302(b).

Subpart E—Fishery Conservation and Management Actions That Significantly Affect the Quality of the Human Environment

§ 700.401 Determining the significance of NMFS's actions.

(a) NMFS, in consultation with the relevant FMC, must consider the proposed fishery management action in light of its context and intensity to determine the significance of environmental effects in order to determine whether to prepare a FONSI or IFEMS.

(b) *Context.* Context means that significance of an action must be analyzed with respect to society as a whole, the affected region and interests, and the locality. Both short- and long-term effects are relevant.

(c) *Intensity.* Intensity refers to the severity of the impact. The following factors must be considered in evaluating intensity:

(1) Impacts may be both beneficial and adverse—a significant effect may exist even if NMFS believes that on balance the effect will be beneficial;

(2) Degree to which public health or safety is affected;

(3) Unique characteristics of the geographic area;

(4) Degree to which effects on the human environment are likely to be highly controversial;

(5) Degree to which effects are highly uncertain or involve unique or unknown risks;

(6) Degree to which the action establishes a precedent for future actions with significant effects or represents a decision in principle about a future consideration;

(7) Individually insignificant but cumulatively significant impacts;

(8) Degree to which the action adversely affects entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources;

(9) Degree to which endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973, are adversely affected; and

(10) Whether a violation of Federal, state, or local law for environmental protection is threatened.

(d) Potentially significant but previously analyzed effects. An FONSI may be appropriate for an action that may have significant or unknown effects, as long as the significance and effects have been analyzed previously.

§ 700.402 Guidance on significance determinations.

(a) NMFS may, as appropriate, develop guidance regarding criteria for determining the significance of effects on a national or regional level for purposes of informing the determination of whether a FONSI is appropriate or an IFEMS must be prepared.

(1) Such guidance may expand on, but not replace, the general language in § 700.401 of this part.

(2) NOAA and NMFS have developed guidance on the determination of significance of fishery management actions (e.g., NOAA Administrative Order (NAO) 216–6 and NMFS' Guidelines for the Preparation of a Finding of No Significant Impact, NMFS Instruction 30–124–1).

(b) NMFS may develop guidance for a specific region that considers how any of the following specific criteria apply.

(1) The extent to which the proposed action may be reasonably expected to compromise the sustainability of any target species that may be affected by the action.

(2) The extent to which the proposed action may be reasonably expected to compromise the sustainability of any non-target species.

(3) The extent to which the proposed action may be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the MSA and identified in FMPs.

(4) The extent to which the proposed action may be reasonably expected to have a substantial adverse impact on public health or safety.

(5) The extent to which the proposed action may be reasonably expected to adversely affect endangered or threatened species, critical habitat of these species, or marine mammals.

(6) The extent to which the proposed action may be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species.

(7) The extent to which the proposed action may be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc).

(8) How to assess significant social or economic impacts that are interrelated with significant natural or physical environmental effects.

(9) The degree to which the effects on the quality of the human environment are likely to be highly controversial. Although no action should be deemed to be significant based solely on its controversial nature, this aspect should be used in weighing the decision on the proper type of environmental review needed to ensure full compliance with NEPA. Socio-economic factors related to users of the resource should also be considered in determining controversy and significance.

(10) Whether the action would result in the introduction or spread of nonindigenous species.

Subpart F—NEPA and Fishery Management Decisionmaking

§ 700.501 Fishery management decisionmaking procedures.

In addition to the procedures set forth herein, NMFS and the FMCs shall adopt and maintain procedures, consistent with current or future Statements of Organization, Practices, and Procedures, as described in 50 CFR 600.115, to ensure that fishery management decisions are made in accordance with the policies and purposes of NEPA and the MSA.

§ 700.502 Record of decision.

(a) NMFS shall complete a concise public ROD by the time of its final decision.

(b) The ROD must do the following.

(1) Describe the decision.

(2) Describe all alternatives considered by NMFS and the FMCs in developing the recommended action

and reaching the final decision, specifying the alternative or alternatives which were considered to be environmentally preferable.

(i) The description of alternatives may discuss preferences among alternatives based on relevant factors including economic and technical considerations under the MSA and other statutory requirements.

(ii) The description of alternative must also identify and discuss all such factors including any essential considerations of national policy which were balanced in developing the recommended action and in making the final decision and state how those considerations entered into the decision.

(3) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. Where the decision is based upon the existence of mitigation measures, the ROD must include a description of the monitoring and enforcement program adopted or to be adopted, and, if not yet adopted, any obstacles to its adoption.

(4) Contain NMFS's responses to comments received on the final IFEMS, if any. In the event the public identifies similar issues to those previously responded to in the final IFEMS, NMFS shall note in the ROD where the prior response to the same or similar comments can be located and provide additional response, if necessary. If the public fails to submit comments at the appropriate point in the process, as specified in § 700.303, NMFS may, but is not required to, address comments that should have been raised at the draft level.

§ 700.503 Implementing the decision.

NMFS may provide for monitoring to assure that the decisions are carried out and shall do so for any mitigation adopted to mitigate significant adverse effects or to obtain information for future IFEMSs or fishery conservation and management decisions. Mitigation (§ 700.502(b)(3)) and other conditions established in the IFEMS or during its review and committed as part of the decision shall be implemented by NMFS, the FMC, recipients of permits or licenses, or other agencies if appropriate. NMFS shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of implementing actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the Secretary.

(d) Regularly make available to decisionmakers and the public the results of relevant monitoring.

Subpart G—Additional Requirements and Limitations

§ 700.601 Limitations on fishery management actions during MSA–NEPA process.

(a) Until NMFS issues a record of decision as provided in § 700.502 (except as provided in paragraph (c) of this section), NMFS shall take no action concerning the proposal which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If NMFS is aware that a person is about to take an action within NMFS's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then NMFS shall promptly notify the applicant that NMFS will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required IFEMS is in progress and the action is not covered by an existing IFEMS or other program statement, NMFS shall not undertake in the interim any major Federal action covered by the plan or program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the IFEMS;

(2) Is itself accompanied by an adequate environmental document; and

(3) Will not prejudice the ultimate decision on the IFEMS. Interim action prejudices the ultimate decision on the IFEMS when it tends to determine subsequent development or limit alternatives.

§ 700.602 NMFS responsibility for environmental documents produced by a third-party.

(a) *Information.* If NMFS requires a non-Federal entity to submit environmental information for possible use by NMFS in preparing an environmental document, then NMFS should assist the non-Federal entity by outlining the types of information required. NMFS shall independently evaluate the information submitted and shall be responsible for its accuracy. If NMFS chooses to use the information submitted by the non-Federal entity in the environmental document, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers. It is the intent of this paragraph that acceptable work not be redone, but that it be verified by NMFS.

(b) *Environmental assessments.* If NMFS permits an applicant to prepare an environmental assessment, NMFS, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) *IFEMSs.* Any IFEMS prepared pursuant to the requirements of MSA section 304(i) and NEPA shall be prepared directly by NMFS, an FMC, or a contractor selected by NMFS or an FMC, or where appropriate under § 700.106(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by NMFS or the FMC, or by NMFS in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by NMFS, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the IFEMS prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency. To the extent that members of an FMC are involved in development of an IFEMS, they must comply with the rules regarding conflicts of interest as set forth in section 302(j) of the MSA, 15 CFR 14.42, 15 CFR 24.36(b), and 40 CFR 1506.5(c).

§ 700.603 Filing requirements.

NMFS shall ensure the timely filing with EPA of IFEMSs together with comments and responses. NMFS shall file IFEMSs with EPA when they are transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each IFEMS to CEQ, which shall satisfy the requirement of availability to the President.

§ 700.604 Minimum time periods for agency action.

(a) *Calculation of time periods.* NMFS shall publish a notice in the **Federal Register** notifying the public of any draft or final IFEMS available for public comment. The minimum time periods set forth in this section may be calculated from the date of publication

of the notice in the **Federal Register**, in accordance with 40 CFR 1506.10(d).

(b) *Comment period on a draft IFEMS.* NMFS and the FMCs shall integrate the solicitation of public comment on the draft IFEMS with the MSA's existing public processes.

(1) Except as provided in paragraph (b)(2) of this section, NMFS and the FMCs shall provide at least 45 days for public comment on the draft IFEMS in advance of a meeting where the FMC may take action

(2) NMFS may, in consultation with the FMC and EPA, reduce the period for public comment on a draft IFEMS to a period of no less than 14 days if NMFS finds that such reduction is in the public interest, based on consideration of the following factors.

(i) Whether there is a need for emergency action or interim measures to address overfishing;

(ii) The potential long- and short-term harm to the fishery resource;

(iii) The potential long- and short-term harm to the marine environment, including non-target and protected species;

(iv) The potential long- and short-term harm to fishing communities;

(v) The ability of the FMC to consider public comments in advance of a scheduled FMC meeting;

(vi) Degree of public need for the proposed action, including the consequences of delay; and

(vii) Time limits imposed on the agency by law, regulations, or executive order.

(3) NMFS should not reduce the public comment period, even if in the public interest, if the value of public notice and comments outweighs the factors listed in paragraph (b)(2) of this section, based on the consideration of the following factors.

(i) The degree to which the affected communities had prior notice of NMFS' or the FMC's consideration of the proposed fishery management actions;

(ii) The complexity of the proposed action and accompanying analysis;

(iii) The degree to which the proposed action is not related to exigent circumstances; and

(iv) The degree to which the science upon which the action is based is uncertain or missing.

(4) In cases where the public comment period is reduced to less than 45 days, NMFS and the FMCs shall explain the rationale for the reduced time period in the NOA announcing the public comment period. The comment period must be the maximum amount of time consistent with the rationale provided.

(c) *Timing of NMFS Decision.* (1) Except as provided in paragraphs (c)(2) and (3) of this section, NMFS shall not make a final decision on a fishery management action until the later of the following dates:

(i) Ninety (90) days after publication of the NOA for a draft IFEMS for an FMP or FMP amendment.

(ii) Thirty (30) days after publication of the NOA for a final IFEMS.

(2) NMFS may make a final decision earlier than the times provided in paragraph (c)(1) of this section if the Secretary, in consultation with EPA, determines one of the following.

(i) NMFS is engaged in rulemaking under section 305(c) of the MSA and the Administrative Procedure Act (APA) for the purpose of protecting the public health or safety or is responding to a fishery management emergency, in which case NMFS may waive or reduce the time periods provided in this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final IFEMS; or

(ii) NMFS has published a supplemental IFEMS and has solicited public comment during the review period provided by MSA section 304 and there is not sufficient time to complete the Final IFEMS and provide for the full 30-day cooling off period within the MSA timeframe. In this case the time periods provided for in paragraph (c)(1) of this section may be reduced by up to 15 days.

(3) For regulations published under section 304(b) of the MSA, the time periods provided by paragraph (c)(1) of this section shall be reduced or enlarged to be commensurate with the comment period provided for the review of the proposed rule.

(d) If the exception listed in paragraph (c)(2)(i) of this section applies, NMFS shall take comment on the final IFEMS for 30 days after publication.

Subpart H—Emergencies and Categorical Exclusions

§ 700.701 Emergencies.

(a) If NMFS finds that there is a need for an emergency action or interim measure to address overfishing, that the action may have significant environmental impacts, and that there is not sufficient time to finalize the NEPA analysis, NMFS shall develop alternative arrangements for NEPA compliance and consult with CEQ about such alternative arrangements. NMFS and CEQ shall limit such arrangements to actions necessary to control the immediate impacts of the emergency. NMFS may develop programmatic alternative arrangements to ensure that such arrangements are limited to the actions necessary to control the immediate impacts of the emergency.

(b) If NMFS finds that an emergency exists and that proposed emergency regulations will not result in a significant environmental impact, NMFS shall document such finding in an EA and FONSI. If NMFS finds that the nature and scope of the emergency requires promulgation of emergency regulations prior to the completion of an EA and FONSI, the Secretary shall develop alternative arrangements for NEPA compliance that include promulgation of the emergency regulations with a draft EA and FONSI that shall be finalized prior to the expiration or extension of the effective period of the regulations.

(c) Other actions remain subject to NEPA review in accordance with this part.

§ 700.702 Categorical exclusions.

(a) The following categories of actions, as found by NOAA in consultation with CEQ for conformity with NEPA and CEQ implementing regulations, normally do not require either an environmental impact statement or an environmental assessment and constitute categorical exclusions:

(1) Ongoing or recurring fisheries actions of a routine administrative nature when the action will not have any impacts not already assessed or NMFS finds they do not have the potential to pose significant effects to the quality of the human environment (apart from those already described in an environmental document) such as: Reallocations of yield within the scope of a previously published IFEMS, FMP or fishery regulation, combining management units in related FMP, and extension or change of the period of effectiveness of an FMP or regulation;

(2) Minor technical additions, corrections, or changes to a Fishery Management Plan or IFEMS; and

(3) Research activities permitted under an EFP or Letter of Authorization where the fish to be harvested have been accounted for in other analyses of the FMP, such as by factoring a research set-aside into the ABC, OY, or Fishing Mortality.

(b) *NOAA and NMFS guidance.* NOAA and NMFS may develop guidance pursuant to 40 CFR 1507.3 on how NMFS will identify categorical exclusions not specified in paragraph (a) of this section.

(c) *Extraordinary circumstances for categorical exclusions.* NOAA and NMFS may develop guidance on how NMFS will determine whether extraordinary circumstances exist such

that an action that normally qualifies for a categorical exclusion requires the preparation of an EA or IFEMS.

(d) *Existing guidance.* NOAA has developed additional guidance on the identification and use of Categorical Exclusions (NOAA Administrative Order 216–6).

[FR Doc. E8–10271 Filed 5–13–08; 8:45 am]
BILLING CODE 3510–22–P

Reader Aids

Federal Register

Vol. 73, No. 94

Wednesday, May 14, 2008

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–741–6000**

Laws **741–6000**

Presidential Documents

Executive orders and proclamations **741–6000**

The United States Government Manual **741–6000**

Other Services

Electronic and on-line services (voice) **741–6020**

Privacy Act Compilation **741–6064**

Public Laws Update Service (numbers, dates, etc.) **741–6043**

TTY for the deaf-and-hard-of-hearing **741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MAY

23939–24138 1
24139–24496 2
24497–24850 5
24851–25502 6
25503–25960 7
25961–26312 8
26313–26940 9
26941–27458 12
27459–27712 13
27713–28024 14

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1200 24139

3 CFR

Proclamations:

8247 24133
8248 24135
8249 24137
8250 25501
8251 25503
8252 26311
8253 27457
8254 27713
8255 27715

Executive Orders:

13338 (See Notice of May 7, 2008) 26939
13399 (See Notice of May 7, 2008) 26939
13460 (See Notice of May 7, 2008) 26939

Administrative Orders:

Memorandums:
Memorandum of May 6, 2008 27717
Notices:
Notice of May 7, 2008 26939
13464 24491
Presidential Determinations:
No. 2008-19 of May 5, 2008 27719

5 CFR

250 24851
2429 27459

7 CFR

305 24851
318 24851
319 25505
915 26941
932 26313
944 26941
1005 26315
1007 26315
1221 25398
2902 ..... 27928, 27958, 27978

Proposed Rules:

319 24886

8 CFR

Proposed Rules:

214 26340
248 26340

9 CFR

Proposed Rules:

2 26344

10 CFR

Proposed Rules:

34 27771
35 27773
50 26349

12 CFR

201 25505

Proposed Rules:

261a 25594
712 23982
741 23982

14 CFR

21 24497
39 ..... 23939, 23942, 24141, 24143, 24145, 24147, 24149, 24151, 24153, 24155, 24157, 24160, 24162, 24164, 24168, 24856, 24858, 24864, 25961, 25962, 25967, 25970, 25974, 25977, 25984, 25986, 25990, 25997, 26316, 26318, 26475
60 26478
71 ..... 25506, 25999, 27721
95 23944
97 ..... 24171, 27721, 27725
121 25506
382 27614

Proposed Rules:

39 ..... 23988, 23990, 23993, 23995, 24887, 25597, 25599, 25601, 25606, 25609, 25612, 26043, 26045, 26351, 27475, 27477, 27479
71 ..... 26047, 26048, 27481
91 26049
125 26049
135 26049

15 CFR

774 26000

16 CFR

Proposed Rules:

317 25614

17 CFR

Proposed Rules:

230 26876
232 26876
239 26876
240 26876
249 26876

18 CFR

35 25832
381 23946

20 CFR

401 25507
402 25507

403.....26001

21 CFR

101.....23947
111.....27727
529.....25507

24 CFR

Proposed Rules
3500.....26953

26 CFR

1 .....26321, 26322, 27728, 27729
301.....27728, 27729
Proposed Rules:
1.....24186
301.....27775

27 CFR

Proposed Rules:
19.....26200

29 CFR

Proposed Rules:
403.....27346

30 CFR

75.....27729
926.....27730
Proposed Rules:
732.....24120
785.....24120
870.....24120
872.....24120

32 CFR

204.....23953
706.....24173
Proposed Rules:
199.....24509

33 CFR

100 .....25508, 26002, 26005, 26007, 27460
101.....25562
102.....25562
104.....25562
105.....25562
106.....25562
117.....24866, 27744
155.....24497
156.....24497
165 .....26017, 26019, 27460, 27745
Proposed Rules:
110.....26054, 27775
117.....24510
160.....27778
165 .....24513, 24889, 24899, 24901, 24904, 25624

34 CFR

8.....27747
Proposed Rules:
5b.....26056
300.....27690

37 CFR

Proposed Rules:
201.....25627

38 CFR

3.....24868
17.....26945
38.....27462

39 CFR

111.....25508, 25509
Proposed Rules:
111.....26353

40 CFR

9.....25098
51.....24174
52 .....23957, 23959, 24174, 24175, 24500, 24868, 25516, 26019
60.....24870
61.....24870
62.....24870
63.....24870
70.....24174
71.....24174
80.....26325
85.....25098
86.....25098
89.....25098
92.....25098
94.....25098
180 .....25518, 25524, 25528, 25533, 27748, 27756
268.....27761
300.....26025
1033.....25098
1039.....25098
1042.....25098
1065.....25098
1068.....25098
Proposed Rules:
52 .....23998, 24187, 24515, 26059, 26355, 27783, 27786, 27788, 27791
704.....24187
720.....24187
721.....24187
723.....24187

41 CFR

302-17.....25539

42 CFR

412.....24871, 26788
Proposed Rules:
413.....25918
418.....24000

44 CFR

64.....24178
65.....26026
67 .....25542, 25560, 26030
Proposed Rules:
67 .....24036, 25633, 26060

45 CFR

Proposed Rules:
1606.....27483
1623.....27483

46 CFR

10.....25562
12.....25562
15.....25562

47 CFR

0.....25566
1.....25420
2.....25420
20.....25566
24.....24180
25.....25420, 25591
27.....24180, 26032
68.....25566
73.....25420
74.....25420
76.....24502
90.....25420
97.....25420
Proposed Rules:
27.....26067
76.....24515

48 CFR

204.....27464
215.....27464
231.....27464
252.....27464
3002.....25592
3036.....24881
6101.....26947
6102.....26947
6103.....26947
6104.....26947
6105.....26947
9904.....23961

49 CFR

29.....24139
1572.....25562
Proposed Rules:
18.....24188
19.....24188
107.....24519
192.....26953
512.....26071
523.....24352
531.....24190, 24352
533.....24190, 24352
534.....24352
536.....24352
537.....24352
544.....24906

50 CFR

17.....23966
660.....25592
229.....23970
622.....24883, 24884
648.....24885
660.....23971, 26325
679 .....24184, 23339, 27473, 27768
Proposed Rules:
17 .....24910, 24911, 24915, 25354, 27483, 27900
80.....24523
600.....24922
635.....24922
648.....24936
700.....27998

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 14, 2008

ENVIRONMENTAL PROTECTION AGENCY

Pesticide Tolerances:

Cyproconazole; published 5-14-08

Tebuconazole; published 5-14-08

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements; Technical Amendment; published 5-14-08

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Montana Regulatory Program; published 5-14-08

LABOR DEPARTMENT

Mine Safety and Health Administration

Sealing of Abandoned Areas; published 5-14-08

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; published 5-14-08

Standard Instrument Approach Procedures,Takeoff Minimums, etc.:

Miscellaneous Amendments; published 5-14-08

TREASURY DEPARTMENT

Internal Revenue Service

Source Rules Involving U.S. Possessions and Other Conforming Changes; Correction; published 5-14-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Changes in Handling Requirements for Fresh Nectarines and Peaches Grown in California; comments due by 5-19-08; published 3-18-08 [FR E8-05357]

Pears Grown in Oregon and Washington; Tomatoes Grown in Florida; and Walnuts Grown in California; comments due by 5-19-08; published 3-18-08 [FR E8-05360]

Raisins Produced From Grapes Grown in California:

Revisions to Requirements Regarding Off-Grade Raisins; comments due by 5-22-08; published 4-22-08 [FR E8-08639]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Weighing, Feed, and Swine Contractors; comments due by 5-21-08; published 4-21-08 [FR E8-08554]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Exclusive Economic Zone Off Alaska:

Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; comments due by 5-20-08; published 3-21-08 [FR E8-05789]

Bering Sea and Aleutian Islands King and Tanner Crabs; comments due by 5-19-08; published 3-19-08 [FR E8-05562]

Fisheries of the Northeastern United States:

Atlantic Mackerel, Squid, and Butterfish Fisheries; comments due by 5-19-08; published 4-4-08 [FR E8-07025]

Fisheries Off West Coast States; Inseason Adjustments; comments due by 5-19-08; published 4-18-08 [FR E8-08405]

General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits; comments due by 5-23-08; published 5-8-08 [FR E8-10176]

Magnuson-Stevens Fishery Conservation and Management Act Provisions:

Fisheries of the Northeastern United States; Northeast Multispecies Fishery, etc.; comments due by 5-21-08; published 5-6-08 [FR E8-09970]

Pacific Whiting Fishery Vessel License Limitation Program; Pacific Coast Groundfish Fishery Management Plan Amendment; comments due by 5-19-08; published 3-19-08 [FR E8-05561]

CONSUMER PRODUCT SAFETY COMMISSION

Standard for the Flammability of Residential Upholstered Furniture; comments due by 5-19-08; published 3-4-08 [FR 08-00768]

DEFENSE DEPARTMENT

Engineers Corps

United States Navy Restricted Area, Menominee River, Marinette Marine Corp. Shipyard, Marinette, WI; comments due by 5-21-08; published 4-21-08 [FR E8-08525]

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Air Quality Implementation Plans:

Virginia; Incorporation of On-board Diagnostic Testing and Other Amendments to the Motor Vehicle, etc.; comments due by 5-22-08; published 4-22-08 [FR E8-08394]

Certain New Chemicals; Receipt and Status Information; comments due by 5-23-08; published 4-23-08 [FR E8-08794]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Pesticide Tolerance:

Prothioconazole; comments due by 5-19-08; published 3-19-08 [FR E8-05290]

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; Basin, WY; comments due by 5-19-08; published 4-14-08 [FR E8-07883]

FEDERAL DEPOSIT INSURANCE CORPORATION

Assessment Dividends; comments due by 5-23-08; published 3-24-08 [FR E8-05670]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 5-19-08; published 4-18-08 [FR E8-08459]

HEALTH AND HUMAN SERVICES DEPARTMENT

Regulation on the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities; comments due by 5-19-08; published 4-17-08 [FR 08-01147]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Safety Zone:

Ocean City Air Show, Atlantic Ocean, Ocean City, MD; comments due by 5-21-08; published 4-21-08 [FR E8-08469]

Red Bull Air Race, Detroit River, Detroit, MI; comments due by 5-22-08; published 5-7-08 [FR E8-10238]

Safety Zone; Festival of Sail 2008 Ship's Parade:

San Diego Harbor, San Diego, California; comments due by 5-23-08; published 4-23-08 [FR E8-08732]

Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY; comments due by 5-21-08; published 5-6-08 [FR E8-10005]

Security Zone; Patapsco River, Middle Branch, Baltimore, MD; comments due by 5-23-08; published 4-23-08 [FR E8-08728]

HOMELAND SECURITY DEPARTMENT

Federal Emergency Management Agency

Proposed Flood Elevation Determinations; comments due by 5-22-08; published 2-22-08 [FR E8-03362]

HOMELAND SECURITY DEPARTMENT

U.S. Citizenship and Immigration Services

Petitions Filed on Behalf of Temporary Workers Subject to or Exempt From Annual Numerical Limitation; comments due by 5-23-08; published 3-24-08 [FR E8-05906]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants:

Coaster Brook Trout; comments due by 5-19-08; published 3-20-08 [FR E8-05618]

INTERIOR DEPARTMENT
Privacy Act; Systems of Records; comments due by 5-19-08; published 4-8-08 [FR E8-07273]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
North Dakota Regulatory Program; comments due by 5-19-08; published 4-18-08 [FR E8-08408]

JUSTICE DEPARTMENT
DNA-Sample Collection Under the DNA Fingerprint Act (of 2005) and the Adam Walsh Child Protection and Safety Act (of 2006); comments due by 5-19-08; published 4-18-08 [FR E8-08339]

SECURITIES AND EXCHANGE COMMISSION
Exchange-Traded Funds; comments due by 5-19-08; published 3-18-08 [FR E8-05239]
Naked Short Selling Anti-Fraud Rule; comments due by 5-20-08; published 3-21-08 [FR E8-05697]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness Directives:
APEX Aircraft Model CAP 10 B Airplanes; comments due by 5-23-08; published 4-23-08 [FR E8-08752]
Bell Helicopter Textron Canada Model 230 Helicopters; comments due by 5-23-08; published 4-23-08 [FR E8-08755]
Boeing Model 737 300, 400, and 500 Series Airplanes; comments due by 5-23-08; published 3-24-08 [FR E8-05702]
Boeing Model 747 Airplanes and Model 767 Airplanes Equipped with General Electric CF6-80C2 and CF6-80A Series Engines; comments due by 5-22-08; published 4-7-08 [FR E8-07153]
Bombardier Model DHC 8 102, DHC-8-103, DHC 8 106, etc.; comments due by 5-21-08; published 5-1-08 [FR E8-09575]
Bombardier Model DHC 8 400 Series Airplanes; comments due by 5-21-08; published 5-1-08 [FR E8-09577]
Eurocopter France Model AS332 C, L, L1 and L2 Helicopters; comments due by 5-22-08; published 4-22-08 [FR E8-08641]
General Electric Co. Aircraft Engines CT7-8A Turboshaft Engines; comments due by 5-19-08; published 3-19-08 [FR E8-05492]
Lindstrand Balloons Ltd. Models 42A, 56A, 60A, 69A77A, 90A, 105A, 120A, 150A, 180A, 210A, 240A, 260A, and 310A Balloons; comments due by 5-19-08; published 4-18-08 [FR E8-08361]
McDonnell Douglas; comments due by 5-22-08; published 4-7-08 [FR E8-07151]
McDonnell Douglas Model 717-200 Airplanes; comments due by 5-22-08; published 4-7-08 [FR E8-07183]
Viking Air Limited Models DHC-2 Mk. I, DHC-2 Mk. II, and DHC-3 Airplanes; comments due by 5-19-08; published 4-18-08 [FR E8-08365]
Airworthiness Standards:
Fire Protection; comments due by 5-21-08; published 2-21-08 [FR E8-03271]
Class E Airspace; Amendment:
Black River Falls, WI; comments due by 5-19-08; published 4-2-08 [FR E8-06580]
Indianapolis, IN; comments due by 5-19-08; published 4-2-08 [FR E8-06572]
Class E Airspace; Establishment and Removal:
Roanoke Rapids, NC; comments due by 5-23-08; published 4-8-08 [FR E8-07092]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 2457/P.L. 110–228

To provide for extensions of leases of certain land by Mashantucket Pequot (Western) Tribe. (May 8, 2008; 122 Stat. 753)

S. 2739/P.L. 110–229

Consolidated Natural Resources Act of 2008 (May 8, 2008; 122 Stat. 754)

Last List May 8, 2008

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.