
# Federal Register

2–9–07 Friday
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WHEN: Tuesday, February 13, 2007
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

# Contents

Federal Register

Vol. 72, No. 27

Friday, February 9, 2007

**Agency for Healthcare Research and Quality**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6244–6245

**Agricultural Marketing Service**
PROPOSED RULES
Milk marketing orders:
Northeast et al., 6179–6184

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Food Safety and Inspection Service
*See* Forest Service
*See* Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6194–6195

**Alcohol and Tobacco Tax and Trade Bureau**
RULES
Alcohol; viticultural area designations:
Outer Coastal Plain, NJ, 6165–6168

**Army Department**
*See* Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Symbiont Enterprises, Inc., 6223

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

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

**Centers for Disease Control and Prevention**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6245–6247

**Centers for Medicare & Medicaid Services**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6247–6248

**Coast Guard**
RULES
Pollution:
Vessels carrying oil; response plans; salvage and firefighting equipment; partial suspension, 6168–6170

**Commerce Department**
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
NOTICES
Privacy Act; systems of records, 6200

**Committee for Purchase From People Who Are Blind or Severely Disabled**
NOTICES
Procurement list; additions and deletions, 6198–6199

**Defense Department**
*See* Army Department
*See* Engineers Corps

**Education Department**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6224–6225
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Indian children demonstration grants, 6225–6229
Safe and drug-free schools—
Alcohol Abuse Reduction Program, 6229–6233
Meetings:
Safe and Drug-Free Schools and Communities Advisory Committee, 6233

**Employment and Training Administration**
NOTICES
Adjustment assistance; applications, determinations, etc.:
Fibrex, LLC, 6292
Hoover Precision Products, Inc., 6292–6293
International Textile Group, Inc., 6293–6294
KHS USA, Inc., 6294
Parkdale America, LLC, 6294
Peterbilt Motors Co., et al., 6294–6296

**Energy Department**
*See* Energy Efficiency and Renewable Energy Office

**Energy Efficiency and Renewable Energy Office**
PROPOSED RULES
Consumer products; energy conservation program:
Energy conservation standards—
Residential furnaces and boilers, 6184–6186
Energy conservation:
Commercial and industrial equipment, energy efficiency program—
Distribution transformers, 6186–6190

**Engineers Corps**
NOTICES
Environmental statements; notice of intent:
Harrison County, MS; Federal Gulfport Harbor Navigation Project, 6224
Meetings:
Inland Waterways Users Board, 6224

**Environmental Protection Agency**
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Electric utility steam generating units and industrial-commercial-institutional steam generating units, 6320–6375
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6233–6235

Confidential business information and data transfer, 6235–6236
Environmental statements; availability, etc.:
Agency comment availability, 6236–6237
Agency weekly receipts, 6237–6238
Meetings:
National ambient air quality standards for nitrogen and sulfur oxides; assessment of health science for review; workshop, 6238
Science Advisory Board, 6238–6239
Reports and guidance documents; availability, etc.:
National enforcement and compliance assurance priorities (2008-2010 FYs); recommendations and comments request, 6239–6241
Superfund; response and remedial actions, proposed settlements, etc.:
Plantation Heat Treatment Site, RI, 6241–6242

**Federal Emergency Management Agency**
PROPOSED RULES
Flood elevation determinations:
Oklahoma, et al., 6192–6193
NOTICES
Disaster and emergency areas:
Colorado, 6248
Nebraska, 6249
Oklahoma, 6249–6250

**Federal Highway Administration**
NOTICES
Reports and guidance documents; availability, etc.:
Highway Performance Monitoring System; reassessment, 6311–6313

**Federal Reserve System**
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 6242

**Federal Transit Administration**
NOTICES
Meetings:
Buy America requirements, 6313

**Fish and Wildlife Service**
NOTICES
Meetings:
Sports Fishing and Boating Partnership Council, 6284

**Food Safety and Inspection Service**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6195–6196

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
New York
Schott Lithotec USA, Corp.; photomask blanks manufacturing and warehousing facilities, 6200
Ohio, 6200–6201

**Forest Service**
NOTICES
Meetings:
Eastern Washington Cascades Provincial and Yakima Provincial Advisory Committees; combined meeting, 6196–6197

**General Services Administration**
NOTICES
Environmental statements; availability, etc.:
Madawaska, ME; border station facility, 6242–6243

**Health and Human Services Department**
*See* Agency for Healthcare Research and Quality
*See* Centers for Disease Control and Prevention
*See* Centers for Medicare & Medicaid Services
*See* National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6243–6244
Special Exposure Cohort; employee class designations:
Nuclear Materials and Equipment Corp., Apollo site, PA, 6244
Y-12 Plant, Oak Ridge, TN, 6244

**Homeland Security Department**
*See* Coast Guard
*See* Federal Emergency Management Agency
RULES
Program Fraud Civil Remedies Act of 1986; implementation, 6143–6144

**Housing and Urban Development Department**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6250–6253
Environmental statements; availability, etc.:
East River Waterfront Esplanade and Piers Project, Manhattan, NY, 6253–6254
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties, 6254–6282
Mortgage and loan insurance programs:
Debenture interest rates, 6282–6284

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau
*See* Reclamation Bureau

**Internal Revenue Service**
RULES
Income taxes:
Qualified film and television production costs deduction, 6155–6165
PROPOSED RULES
Income taxes:
Qualified film and television production costs deduction; cross-reference, 6190–6192
NOTICES
Agency information collection activities; proposals, submissions, and approvals; correction, 6315

**International Trade Administration**
NOTICES
Antidumping:
Polyester staple fiber from—
China, 6201
Wooden bedroom furniture from—
China, 6201–6221

**International Trade Commission**
NOTICES
Import investigations:
Recordable compact discs and rewritable compact discs, 6286–6288

Textiles and apparel; Haiti trade markets and industries; special rules, 6288–6289

**Justice Department**
*See* Justice Programs Office
*See* Prisons Bureau

**Justice Programs Office**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6289–6290

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

**Land Management Bureau**
NOTICES
Environmental statements; availability, etc.:
Moffat, Routt, and Rio Blanco Counties, CO; Little Snake Resource Management Plan, 6284–6285

**Mine Safety and Health Administration**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6296

**National Aeronautics and Space Administration**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6297

**National Foundation on the Arts and the Humanities**
RULES
Grants and agreements:
Nonprocurement debarment and suspension; OMB guidance; implementation, 6141–6142

**National Institutes of Health**
NOTICES
Meetings:
National Institute on Drug Abuse, 6248

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Non-community development quota pollock, 6178
Pollock, 6177–6178
International Fisheries regulations:
South Pacific tuna—
Vessel monitoring system requirements, vessel reporting requirements, area restrictions for U.S. purse seine vessels, etc., 6144–6155
NOTICES
Damage Assessment and Restoration Program; indirect cost rates (2005 FY), 6221–6222
Marine mammal permit applications, determinations, etc., 6222–6223
Scientific research permit applications, determinations, etc., 6223

**National Science Foundation**
NOTICES
Meetings:
National Science Board, 6297

**Personnel Management Office**
RULES
Combined Federal Campaign; eligibility requirements and public accountability standards; correction, 6142–6143

**Prisons Bureau**
NOTICES
Environmental statements; notice of intent:
Aliceville, AL; Federal correctional complex development, 6290–6292

**Reclamation Bureau**
NOTICES
Environmental statements; availability, etc.:
Red River Valley Water Supply Project, ND; public hearings, 6285–6286

**Rural Utilities Service**
NOTICES
Environmental statements; availability, etc.:
Highwood Generating Station, MT, 6197–6198

**Securities and Exchange Commission**
PROPOSED RULES
Securities:
Credit Rating Agency Reform Act of 2006; implementation—
Nationally recognized statistical rating organizations, 6378–6431
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6297–6299
Meetings; Sunshine Act, 6299
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 6299–6302
Boston Stock Exchange, Inc., 6302–6305
Chicago Board Options Exchange, Inc., 6305–6306
NYSE Arca, Inc., 6306–6309

**Social Security Administration**
NOTICES
Privacy Act; computer matching programs, 6309–6310

**State Department**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6310–6311

**Transportation Department**
*See* Federal Highway Administration
*See* Federal Transit Administration
RULES
Standard time zone boundaries:
Indiana, 6170–6177

**Treasury Department**
*See* Alcohol and Tobacco Tax and Trade Bureau
*See* Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 6314

**Veterans Affairs Department**
**NOTICES**
Privacy Act; systems of records, 6315–6317

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 6320–6375

**Part III**
Securities and Exchange Commission, 6378–6431

**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.

**2 CFR**
3254.....6141

**5 CFR**
950.....6142

**6 CFR**
13.....6143

**7 CFR**
**Proposed Rules:**
1000.....6179
1001.....6179
1005.....6179
1006.....6179
1007.....6179
1030.....6179
1032.....6179
1033.....6179
1124.....6179
1126.....6179
1131.....6179

**10 CFR**
**Proposed Rules:**
430.....6184
431.....6186

**15 CFR**
902.....6144

**17 CFR**
**Proposed Rules:**
240.....6378
249b.....6378

**26 CFR**
1.....6155
602.....6155
**Proposed Rules:**
1.....6190

**27 CFR**
9.....6165

**33 CFR**
155.....6168

**40 CFR**
**Proposed Rules:**
60.....6320

**44 CFR**
**Proposed Rules:**
67.....6192

**45 CFR**
1154.....6141

**49 CFR**
71.....6170

**50 CFR**
300.....6144
679 (2 documents).....6177, 6178

# Rules and Regulations

Federal Register
Vol. 72, No. 27
Friday, February 9, 2007



## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### 2 CFR Part 3254 and 45 CFR Part 1154

**RIN 3135–AA21**

### National Endowment for the Arts Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

**AGENCY:** Office of the General Counsel, National Endowment for the Arts, Arts.

**ACTION:** Final rule.

**SUMMARY:** The National Endowment for the Arts (NEA) implements Office of Management and Budget (OMB) guidance on nonprocurement suspension and debarment, issued on August 31, 2005 [70 FR 51863], by adopting the guidelines in a new part in title 2 of the CFR, the Government-wide title recently established for OMB guidance on grants and agreements, and removing 45 CFR part 1154, the part containing the NEA implementation of the government-wide common rule on nonprocurement debarment and suspension. This regulatory action would make no substantive change in NEA policy or procedures for nonprocurement debarment and suspension.

**DATES:** *Effective Date:* The rule will become effective March 12, 2007.

**FOR FURTHER INFORMATION CONTACT:** National Endowment for the Arts, ATTN: Federal Register, 1100 Pennsylvania Avenue, NW., Room 518, Washington, DC 20506; or Laura Nelson, (202) 682–5595.

**SUPPLEMENTARY INFORMATION:** This final rule implements the OMB guidance and does not make any changes in current policies and procedures.

**Executive Order 12866**

This rule is not significant because the replacement of the common rule with OMB guidance and a brief NEA adopting regulation does not make any changes in current polices and procedures.

**Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))**

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

**Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)**

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

**Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)**

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

**Federalism (Executive Order 13132)**

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

**List of Subjects in 2 CFR Part 3254**

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

■ Accordingly, under the authority of 20 U.S.C. 959(a)(1), NEA amends title 2, subtitle B, and title 45, chapter 1154, of the Code of Federal Regulations as follows:

**Title 2—Grants and Agreements**

■ 1. Add Chapter 32 to Subtitle B to read as follows:

## CHAPTER 32—NATIONAL ENDOWMENT FOR THE ARTS

## PART 3254—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3254.10 What does this part do?
3254.20 Does this part apply to me?
3254.30 What policies and procedures must I follow?

**Subpart A—General**

3254.137 Who in the NEA may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

3254.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

**Subpart C—Responsibilities of Participants Regarding Transactions**

3254.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

3254.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

**Subpart E—I [Reserved]**

**Authority:** Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

### § 3254.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the National Endowment for the Arts (NEA) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the NEA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" (3 CFR 1986 Comp., p. 189), Executive Order 12689, "Debarment and Suspension" (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

### § 3254.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a "covered transaction" (see Subpart B of 2 CFR part 180 and the definition of "nonprocurement transaction" at 2 CFR 180.970.

(b) Respondent in a NEA suspension or debarment action.

(c) NEA debarment or suspension official;

(d) NEA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

**§ 3254.30 What policies and procedures must I follow?**

The NEA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3254.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, NEA policies and procedures are those in the OMB guidance.

**Subpart A—General**

**§ 3254.137 Who in the NEA may grant an exception to let an excluded person participate in a covered transaction?**

The NEA Chairman has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

**Subpart B—Covered Transactions**

**§ 3254.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see options lower tier coverage in the figure in the Appendix to 2 CFR part 180), NEA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

**Subpart C—Responsibilities of Participants Regarding Transactions**

**§ 3254.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

**§ 3254.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by Subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

**Subpart E—I [Reserved]**

Title 45 Public Welfare—Chapter XI—National Endowment for the Arts

**PART 1154—[REMOVED]**

■ 2. Under authority Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235) part 1154 is removed.

Dated: January 31, 2007.

**Karen Elias,**

*Acting General Counsel, National Endowment for the Arts.*

[FR Doc. 07–576 Filed 2–8–07; 8:45 am]

BILLING CODE 7537–01–M

## OFFICE OF PERSONNEL MANAGEMENT

**[3206–AL05]**

**5 CFR Part 950**

## Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations—Eligibility and Public Accountability Standards

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule, Technical Amendment.

**SUMMARY:** The Office of Personnel Management (OPM) is making a technical amendment to the final regulations concerning the Combined Federal Campaign (CFC). This technical amendment corrects the final rule issued on November 20, 2006 by re-inserting text that was erroneously removed.

**FOR FURTHER INFORMATION CONTACT:** Mark W. Lambert by telephone at (202) 606–2564; by FAX at (202) 606–5056; or by e-mail at *cfc@opm.gov*.

**DATES:** This technical amendment is effective on February 9, 2007.

**SUPPLEMENTARY INFORMATION:** In the final regulations issued on November 20, 2006, OPM erroneously removed regulatory text in 5 CFR 950.203(a)(1) that had required a charitable organization applying to participate in the CFC to provide, in addition to its certification, "documentation describing the health and human welfare benefits provided by the organization within the previous year." Although OPM has changed the manner in which it collects this documentation (as of 2007, it is included on the "Statement of Services" Attachment A to the application whereas in previous years it was a separate attachment to the application), OPM did not intend to remove the regulatory provision. As stated in the Supplementary Information to both the Proposed Rule, 71 FR 37003 (June 29, 2006) and the Final Rule, "no changes were proposed to this standard and it remains the same as the existing regulation." 71 FR 67276, 67277 (November 20, 2006). The denotation "(a) * * *" regarding regulatory changes under section 950.203 Public Accountability Standards, similarly indicates OPM's intention to retain the provision at 5 CFR 950.203(a)(1) as it had previously existed. OPM believes that this documentation is an important requirement to ensure that only organizations that are currently providing human health and welfare services are admitted to participate in the CFC. As such, OPM is re-inserting this provision into the regulations via this technical amendment.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. Charitable organizations applying to the CFC have an existing, independent obligation to comply with the eligibility and public accountability standards contained in current CFC regulations. This technical amendment will not cause significant additional burden.

**List of Subjects in 5 CFR Part 950**

Administrative practice and procedures, Charitable contributions, Government employees, Military personnel, Nonprofit organizations and Reporting and recordkeeping requirements.

Office of Personnel Management.

**Linda M. Springer,**

*Director, U.S. Office of Personnel Management.*

■ Accordingly, OPM amends 5 CFR part 950 as follows:

## PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

■ 1. The authority citation for part 950 continues to read as follows:

**Authority:** E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR, 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.S.C. 1101 Note).

■ 2. Amend § 950.203 to revise paragraph (a)(1) to read as follows:

**§ 950.203 Public accountability standards.**

(a) * * *

(1) Certify that the organization is a human health and welfare organization providing services, benefits, or assistance to, or conducting activities affecting, human health and welfare. The organization's application must provide documentation describing the health and human welfare benefits provided by the organization within the previous year.

* * * * *

[FR Doc. E7–2160 Filed 2–8–07; 8:45 am]

BILLING CODE 6325–46–P

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### 6 CFR Part 13

[DHS–2005–0059]

RIN 1601–AA11

## Program Fraud Civil Remedies

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, without change, the Program Fraud Civil Penalties interim rule published by the Department of Homeland Security (DHS) on October 12, 2005. This rule finalizes uniform administrative procedures for DHS to implement the Program Fraud Civil Remedies Act of 1986 (the Act).

**DATES:** The interim rule is adopted as final as of March 12, 2007.

**FOR FURTHER INFORMATION CONTACT:** Michael Russell, Acting Deputy Associate General Counsel, Division of General Law, Office of the General Counsel, Department of Homeland Security, Washington, DC 20528. Telephone: 202–205–4634 or facsimile: 202–772–9735, not toll free calls; or e-mail: *michael.d.russell@dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3801–3812 and adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), establishes an administrative remedy against anyone who makes a false Claim or written Statement to any of certain Federal agencies, including DHS. In brief, any person who submits a Claim or written Statement to an affected agency knowing or having reason to know that it is false, fictitious, or fraudulent, is liable for a penalty of up to $5,500 per false Claim or Statement and, in addition, with respect to Claims, for an assessment of up to double the amount falsely Claimed. The Act requires each affected Federal agency to publish rules and regulations necessary to implement the provisions of the Act. 31 U.S.C. 3809.

The interim rule, published on October 12, 2005, at 70 FR 59209, contains procedures governing the imposition of civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent Claims or written Statements to DHS or any of its components. The final rule adopts those regulations as final.

### II. Comment on the Interim Rule

DHS solicited public comments on the interim rule and the comment period closed on November 15, 2005. DHS received one comment. The commenter expressed concern that the penalty of $5,500 per false Claim or Statement is far too low, because, the commenter asserted, the cost to the government for fraud exceeds this amount. The Act being implemented here limits the penalty and DHS is not authorized to exceed those limitations. The commenter also expressed concerns about how the government gives out money generally; these comments were beyond the scope of the rulemaking because the rule is limited to implementing the Program Fraud and Civil Remedies Act of 1986, and did not address government grant programs generally, or individual eligibility issues.

### III. Regulatory Analyses

*Executive Order 12866*

This final rule is considered by DHS to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. 58 FR 51735, October 4, 1993 (Executive Order). Under Executive Order 12866 a significant regulatory action is subject to an Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $ 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. As discussed in the interim rule, because this rule announces procedures for a unique and relatively new cabinet-level department, and because DHS engages in uncommon relief and assistance efforts such as those following Hurricane Katrina, this rule may raise novel policy issues. 70 FR 59209, 59211 (Oct. 12, 2005). Accordingly, the rule was reviewed by the Office of Management and Budget.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is "required by section 553 * * *, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for interpretative rule involving the internal revenue laws of the United States * * *." 5 U.S.C. 603(a). RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS determined that good cause existed under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). *See* 70 FR 59209, 59210 (Oct. 12, 2005). Therefore, no RFA analysis under 5 U.S.C. 603 is required for this rule.

*Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, UMRA 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. UMRA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS determined that good cause existed under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). *See* 70 FR 59209, 59210 (Oct. 12, 2005). Therefore, no UMRA analysis is required for this rule. Nevertheless, DHS does not expect this rule to result in such an expenditure.

*Executive Order 13132, Federalism*

This final rule 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. It will not preempt any state laws. In accordance with section 6 of Executive Order 13132, we determine that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

*Executive Order 12988, Civil Justice Reform*

This final rule meets the applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988.

*Paperwork Reduction Act*

This final rule will not require or invite any additional record or information maintenance, submission, or collection for the DHS programs. Therefore, this final rule will not invoke the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 6 CFR Part 13**

Administrative practice and procedure, Claims, Fraud, Penalties.

**Authority and Issuance**

Accordingly, for the reasons stated in the preamble, and pursuant to my authority as Secretary of Homeland Security, the interim rule adding 6 CFR part 13 that was published at 70 FR 59209 on October 12, 2005, is adopted as a final rule without change.

**Michael Chertoff,**

*Secretary.*

[FR Doc. 07–569 Filed 2–8–07; 8:45 am]

BILLING CODE 4410–10–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 902

### 50 CFR Part 300

**[Docket No. 050620161–7016–02; I.D. 061605A]**

**RIN 0648–AP61**

## South Pacific Tuna Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS revises regulations implementing the South Pacific Tuna Act of 1988, as amended (SPTA), to reflect the changes agreed to in the Third Extension of the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America and its annexes, schedules, and implementing agreements, as amended (Treaty). New provisions under the Treaty relate to vessel monitoring system (VMS) requirements, vessel reporting requirements, area restrictions for U.S. purse seine vessels fishing under the Treaty, and allowing U.S. longline vessels to fish on the high seas portion of the Treaty Area. These actions are intended to bring the United States into compliance with its obligations under the Treaty.

**DATES:** Effective March 12, 2007.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA), regulatory impact review, environmental assessment, and small entity compliance guide that were prepared for this final rule may be obtained from the Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700, or by contacting Raymond P. Clarke by telephone at 808–944–2200 or by facsimile (fax) at 808–973–2941.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Pacific Islands Regional Office, and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Raymond P. Clarke, 808–944–2200.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 10, 2006, NMFS published a proposed rule (71 FR 45752) that would revise regulations at 50 CFR part 300, subpart D, in order to implement, under the authority of the SPTA (16 U.S.C. 973 *et seq.*), certain changes recently agreed to in the Treaty. The proposed rule was open to public comment through October 10, 2006.

The objective of this final rule is to fulfill the commitments of the United States to implement the amendments made in the Third Extension of the Treaty, which was agreed to in 2002 and expires June 14, 2013, as well as subsequent technical modifications made in the seventeenth annual formal consultation of the parties to the Treaty in March 2005.

This final rule implements four modifications to the Treaty, as summarized below. References to the term "FFA" mean the Pacific Islands Forum Fisheries Agency, in its capacity of Treaty Administrator on behalf of the Pacific Island parties to the Treaty. In addition to revising the regulations to implement these Treaty modifications, the regulations are revised to explicitly include the details of certain requirements that were until now incorporated only by reference to the Treaty and its annexes.

(1) *Modifications to vessel reporting requirements:* The purse seine vessel reporting requirements have been modified such that: times must be reported in Universal Coordinated Time (also known as UTC) rather than Greenwich Mean Time (or GMT); catches must be reported in metric tons (rather than short tons); the weekly vessel report to the FFA, known as the WEEK report, is eliminated; the weekly reports to national authorities continue but are amended to indicate whether or not an observer is on board the vessel; the report for entry into port for unloading must be submitted at least 24 hours prior to (rather than any time prior to) the vessel's arrival into port; and the vessel operator is required to report the estimated date and time of arrival and the estimated date of departure from port in the report for port departure and the report entry into port for unloading, as appropriate.

(2) *Modifications to Closed and Limited Areas:* Papua New Guinea's

archipelagic waters are now closed to U.S. purse seine vessels (prior to the Third Extension certain of these waters were open to U.S. vessels fishing under the Treaty) and the Solomon Islands EEZ is now opened to fishing under the Treaty, with the exception of the area from the archipelagic baseline for the main island group (as defined in Solomon Islands' Delimitation of Marine Waters Act 1978) out to 60 nautical miles (111 kilometers) that is closed to fishing (prior to the Third Extension all but a small portion of the Solomon Islands EEZ was a Closed Area; the remainder was a Limited Area in which effort by U.S. purse seine vessels was restricted).

(3) *VMS requirements:* U.S. purse seine vessels licensed under the Treaty are required to have installed and to carry, operate, and maintain a VMS unit while in the Treaty Area. The VMS unit and attendant software have to be of a type approved by the FFA as Treaty Administrator. A list of VMS units and associated software that are approved at this time is provided in the following table. The approvals are subject to change; an up-to-date list can be obtained from the FFA, as Treaty Administrator.

| Model name | Model No. | Software version |
|---|---|---|
| Thrane and Thrane Capsat transceiver | TT–3022D | 3.11 |
| Thrane and Thrane Capsat transceiver | TT–3022D | 3.24 |
| Thrane and Thrane Capsat transceiver | TT–3022D | 3.28 non-SOLAS Fishery DistFn-1 |
| Thrane and Thrane Capsat transceiver | TT–3022D | 3.32 |
| Thrane and Thrane Capsat transceiver | TT–3026S Mini-C | 2.12 |
| Japan Radio Company Limited Inmarsat-C transceiver | JUE–75C | 8.0 |
| Japan Radio Company Limited Inmarsat-C transceiver | JUE–75CV | 6.1 |
| Japan Radio Company Limited Inmarsat-C transceiver | JUE–95VM | 1.0 |
| Trimble Galaxy transceiver | 8005 (Courier) | 5.10 |
| Trimble Galaxy transceiver | TNL 7001 | 5.10a |
| Trimble Galaxy transceiver | TNL 7005 (non solas) | 5.10 |
| Trimble Galaxy transceiver | TNL 8001 (Sentinel) | 5.10 |
| Furuno Inmarsat-C Mobile Earth Station Transceiver | Felcom 15 | DCE F15 V02+FFA |
| Furuno Inmarsat-C transceiver | Felcom 12 (IC–212) | DCE version .07+FFA |
| Furuno Inmarsat-C transceiver | Felcom 12 (IC–212) | DCE version .08+FFA |
| Furuno Mini-C Mobile Earth Station Transceiver | Felcom 16 | DCE F16 V02+FFA |
| Furuno Mini-C Mobile Earth Station Transceiver | Felcom 16 | DCE F16 V03+FFA |
| Sailor Inmarsat-C Mobile Earth Station Transceiver (SAT–C) | H1622D | TT–10202A Version 3.21 non-SOLAS Fishery |

If the VMS unit malfunctions or fails, the owner or operator is required to provide notice of such failure or malfunction, submit substitute reports by an alternative means at intervals of no greater than 8 hours, and if directed by the FFA or NMFS, proceed to a designated port to repair or replace the VMS unit. Owners and operators of vessels licensed under the Treaty are also required to register annually on the FFA Vessel Register (in the past the FFA administered a "FFA VMS Register of Foreign Fishing Vessels" and a "FFA Regional Register of Foreign Fishing Vessels" but the two have been consolidated into a single "FFA Vessel Register"). NMFS will administratively facilitate the applications for registration on the register, but vessel owners and operators are responsible for completing the FFA registration forms and the payment of associated fees.

The contact information for the FFA, as Treaty Administrator, for the purpose of the manual position reports and the notifications required in certain circumstances in the VMS-related regulations, as well as for informational purposes, is as follows:

- *Telephone:* Country code 677, number 21124.
- *Facsimile:* Country code 677, number 23995.
- *E-mail: VMS.Help@ffa.int.*

Updated contact information may be obtained from NMFS (see **ADDRESSES**).

Additional contact information for the FFA, as Treaty Administrator, for informational purposes is as follows:

- *Internet: http://www.ffa.int.*
- *Mail:* Director-General, Pacific Islands Forum Fisheries Agency, P.O. Box 629, Honiara, Solomon Islands

Updated contact information may be obtained from the NMFS American Samoa field station, *telephone:* 684–633–5598; *facsimile:* 684–633–1400, or the NMFS Pacific Islands Regional Office (see **ADDRESSES**).

The VMS data will be treated by NMFS as confidential business information. However, if VMS data are requested under FOIA, the responding agency will be required to determine the releasability of the information pursuant to any applicable exemptions. These new VMS requirements appear in the revised regulations at 50 CFR 300.45.

(4) *Longline high seas access:* This final rule exempts U.S. longline vessels from the prohibitions currently listed in 50 CFR 300.38, effectively allowing authorized U.S. longline vessels to fish in the high seas portions of the Treaty Area. The original language of the Treaty stated that only purse seine vessels could operate under the Treaty, with one exception, that being for albacore vessels that trolled (fished) while transiting through the high seas portion of the Treaty Area. The unintended consequence of this language is that it did not allow for other types of U.S. vessels, including longline vessels, to fish on the high seas portions of the Treaty Area. It was never the intent of the parties to the Treaty to exclude U.S. longline vessels to areas open to all others fleets in the region. In 1999, after an expressed interest on the part of the U.S. longline industry, the parties agreed to rectify the situation and to allow U.S. longline vessels access to the high seas portions of the Treaty Area. This exemption for U.S. longline vessels to fish in the high seas portion of the Treaty Area appears in the revised regulations at 50 CFR 300.39(a).

Additional background information may be found in the preamble to the proposed rule (71 FR 45752, August 10, 2006).

### Comments and Responses

NMFS received two sets of comments on the proposed rule; summaries of those comments, and NMFS' responses, follow (see the Classification section for

comments on the initial regulatory flexibility analysis (IRFA) and NMFS' responses).

*Comment 1:* There are many required reports involving fish tonnages by species and size. The crew makes estimates of these weights without the benefit of scales, so the estimates vary from actual weights. The proposed requirements in 50 CFR 300.34(a)-(c), which call for reported information to be true, complete, correct, accurate and timely, are a concern with respect to the expected accuracy of the reports. A literal interpretation of the language could place the vessels in an impossible position.

*Response:* The reporting requirements in 50 CFR 300.34(a) and (b) of the rule, which state that reported information must be "true, complete and correct", are existing regulations; they will not be altered by this rulemaking. The contents of the required reports will not be modified, either (except in relatively minor ways that should have no effect in terms of the attainable accuracy of reported fish weights, such as changing the reporting units for fish weights from short tons to metric tons). The rulemaking will only add, in 50 CFR 300.34(c), the terms "accurate" and "timely" with respect to the required reports and notifications. NMFS believes that it is important, as well as reasonable, that reported information, including fish weights, be accurate. At the same time, NMFS does not interpret the term "accurate" to necessarily mean that measurements and reports thereof must be absolutely precise.

*Comment 2:* The preamble to the proposed rule neglected to note the duration of the Third Extension of the Treaty, which is 10 years, until 2013.

*Response:* That is correct; the duration of the Third Extension of the Treaty was not noted in the proposed rule. Its duration is 10 years, expiring June 14, 2013.

*Comment 3:* The preamble to the proposed rule indicated that the contact numbers for the NMFS American Samoa field station include a "country code 684", but the office is actually dialed from within the United States as a domestic number.

*Response:* That is correct—the preamble to the proposed rule included incorrect contact numbers for the NMFS field station in American Samoa. American Samoa uses the telephone country code for the United States, which is 1. The correct contact numbers for the office are: telephone: 684–633–5598; facsimile: 684–633–1400.

*Comment 4:* I do not believe in longline fishing; it is dangerous for oceans, depletes the supply, makes the balance of marine life suffer, and results in other fish and birds getting caught and suffering and dying; please do away with this longline fishing.

*Response:* The comment is acknowledged, but it addresses an issue that is beyond the scope of this rule, the purpose of which is to fulfill the obligations of the United States under an international agreement, the Third Extension of the Treaty.

**Changes to the Proposed Rule**

Three changes have been made to the proposed rule: (1) The statement "The initial list of approved hardware and software will appear in the final rule for this action" has been removed from paragraph (d) of proposed 50 CFR 300.45. The referenced list is provided in this preamble to the final rule. (2) Corrections have been made to the numbering of the paragraphs referred to in 50 CFR 300.38. (3) An entry has been added in the table in 15 CFR 902.1(b), of control numbers issued by the Office of Management and Budget (OMB), which identifies the location of NOAA regulations for which OMB control numbers have been issued under the Paperwork Reduction Act (PRA) for collections of information. The additional entry identifies that the new 50 CFR 300.45, on VMS requirements, contains collection-of-information requirements and that the associated OMB control number is 0648–0218.

**Delegation of Authority**

Under NOAA Administrative Order 205–11, dated December 17, 1990, the under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

**Classification**

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA (which was summarized in the proposed rule), a summary of the significant issues raised by the public comments in response to the IRFA and NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

**Need for, and Objectives of, the Rule**

A description of the need for, and objectives of, this final rule is contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble.

**Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA**

NMFS received one comment on the IRFA (as summarized in the proposed rule) and one comment not specifically on the IRFA but on an issue with possible economic implications. Those comments, and NMFS' responses, follow.

*Comment 1:* The owners of vessels licensed under the Treaty now pay $2,235 per year for the new combined VMS and vessel registration fee. Should that be indicated in the rule?

*Response:* The FFA has consolidated what were previously called the "FFA VMS Register of Foreign Fishing Vessels" and the "FFA Regional Register of Foreign Fishing Vessels" into a single "FFA Vessel Register." There is a single annual fee for applying for inclusion on the FFA Vessel Register; the fee has been formulated as the sum of two components (one of which is the VMS-related component) that correspond to the two former registers. The IRFA summary in the preamble to the proposed rule included an estimate of only the additional cost that would be imposed under the rule; that is, the VMS-related part of the fee ($1,375 per vessel per year). The remainder of the payment referred to by the commenter (which is actually $2,253, not $2,235) is not related to, and will not be affected by, this final rule.

*Comment 2:* There are many required reports involving fish tonnages by species and size. The crew makes estimates of these weights without the benefit of scales, so the estimates vary from actual weights. The proposed requirements in 50 CFR 300.34(a)–(c), which call for reported information to be true, complete, correct, accurate and timely, are a concern with respect to the expected accuracy of the reports. A literal interpretation of the language could place the vessels in an impossible position.

*Response:* The reporting requirements in 50 CFR 300.34(a) and (b) of the rule, which state that reported information must be "true, complete and correct", are existing regulations; they will not be altered by this rule. The contents of the required reports will not be modified, either (except in relatively minor ways that should have no effect in terms of the attainable accuracy of reported fish weights, such as changing the reporting units for fish weights from short tons to metric tons). The rule will only add, in 50 CFR 300.34(c), the terms "accurate" and "timely" with respect to the

required reports and notifications. NMFS believes that it is important, as well as reasonable, that reported information, including fish weights, be accurate. At the same time, NMFS does not interpret the term "accurate" to necessarily mean that measurements and reports thereof must be absolutely precise.

NMFS finds that neither of the issues raised in these public comments gives reason to make any changes to the rule. The first issue, regarding the VMS-related registration costs, is one merely of clarifying the information presented in the IRFA. The second issue, regarding the potential difficulty in vessel operators providing accurate and timely information, is not a new issue created by this rule, and in any case NMFS has not identified any alternative that would provide the needed information with a lesser burden on small entities. NMFS has not made any changes to the rule as a result of these public comments.

**Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply**

Three of the measures in this final rule, the modified vessel reporting requirements, the VMS requirements, and the modified Closed and Limited Areas, will apply to owners and operators of U.S. purse seine vessels that operate in the Treaty Area. The measure to allow longline vessels access to the high seas portion of the Treaty Area will apply to owners and operators of U.S. longline vessels operating in the Pacific Ocean. Based on the number of U.S. purse seine vessels licensed under the Treaty and the number of U.S. longline vessels permitted to operate in the Pacific Ocean under the Magnuson-Stevens Fishery Conservation and Management Act and/or the High Seas Fishing Compliance Act as of June 2006, NMFS estimates that 12 purse seine vessels and approximately 183 longline vessels will be subject to the rule. These purse seine and longline vessels are owned by approximately 9 and 183 business entities, respectively. Based on (limited) financial information about these fishing fleets, NMFS believes that as many as 7 and 183 of the affected purse seine and longline business entities, respectively, are small business entities (i.e., they have gross annual revenues of less than $4.0 million).

**Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule**

The reporting, recordkeeping, and other compliance requirements of this final rule are described in the **SUPPLEMENTARY INFORMATION** section of this preamble. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill the requirements are as follows:

(1) *Vessel reporting requirements:* Approximately seven small business entities will be subject to these requirements. The cost of compliance will be minor: because the changes have to do only with units of measure, the timing of reports, and the reporting of one additional piece of information (whether or not an observer is on board), they will require only minor modifications in habit on the part of the vessel operators. Fulfillment of these reporting requirements is not expected to require any professional skills that the vessel owners and operators do not already possess.

(2) *Fishing area modifications:* Approximately seven small business entities will be subject to these requirements. These modifications will not impose any new reporting or recordkeeping requirements (within the meaning of the PRA) on purse seine vessel owners or operators, but they could affect the economic performance of such vessels. It is not known whether the density of exploitable stocks in the affected areas is greater or less than in the fleet's fishing grounds generally. Because the target stocks are a highly fluid resource in this region, with high turnover rates and significant movements of fish through the region, any such differences are likely to be small. The measure is therefore not expected to have a strong direct effect on catch rates or resulting economic returns. However, the modifications will affect the operational flexibility of U.S. purse seine vessels, and such effects could in turn bring economic impacts. Vessels will have greater operational flexibility through enhanced access to the Solomon Islands EEZ but less flexibility from reduced access to the waters around Papua New Guinea. It is not possible to predict whether the expected positive impacts to small entities from the former effect will be less than or greater than the expected negative impacts from the latter effect. This is due to a lack of information about the extent and value of the operational flexibility afforded by each of the two affected areas, as well as the general difficulty in predicting the behavior of vessels that operate in response to many biophysical and economic factors and conditions, many of which change markedly from year to year. The impact, while difficult to predict, is not expected to differ by entity class (*i.e.* by small versus large entity). Fulfillment of these requirements is not expected to require any professional skills that the vessel owners and operators do not already possess.

(3) *VMS requirements:* Approximately seven small business entities will be subject to these requirements. The expected annual cost of complying with the VMS requirements is no more than about $4,000 per vessel (including annualized costs of $1,000-$2,000 for the purchase of VMS units and approximately $200 for the installation and activation of VMS units, which might have to be replaced as often as once every four years; $1,375 for the VMS portion of the annual FFA Vessel Register registration fee; and approximately $500 for maintenance and routine operation). This represents about one-tenth of one percent of the total costs of production for a typical purse seine vessel, and perhaps as much as two-tenths of one percent of the total costs of production for the smallest affected small business entity. Fulfillment of these VMS requirements is not expected to require any professional skills that the vessel owners and operators do not already possess.

(4) *Longline high seas access:* Approximately 183 small business entities will be subject to this measure. Opening the high seas areas of the Treaty Area to U.S. longline vessels will not impose any additional reporting, recordkeeping, or other compliance requirements. Since the measure will expand the fishing area available to U.S. longline vessels, increasing their operational flexibility, it is expected to have positive or neutral impacts on affected small entities.

The measures that will apply to the purse seine entities (particularly the VMS requirements) will impose the same cost burden on small entities as they will on large entities, so the cost as a proportion of gross revenues will generally be greater for small entities than for large entities. The same is true within the group of affected small entities: the smaller the business, the greater the burden is likely to be relative to gross revenues, assuming that profit margins are similar among firms. However, there is not a great difference in size (e.g. in terms of gross revenues) between the affected small and large entities or among the small entities, so the differences in the relative burdens by entity size are expected to be minor. No disproportionate burdens among affected entities according to other characteristics, such as homeport or area fished, are expected.

The measure that will apply to the longline entities (all of which are small entities) will not impose any costs on

any entities, so no disproportionate adverse impacts according to entity size will occur. The measure will have positive, if any, impacts on affected entities, but since larger vessels tend to have greater operating ranges, they are more likely than smaller vessels to be able to take advantage of the availability of new fishing grounds and enjoy the benefits of the measure. A similar difference in the likelihood of benefitting from the measure might also exist according to where a vessel is based (e.g. American Samoa versus Hawaii), but the difference is not possible to predict.

**Steps Taken To Minimize the Significant Economic Impact on Small Entities**

NMFS considered several alternatives to this final rule. As a party to the Treaty, the U.S. has committed itself to implementation of the Treaty amendments. Consequently, NMFS has limited discretion with regard to implementation of the SPTA. One alternative NMFS considered is to take no action. However, NMFS rejected this alternative because it would not achieve the objectives of the SPTA, which are to implement the terms of the Treaty. NMFS also considered several alternatives to the VMS requirements. One is to encourage voluntary compliance with the VMS measures rather than issuing a rule that would make them mandatory. To the extent that voluntary compliance is achieved, the costs to small entities would be the same as under the preferred alternative. Because relying on voluntary compliance would make it difficult to ensure that the VMS requirements of the Treaty are met, NMFS rejected this alternative. Two other non-regulatory alternatives, which would require agreement by the parties to the Treaty, are to obtain the desired compliance and monitoring benefits via enhanced vessel observer coverage or enhanced aerial and surface surveillance activities rather than via a VMS. These alternatives could achieve the objectives of the SPTA at potentially lesser cost to small entities. However, the projected costs to the public of enhancing vessel observer coverage or aerial and surface surveillance to the extent needed to achieve the compliance and monitoring benefits offered by a VMS are significantly greater than the expected total costs of the VMS alternative. Because the cost of a VMS is significantly less than the costs of enhanced observer coverage or enhanced aerial and surface monitoring, NMFS rejected the alternatives of enhanced observer coverage and enhanced aerial and surface monitoring, and selected the VMS alternative for adoption in this final rule.

**Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the small entity compliance guide for this final rule are available from NMFS (see **ADDRESSES**).

This final rule contains VMS and vessel reporting collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB under control number 0648–0218. The public reporting burden for the modified vessel reporting requirements is estimated to average 1 hour per catch report, with about five catch reports per year per respondent, and about 30 minutes per unloading logsheet, with about six unloading logsheets per year per respondent. The public reporting burden for the VMS requirements is estimated to average 30 minutes per year per respondent for what was formerly called the FFA Regional Register of Foreign Fishing Vessels application form, 15 minutes per year per respondent for what was formerly called the FFA VMS Register of Foreign Fishing Vessels application form, and 2 hours per year per respondent for VMS unit maintenance. As explained previously, the FFA consolidated the two previously-used vessel registers into a single "FFA Vessel Register" on about September 1, 2005, and there is now a single application form for the register. This consolidation had no effect on the information collection requirement or the estimated public reporting burden. These estimated burdens include the 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 these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Prior notice and opportunity for public comment are not required with respect to the revision to the table of OMB control numbers in 15 CFR 902.1(b) because this action is a rule of agency organization, procedure or practice under 5 U.S.C. 553(b)(A).

**List of Subjects**

*15 CFR Part 902*

Reporting and recordkeeping requirements.

*50 CFR Part 300*

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: February 5, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter III are amended to read as follows:

## 15 CFR CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

## PART 902—NOAA INFORMATION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) is amended by adding a new entry, "300.45", and its corresponding OMB control number, under the entry "50 CFR", to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

* * * * *

(b) * * *

| CFR part or section where the information collection requirement is located | Current OMB control No. (all numbers begin with 0648–) |
|---|---|
| * * * * * | |
| 50 CFR | |
| * * * * * | |
| 300.45 | –0218 |
| * * * * * | |

## 50 CFR CHAPTER III—INTERNATIONAL FISHING AND RELATED ACTIVITIES

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart D—South Pacific Tuna Fisheries

■ 3. The authority citation for 50 CFR part 300, subpart D continues to read as follows:

**Authority:** 16 U.S.C. 973–973r.

■ 4. In § 300.31, definitions for "*FFA Vessel Register*", "*Pacific Islands Forum Fisheries Agency*" or "*FFA*", "*UTC*", and "*Vessel Monitoring System Unit*" or "*VMS unit*" are added, the definition for "*Limited Area(s)*" is removed, and definitions for "*Regional Administrator*", "*Applicable national law*", "*Closed Area*", and "*Treaty Area*" are revised to read as follows:

**§ 300.31 Definitions.**

* * * * *

*Applicable national law* means any of the laws of Pacific Island Parties in the following table and any regulations or other instruments having the force of law implemented pursuant to these laws:

| Pacific Island Party | Laws |
|---|---|
| AUSTRALIA | Antarctic Marine Living Resources Conservation Act, 1981. |
| | Fisheries Management Act, 1991. |
| | Fisheries Administration Act, 1991. |
| | Statutory Fishing Rights Charge Act, 1991. |
| | Fisheries Legislation (Consequential Provisions) Act, 1991. |
| | Foreign Fishing Licences Levy Act, 1991. |
| | Fishing Levy Act, 1991. |
| | Fisheries Agreements (Payments) Act, 1991. |
| | Torres Strait Fisheries Act, 1984. |
| | Whale Protection Act, 1980. |
| COOK ISLANDS | Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1979. |
| | Territorial Sea and Exclusive Economic Zone Act, 1977. |
| | Marine Resources Act, 1989. |
| FEDERATED STATES OF MICRONESIA | Titles 18 and 24 of the Code of the Federated States of Micronesia, as amended by Public Law Nos. 2–28, 2–31, 3–9, 3–10, 3–34, and 3–80. |
| FIJI | Fisheries Act (Cap. 158). |
| | Fisheries Regulations (Cap. 158). |
| | Marine Spaces Act (Cap. 158A). |
| | Marine Spaces (Foreign Fishing Vessels) Regulations, 1979. |
| KIRIBATI | Fisheries Ordinance, 1979. |
| | Fisheries (Amendment) Act, 1984. |
| | Marine Zones (Declaration) Act, 1983. |
| | Fisheries (Pacific Island States' Treaty with the United States) Act 1988. |
| MARSHALL ISLANDS | Title 33, Marine Resources Act, as amended by P.L. 1989–56, P.L. 1991–43, and P.L. 1992–25 of the Marshall Islands Revised Code. |
| NAURU | Interpretation Act, 1971. |
| | Interpretation Act (Amendment) Act No. 1 1975. |
| | Interpretation Act (Amendment) Act No. 2 1975. |
| | Marine Resources Act, 1978. |
| NEW ZEALAND | Antarctic Marine Living Resources Act, 1981. |
| | Continental Shelf Act, 1964. |
| | Conservation Act, 1987. |
| | Driftnet Prohibition Act, 1991. |
| | Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1978. |
| | Fishing Industry Board Act, 1963. |
| | Fisheries Act, 1983. |
| | Marine Mammals Protection Act, 1978. |
| | Marine Reserves Act, 1971. |
| | Marine Pollution Act, 1974. |
| | Meat Act, 1964. |
| | Territorial Sea and Exclusive Economic Zone Act, 1977. |
| | Tokelau (Territorial Sea and Exclusive Economic Zone) Act, 1977. |
| | Submarine Cables and Pipelines Protection Act, 1966. |
| | Sugar Loaf Islands Marine Protected Area Act, 1991. |
| | Wildlife Act, 1953. |
| NIUE | Niue Fish Protection Ordinance 1965. |
| | Sunday Fishing Prohibition Act 1980. |
| | Territorial Sea and Exclusive Economic Zone Act 1978. |
| PALAU | Palau National Code, Title 27. |
| PAPUA NEW GUINEA | Fisheries Act (Cap 214). |
| | Fisheries Regulations (Cap 214). |
| | Fisheries (Torres Strait Protected Zone) Act, 1984. |
| | National Seas Act (Cap 361). |
| | Tuna Resources Management Act (Cap 224). |
| | Whaling Act (Cap 225). |

| Pacific Island Party | Laws |
|---|---|
| SOLOMON ISLANDS | Delimitation of Marine Waters Act, 1978.<br>Fisheries Act, 1972.<br>Fisheries Limits Act, 1977.<br>Fisheries Regulations, 1972.<br>Fisheries (Foreign Fishing Vessels) Regulations, 1981.<br>Fisheries (United States of America) (Treaty) Act 1988. |
| TONGA | Fisheries Act, 1989. |
| TUVALU | Fisheries Act (Cap 45).<br>Fisheries (Foreign Fishing Vessel) Regulations, 1982.<br>Marine Zones (Declaration) Act, 1983.<br>Foreign Fishing Vessels Licensing (US Treaty) Order 1987. |
| VANUATU | Fisheries Act 1982 (Cap 158).<br>Fisheries Regulations, 1983.<br>Maritime Zones Act 1981 (Cap 138). |
| SAMOA | Exclusive Economic Zone Act, 1977.<br>Territorial Sea Act, 1971.<br>Fisheries Act, 1988. |

* * * * *

*Closed area* means any of the areas in the following table, as depicted on charts provided by the Regional Administrator and as further described in additional information that may be provided by the Regional Administrator:

| Pacific Island Party | Area |
|---|---|
| AUSTRALIA | All waters within the seaward boundary of the Australian Fishing Zone (AFZ) west of a line connecting the point of intersection of the outer limit of the AFZ by the parallel of latitude 25° 30′ South with the point of intersection of the meridian of longitude 151° East by the outer limit of the AFZ and all waters south of the parallel of latitude 25° 30′ South. |
| COOK ISLANDS | Territorial Sea. |
| FEDERATED STATES OF MICRONESIA | Three nautical mile territorial sea and nine nautical mile exclusive fishery zone and on all named banks and reefs as depicted on the following charts:<br>DMAHTC NO 81019 (2nd. ed., Mar. 1945; revised 7/17/72; corrected through NM 3/78 of 21 June 1978).<br>DMAHTC NO 81023 (3rd. ed., 7 Aug. 1976).<br>DMAHTC NO 81002 (4th. ed., 26 Jan. 1980; corrected through NM 4/80). |
| FIJI | Internal waters, archipelagic waters and territorial seas of Fiji and Rotuma and its Dependencies. |
| KIRIBATI | Within archipelagic waters as established in accordance with Marine Zones (Declaration) Act 1983; within 12 nautical miles drawn from the baselines from which the territorial seas is measured; and within 2 nautical miles of any anchored fish aggregating device within the Kiribati exclusive economic zone for which notification of its location shall be given by geographical coordinates. |
| MARSHALL ISLANDS | 12 nautical mile territorial sea and area within two nautical miles of any anchored fish aggregating device within the Marshall Islands exclusive economic zone for which notification of its location shall be given by geographical coordinates. |
| NAURU | The territorial waters as defined by Nauru Interpretation Act, 1971, Section 2. |
| NEW ZEALAND | Territorial waters; waters within 6 nautical miles of outer boundary of territorial waters; all waters to west of New Zealand main islands and south of 39° South latitude; all waters to east of New Zealand main islands south of 40° South latitude; and in respect of Tokelau: areas within 12 nautical miles of all island and reef baselines; twelve and one half nautical miles either side of a line joining Atafu and Nukunonu and Faka'ofo; and coordinates as follows:<br>Atafu: 8°35′10″ S, 172°29′30″ W<br>Nukunonu: 9°06′25″ S, 171°52′10″ W 9°11′30″ S, 171°47′00″ W<br>Faka'ofo: 9°22′30″ S, 171°16′30″ W |
| NIUE | Territorial sea and within 3 nautical miles of Beveridge Reef, Antiope Reef and Haran Reef as depicted by appropriate symbols on NZ 225F (chart showing the territorial sea and exclusive economic zone of Niue pursuant to the Niue Territorial Sea and Exclusive Economic Zone Act of 1978). |
| PALAU | Within 12 nautical miles of all island baselines in the Palau Islands; and the area:<br>commencing at the north-easternmost intersection of the outer limit of the 12 nautical mile territorial sea of Palau by the arc of a circle having a radius of 50 nautical miles and its center at Latitude 07°16′34″ North, longitude 134°28′25″ East, being at about the center of the reef entrance to Malakal Pass; running thence generally south-easterly, southerly, south-westerly, westerly, north-westerly, northerly and north-easterly along that arc to its intersection by the outer limit of the 12 nautical mile territorial sea; and thence generally northerly, north-easterly, easterly, south-easterly and southerly along that outer limit to the point of commencement.<br>Where for the purpose of these specifications it is necessary to determine the position on the surface of the Earth of a point, line or area, it shall be determined by reference to the World Geodetic System 1984; that is to say, by reference to a spheroid having its center at the center of the Earth and a major (equatorial) radius of 6,378,137 meters and a flattening of 1/298.2572. |
| PAPUA NEW GUINEA | All territorial seas, archipelagic and internal waters. |
| SOLOMON ISLANDS | All internal waters, territorial seas and archipelagic waters; and such additional waters around the main group archipelago, as defined under the Delimitation of Marine Waters Act 1978, not exceeding sixty nautical miles. |
| TONGA | All waters with depths of not more than 1,000 meters, within the area bounded by the fifteenth and twenty third and one half degrees of south latitudes and the one hundred and seventy third and the one hundred and seventy seventh degrees of west longitudes; also within a radius of twelve nautical miles from the islands of Teleki Tonga and Teleki Tokelau. |

| Pacific Island Party | Area |
|---|---|
| TUVALU | Territorial sea and waters within two nautical miles of all named banks, that is Macaw, Kosciusko, Rose, Bayonnaise and Hera, in Tuvalu exclusive economic zone, as depicted on the chart entitled "Tuvalu Fishery Limits" prepared by the United Kingdom Hydrographic Department, Taunton, January 11, 1981. |
| VANUATU | Archipelagic waters and the territorial sea, and internal waters. |
| SAMOA | Territorial sea; reefs, banks and sea-mounts and within 2 nautical miles of any anchored fish aggregating device within the Samoa exclusive economic zone for which notification of its location shall be given by geographical coordinates. |

* * * * *

*FFA Vessel Register* means the registry of fishing vessels maintained by the FFA, comprising those vessels which are in good standing and licensed to fish in the waters of FFA member countries, including those vessels licensed under § 300.32.

* * * * *

*Pacific Islands Forum Fisheries Agency* or *FFA* means the organization established by the 1979 South Pacific Forum Fisheries Agency Convention.

*Regional Administrator* means the Regional Administrator, Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, or a designee.

* * * * *

*Treaty Area* means all waters north of 60° S. lat. and east of 90° E. long., subject to the fisheries jurisdiction of Pacific Island Parties, and all other waters within rhumb lines connecting the following points, except for waters subject to the jurisdiction in accordance with international law of a State which is not a party to the Treaty:

| Point | Latitude | Longitude |
|---|---|---|
| A | 2°35′39″ S | 141°00′00″ E |
| B | 1°01′35″ N | 140°48′35″ E |
| C | 1°01′35″ N | 129°30′00″ E |
| D | 10°00′00″ N | 129°30′00″ E |
| E | 14°00′00″ N | 140°00′00″ E |
| F | 14°00′00″ N | 142°00′00″ E |
| G | 12°30′00″ N | 142°00′00″ E |
| H | 12°30′00″ N | 158°00′00″ E |
| I | 15°00′00″ N | 158°00′00″ E |
| J | 15°00′00″ N | 165°00′00″ E |
| K | 18°00′00″ N | 165°00′00″ E |
| L | 18°00′00″ N | 174°00′00″ E |
| M | 12°00′00″ N | 174°00′00″ E |
| N | 12°00′00″ N | 176°00′00″ E |
| O | 5°00′00″ N | 176°00′00″ E |
| P | 1°00′00″ N | 180°00′00″ |
| Q | 1°00′00″ N | 164°00′00″ W |
| R | 8°00′00″ N | 164°00′00″ W |
| S | 8°00′00″ N | 158°00′00″ W |
| T | 0°00′00″ | 150°00′00″ W |
| U | 6°00′00″ S | 150°00′00″ W |
| V | 6°00′00″ S | 146°00′00″ W |
| W | 12°00′00″ S | 146°00′00″ W |
| X | 26°00′00″ S | 157°00′00″ W |
| Y | 26°00′00″S | 174°00′00″ W |
| Z | 40°00′00″S | 174°00′00″ W |
| AA | 40°00′00″ S | 171°00′00″ W |
| AB | 46°00′00″ S | 171°00′00″ W |
| AC | 55°00′00″ S | 180°00′00″ |
| AD | 59°00′00″ S | 160°00′00″ E |
| AE | 59°00′00″ S | 152°00′00″ E and north along the 152 degrees of East longitude until intersecting the Australian 200-nautical-mile limit. |

*UTC* means Universal Coordinated Time.

*Vessel Monitoring System Unit* or *VMS unit* means Administrator-approved VMS unit hardware and software installed on a vessel and required under § 300.45 as a component of the regional VMS administered by the FFA to transmit information between the vessel and the Administrator and/or other reporting points designated by NMFS.

■ 5. In § 300.32, paragraph (d) is revised to read as follows:

**§ 300.32 Vessel licenses.**

* * * * *

(d) The number of available licenses is 45, five of which shall only be available to fishing vessels of the United States engaged in joint venture arrangements, specifically: Vessels engaged in fishing activity designed to promote maximization of the benefits generated for the Pacific Island Parties from the operations of fishing vessels licensed pursuant to the Treaty, as determined by the Administrator. Such activity can include the use of canning, transshipment, vessel slipping and repair facilities located in the Pacific Island Parties; the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island Parties; and the employment of nationals of the Pacific Island Parties on board such vessels.

* * * * *

■ 6. Section 300.34 is revised to read as follows:

**§ 300.34 Reporting requirements.**

(a) Holders of licenses issued under § 300.32 shall comply with the reporting requirements of this section with respect to the licensed vessels.

(b) Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of these regulations, the Act, or the Treaty shall be true, complete and correct. Any change in circumstances that has the effect of rendering any of the information provided false, incomplete or misleading shall be communicated immediately to the Regional Administrator.

(c) The operator of any vessel licensed under § 300.32 must prepare and submit accurate, complete, and timely notifications, requests, and reports with respect to the licensed vessel, as described in paragraphs (c)(1) through (10) of this section.

(1) *Catch report forms.* A record of catch, effort and other information must be maintained on board the vessel, on catch report forms (also known as "Regional Purse Seine Logsheets", or RPLs) provided by the Regional Administrator. At the end of each day that the vessel is in the Licensing Area, all information specified on the form must, for that day, be recorded on the form. The completed catch report form must be mailed by registered airmail to the Administrator within 14 days of the vessel's next entry into port for the purpose of unloading its fish catch. A copy of the completed catch report form must also be submitted to, and received by, the Regional Administrator within 2 days of the vessel reaching port.

(2) *Unloading and transshipment logsheet forms.* At the completion of any unloading or transshipment of fish from the vessel, all the information specified on unloading and transshipment logsheet forms provided by the Regional Administrator must, for that unloading or transshipment, be recorded on such forms. A separate form must be completed for each fish processing destination to which the unloaded or transshipped fish are bound. The completed unloading and transshipment logsheet form or forms must be mailed by registered airmail to the Administrator within 14 days of the completion of the unloading or transshipment. The submitted form must be accompanied by a report or reports of the size breakdown of the

catch as determined by the receiver or receivers of the fish, and such report must be signed by the receiver or receivers. A copy of the completed unloading and transshipment logsheet, including a copy of the accompanying report or reports of the size breakdown of the catch as determined by the receiver or receivers of the fish, must also be submitted to, and received by, the Regional Administrator within 2 days of the completion of the unloading or transshipment.

(3) *Port departure reports.* Before the vessel's departure from port for the purpose of beginning a fishing trip in the Licensing Area, a report must be submitted to the Administrator by telex, transmission via VMS unit, facsimile, or e-mail that includes the following information: Report type ("LBEG"); Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; port name; weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and estimated date of departure. This information must be reported in the format provided by the Regional Administrator.

(4) *Entry into port for unloading reports.* At least 24 hours before the vessel's entry into port for the purpose of unloading fish from any trip involving fishing within the Licensing Area, a report must be submitted to the Administrator by telex, transmission via VMS unit, facsimile, or e-mail that includes the following information: Report type ("LFIN"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; port name; weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and estimated date and time (in UTC) of entry into port. This information must be reported in the format provided by the Regional Administrator.

(5) *Intent to transship notification and request.* At least 48 hours before transshipping any or all of the fish on board the vessel, a notification must be submitted to the Administrator and a request must be submitted to the Pacific Island Party in whose jurisdiction the transshipment is requested to occur. The notification to the Administrator and the request to the Pacific Island Party may be identical. The notification and request must include the following information: Name of vessel; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board the vessel (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; and the date, time (in UTC), and location where such transshipment is requested to occur. The notification to the Administrator must be reported in the format provided by the Regional Administrator and submitted by telex, transmission by VMS unit, facsimile, or e-mail. The request to the Pacific Island Party must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(6) *Zone entry and exit reports.* Each time the vessel enters or exits the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("ZENT" for entry or "ZEXT" for exit); FFA Regional Register number; trip begin date; date and time (in UTC) of the entry or exit; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; and intended action. This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(7) *Weekly reports.* Each Wednesday while the vessel is within the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("WEEK"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and whether or not there is a vessel observer on board ("Y" or "N"). This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(8) *Port entry reports.* At least 24 hours before the vessel's entry into port of any Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("PENT"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; estimated time (in UTC) of entry into port; port name; and intended action. This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(9) *Transshipment reports.* Upon completion of transshipment of any or all of the fish on board the vessel, a report must be submitted to the Administrator and to the Pacific Island Party in whose jurisdiction the transshipment occurred. The report must include the following information: Report type ("TRANS"); FFA Regional Register number; trip begin date; date and time (in UTC) of the transshipment; IRCS; vessel position at time of transshipment (latitude and longitude to nearest minute of arc); amount of fish transshipped (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; name of vessel to which the fish were transshipped; and the destination of the transshipped fish. The report to the Administrator must be reported in the format provided by the Regional Administrator and submitted by telex, transmission by VMS unit, facsimile, or e-mail. The report to the Pacific Island Party must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(10) *Other reports and notifications to Pacific Island Parties.* Reports and notifications must be submitted to the relevant Pacific Island Parties in each of the circumstances and in the manner described in the subparagraphs of this paragraph. Unless otherwise indicated in this paragraph, the reports must be prepared in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(i) *Australia.*

(A) Each day while the vessel is within the Australian Fishing Zone, a report must be submitted that includes the following information: Vessel position (latitude and longitude to nearest minute of arc); and the amount of catch made during the previous day, by species.

(B) At least 24 hours before entering the Australian Fishing Zone, a notification must be submitted that indicates an intent to enter the Australian Fishing Zone.

(ii) *Fiji.*

(A) Each day while the vessel is in Fiji fisheries waters, a report must be submitted that includes the following information: vessel name; IRCS; country of registration of the vessel; and vessel position at the time of the report (latitude and longitude to nearest minute of arc).

(B) Each week while the vessel is in Fiji fisheries waters, a report must be

submitted that includes the amount of the catch made during the preceding week, by species.

(iii) *Kiribati.*

(A) At least 24 hours before entering a Closed Area under the jurisdiction of Kiribati, a notification must be submitted that includes the following information: vessel name; IRCS; vessel position at the time of the report (latitude and longitude to nearest minute of arc); the reason for entering the Closed Area; and the estimated time (in UTC) of entry into the Closed Area (latitude and longitude to nearest minute of arc).

(B) Immediately upon entry into or exit from a Closed Area under the jurisdiction of Kiribati, a report must be submitted that includes the following information: report type ("CAENT" for entry or "CAEXT" for exit); the number of the vessel's license issued under § 300.32; IRCS; date and time (in UTC) of the report; vessel position (latitude and longitude to nearest minute of arc); amount of the catch on board the vessel, by species; and status of the boom ("up" or "down"), net ("deployed" or "stowed"), and skiff ("deployed" or "stowed").

(C) At least 24 hours prior to fueling the vessel from a tanker in the area of jurisdiction of Kiribati, a report must be submitted that includes the following information: report type ("SBUNK"); the number of the vessel's license issued under § 300.32; IRCS; trip start date; name of port from which trip started; amount of the catch on board the vessel, by species; estimated time of bunkering; estimated position of bunkering (latitude and longitude to nearest minute of arc); and name of tanker.

(D) After fueling the vessel from a tanker in the area of jurisdiction of Kiribati, but no later than 12 noon local time on the following day, a report must be submitted that includes the following information: report type ("FBUNK"); the number of the vessel's license issued under § 300.32; IRCS; start time of bunkering; end time of bunkering; amount of fuel received, in kiloliters; and name of tanker.

(iv) *New Zealand.*

(A) At least 24 hours before entering the exclusive economic zone of New Zealand, a notification must be submitted that includes the following information: name of vessel; IRCS; position of point of entry into the exclusive economic zone of New Zealand (latitude and longitude to nearest minute of arc); amount of catch on board the vessel, by species; and condition of the catch on board the vessel ("fresh" or "frozen").

(B) For each day that the vessel is in the exclusive economic zone of New Zealand, a notification must be submitted no later than noon of the following day of the vessel's position (latitude and longitude to nearest minute of arc) at noon.

(C) For each week or portion thereof that the vessel is in the exclusive economic zone of New Zealand, a report that covers the period from 12:01 a.m. on Monday to 12 midnight on the following Sunday must be submitted and received by noon of the following Wednesday (local time). The report must include the amount of the catch taken in the exclusive economic zone of New Zealand during the reporting period.

(D) At least 10 days prior to an intended transshipment in an area under the jurisdiction of New Zealand, a notification must be submitted that includes the intended port, date, and time of transshipment.

(E) At least 24 hours prior to exiting the exclusive economic zone of New Zealand, a notification must be submitted that includes the following information: position of the intended point of exit (latitude and longitude to nearest minute of arc); the amount of catch on board the vessel, by species; and condition of the catch on board the vessel ("fresh" or "frozen").

(v) *Solomon Islands.*

(A) At least 24 hours prior to entry into Solomon Islands Fisheries Limits, a report must be submitted that includes the following information: expected vessel position (latitude and longitude to nearest minute of arc) and expected date and time of entry.

(B) For each week or portion thereof that the vessel is in the exclusive economic zone of Solomon Islands, a report that covers the period from 12:01 a.m. on Monday to 12 midnight on the following Sunday must be submitted and received by noon of the following Tuesday (local time). The report must include the amount of the catch taken and the number of fishing days spent in the exclusive economic zone of Solomon Islands during the reporting period.

(vi) *Tonga.*

(A) Each day while the vessel is in the exclusive economic zone of Tonga, a report must be submitted that includes the vessel's position (latitude and longitude to nearest minute of arc).

(B) [Reserved]

(vii) *Tuvalu.*

(A) At least 24 hours prior to entering Tuvalu fishery limits, a report must be submitted that includes the following information: vessel name; IRCS; country of registration of the vessel; the number of the vessel's license issued under § 300.32; intended vessel position (latitude and longitude to nearest minute of arc) at entry; and amount of catch on board the vessel, by species.

(B) Every seventh day that the vessel is in Tuvalu fishery limits, a report must be submitted that includes vessel position (latitude and longitude to nearest minute of arc) and the total amount of catch on board the vessel.

(C) Immediately upon exit from Tuvalu fishery limits, a notification must be submitted that includes vessel position (latitude and longitude to nearest minute of arc) and the total amount of catch on board the vessel.

■ 7. In § 300.38, paragraph (a)(4) is removed, paragraphs (a)(5) through (a)(11) are redesignated as paragraphs (a)(4) through (a)(10), redesignated paragraph (a)(10) is revised, and paragraphs (a)(11) through (a)(15) are added to read as follows:

**§ 300.38 Prohibitions.**

(a) * * *

(10) To transship fish on board a vessel that fished in the Licensing Area, except in accordance with the requirements of § 300.46.

(11) To fail to have installed, allow to be programmed, carry, or have operational a VMS unit while in the Treaty Area as specified in § 300.45(a).

(12) To fail to activate a VMS unit, to interrupt, interfere with, or impede the operation of a VMS unit, to tamper with, alter, damage, or disable a VMS unit, or to move or remove a VMS unit without prior notification as specified in § 300.45(e).

(13) In the event of a VMS unit failure or breakdown or interruption of automatic position reporting in the Treaty Area, to fail to submit manual position reports as specified in § 300.45(f).

(14) In the event of a VMS unit failure or breakdown or interruption of automatic position reporting in the Treaty Area and if directed by the Administrator or an authorized officer, to fail to stow fishing gear or take the vessel to a designated port as specified in § 300.45(f).

(15) To fail to repair or replace a VMS unit as specified in § 300.45(h).

* * * * *

■ 8. In § 300.39, paragraph (a) is revised to read as follows:

**§ 300.39 Exceptions.**

(a) The prohibitions of § 300.38 and the licensing requirements of § 300.32 do not apply to fishing for albacore tuna by vessels using the trolling method or to fishing by vessels using the longline

method in the high seas areas of the Treaty Area.

* * * * *

■ 9. In § 300.42, paragraphs (a)(1)(i) and (b) are revised to read as follows:

**§ 300.42 Findings leading to removal from fishing area.**

(a) * * *

(1) * * *

(i) While fishing in the Licensing Area did not have a license issued under § 300.32 to fish in the Licensing Area, and that under the terms of the Treaty the fishing is not authorized to be conducted in the Licensing Area without such a license.

* * * * *

(b) Upon being advised by the Secretary of State that proper notification to Parties has been made by a Pacific Island Party that such Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of that Pacific Island Party, the Secretary shall order the vessel to leave those waters until the Secretary of State notifies the Secretary that the order is no longer necessary.

* * * * *

■ 10. A new § 300.45 is added to read as follows:

**§ 300.45 Vessel Monitoring System.**

(a) *Applicability.* Holders of vessel licenses issued under § 300.32 are required, in order to have the licensed vessel in the Treaty Area, to:

(1) Have installed a VMS unit on board the licensed vessel;

(2) Allow the Administrator, its agent, or a person authorized by the Administrator to program the VMS unit to transmit position and related information to the Administrator;

(3) If directed by the Regional Administrator, allow NMFS, its agent, or a person authorized by NMFS to program the VMS unit to transmit position and related information to NMFS; and

(4) Carry and have operational the VMS unit at all times while in the Treaty Area, except as provided in paragraphs (f) and (g) of this section.

(b) *FFA Vessel Register.* Purse seine vessels must be in good standing on the FFA Vessel Register maintained by the Administrator in order to be licensed under the Treaty. FFA Vessel Register application forms may be obtained from the Regional Administrator or the Administrator or from the FFA Web site: *http://www.ffa.int.* Purse seine vessel owners or operators must submit completed FFA Vessel Register applications to the Regional Administrator for transmittal to the Administrator and pay fees for registration of their vessel(s) on the FFA Vessel Register annually. The vessel owner or operator may submit a completed FFA Vessel Register application form at any time, but the application must be received by the Regional Administrator at least seven days before the first day of the next licensing period to avoid the potential lapse of the registration and license between licensing periods.

(c) *VMS unit installation.* A VMS unit required under this section must be installed by a person authorized by the Administrator. A list of Administrator-authorized VMS unit installers may be obtained from the Regional Administrator or the Administrator.

(d) *Hardware and software specifications.* The VMS unit installed and carried on board a vessel to comply with the requirements of this section must consist of hardware and software that is approved by the Administrator and able to perform all functions required by the Administrator. A current list of approved hardware and software may be obtained from the Administrator.

(e) *Service activation.* Other than when in port or in a shipyard and having given proper notification to the Administrator as specified in paragraph (g) of this section, the owner or operator of a vessel licensed under § 300.32 must, when the vessel is in the Treaty Area:

(1) Activate the VMS unit on board the licensed vessel to transmit automatic position reports;

(2) Ensure that no person interrupts, interferes with, or impedes the operation of the VMS unit or tampers with, alters, damages, or disables the VMS unit, or attempts any of the same; and

(3) Ensure that no person moves or removes the VMS unit from the installed position without first notifying the Administrator by telephone, facsimile, or e-mail of such movement or removal.

(f) *Interruption of VMS unit signal.* When a vessel owner or operator is notified by the Administrator or an authorized officer that automatic position reports are not being received, or the vessel owner or operator is otherwise alerted or aware that transmission of automatic position reports has been interrupted, the vessel owner and operator must comply with the following:

(1) The vessel owner or operator must submit manual position reports that include vessel name, call sign, current position (latitude and longitude to the nearest minute), date, and time to the Administrator by telephone, facsimile, or e-mail at intervals of no greater than eight hours or a shorter interval if and as specified by the Administrator or an authorized officer. The reports must continue to be submitted until the Administrator has confirmed to the vessel owner or operator that the VMS unit is properly transmitting position reports. If the manual position reports cannot be made, the vessel operator or owner must notify the Administrator of such as soon as possible, by any means possible.

(2) If directed by the Administrator or an authorized officer, the vessel operator must immediately stow the fishing gear in the manner described in § 300.36, take the vessel directly to a port designated by the Administrator or authorized officer, and notify the Administrator by telephone, facsimile, or e-mail as soon as possible that the vessel is being taken to port with fishing gear stowed.

(g) *Shutdown of VMS unit while in port or in shipyard.* When a vessel is in port and not moving, the VMS unit may be shut down, provided that the Administrator has been notified by telephone, facsimile, or e-mail that the vessel is in port and of the intended shutdown, and only as long as manual position reports as described in paragraph (f)(1) of this section are submitted to the Administrator at intervals of no greater than 24 hours or a shorter interval if and as specified by the Administrator or an authorized officer. If the VMS unit is shut down while the vessel is in port, the vessel owner or operator must notify the Administrator by telephone, facsimile, or e-mail as soon as possible after the vessel's departure from port. When the vessel is in a shipyard, the VMS unit may be shut down and the submission of manual position reports is not required, provided that the Administrator has been notified by telephone, facsimile, or e-mail that the vessel is in the shipyard and of the intended VMS unit shutdown. If the VMS unit is shut down while the vessel is in a shipyard, the vessel owner or operator must notify the Administrator by telephone, facsimile, or e-mail as soon as possible after the vessel's departure from the shipyard.

(h) *VMS unit repair and replacement.* After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must have the VMS unit repaired or replaced prior to the vessel's next trip. If the VMS unit is replaced, the new VMS unit must be installed by an Administrator-authorized VMS unit

installer, as specified in paragraph (c) of this section. In making such repairs or replacements, conformity with the current requirements must be met before the vessel may lawfully operate under the Treaty.

(i) *Access to data.* As a condition to obtaining a license, holders of vessel licenses issued under § 300.32 must allow the Regional Administrator, an authorized officer, the Administrator or an authorized party officer or designees access to the vessel's position data obtained from the VMS unit at the time of, or after, its transmission to the vendor or receiver.

■ 11. A new § 300.46 is added to read as follows:

**§ 300.46 Transshipping requirements.**

(a) *Applicability.* This section applies to vessels licensed under § 300.32.

(b) Transshipping may only be done at the time and place authorized for transshipment by the Pacific Island Parties, following the notification and request requirements of § 300.34(c)(5).

(c) The operator and each member of the crew of a vessel from which any fish taken in the Licensing Area is transshipped must:

(1) Allow and assist any person identified as an officer of the Pacific Island Party to:

(i) Have full access to the vessel and any place where such fish is being transshipped and the use of facilities and equipment that the officer may determine is necessary to carry out his or her duties;

(ii) Have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;

(iii) Remove samples;

(iv) Have full access to the vessel's records, including its log and documentation, for the purpose of inspection and copying; and

(v) Gather any other information required to fully monitor the activity without interfering unduly with the lawful operation of the vessel; and

(2) Not assault, obstruct, resist, delay, refuse boarding to, intimidate, or interfere with any person identified as an officer of the Pacific Island Party in the performance of his or her duties.

(d) Transshipping at sea may only be done:

(1) In a designated area in accordance with such terms and conditions as may be agreed between the operator of the vessel and the Pacific Island Party in whose jurisdiction the transshipment is to take place;

(2) In accordance with the requirements of § 300.34; and

(3) If the catch is transshipped to a carrier vessel duly authorized in accordance with national laws.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

**[TD 9312]**

**RIN 1545–BF95**

## Section 181—Deduction for Film and Television Production Costs

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulation.

**SUMMARY:** This document contains temporary regulations relating to deductions for the cost of producing film and television productions under section 181. These temporary regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005, and affect taxpayers that produce films and television productions within the United States. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective February 9, 2007.

*Applicability Dates:* For dates of applicability, see § 1.181–6T.

**FOR FURTHER INFORMATION CONTACT:** Bernard P. Harvey, (202) 622–3110 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–2059. Responses to these collections of information are required to obtain a tax benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the cross-referencing notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document contains amendments to 26 CFR part 1 to provide regulations under section 181 of the Internal Revenue Code of 1986 (Code). Section 181 was added to the Code by section 244 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (Oct. 22, 2004), and was modified by section 403(e) of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577) (Dec. 21, 2005).

### Explanation of Provisions

For several years, independent filmmakers and television producers have moved production activities from the United States to other countries. Frequently, this has been motivated by credits and other incentives offered by foreign governments to attract the economic benefits gained by hosting these productions. Congress enacted section 181 to make domestic production more attractive to these taxpayers.

Section 181 permits the owner of a qualified film or television production to elect to deduct production costs in the year the costs are paid or incurred in lieu of capitalizing the costs and recovering them through depreciation allowances if the aggregate costs do not exceed $15 million for each qualifying production ($20 million if a significant amount of the production costs are incurred in certain designated areas) (the "production cost limit"). A film or television production is a qualified film or television production if 75 percent of the total compensation of the production is compensation for services performed in the United States by actors, directors, producers, and other relevant production personnel (the "75 percent test").

*Allowance of Deduction*

The deduction under section 181 is allowed for the cost of producing qualified film and television productions for which principal photography begins after October 22, 2004, and before January 1, 2009. Production costs incurred before or after this period may be deducted so long as principal photography commences during the period.

Section 181 refers to "the taxpayer" who makes the election and takes the deduction. The temporary regulations provide that only the owner of the film or television production may elect to deduct production costs under section 181. Under the regulations, the owner of the production is deemed to be the person or persons otherwise required to capitalize production costs into the basis of the film or television production under section 263A (or the person or persons that would be required to capitalize production costs if subject to section 263A).

The production costs that must be taken into account (for both the amount of the deduction and for the production cost limit) are the amounts that, absent section 181, are required to be capitalized under section 263A (or the amounts that would be required to be capitalized if the taxpayer was subject to section 263A). Although a film's budget might be evidence that the production costs will not exceed the production cost limit, the budget is not the same as production costs for purposes of section 181. All production costs eligible to be deducted under section 181 are subject to the production cost limit. Under the temporary regulations, distribution costs are specifically excluded from the definition of production costs under section 181, consistent with the exclusion of distribution costs under section 263A.

Section 181 does not require the production to be placed in service in order for the producer to begin deducting production costs, and there is no requirement that the production ever be placed in service or completed. However, the temporary regulations require that, at the time the election is made and in any year that a deduction is claimed, a taxpayer must have a reasonable basis for believing that the production will be set for production (as defined in American Institute of Certified Public Accountants Statement of Position 00–2), will be a qualified film or television production upon completion, and will not exceed the production cost limit. For example, a taxpayer that has developed a shooting script, has a well-documented budget, and has obtained financing on the basis of these facts is in a good position to determine whether it has a reasonable basis to claim the deduction.

The temporary regulations treat the cost of acquiring a production as a production cost. This rule is premised upon the understanding that under section 1245, the seller would recapture upon the sale of the production any section 181 deduction that the seller had claimed. In the case of a sale between related parties, the purchaser must treat the greater of the acquisition cost or the seller's production cost as the purchaser's production cost for purposes of the production cost limit, notwithstanding that the purchaser's deduction under section 181 is based on the purchaser's actual acquisition cost.

In the film industry, once a prospective producer has determined the estimated budget for a production, it usually must obtain financing from a bank or other lender to cover at least part of the production cost. The producer may incur up-front costs in obtaining such financing. The producer's pre-sale agreements with distributors may be used as collateral for this financing. Generally, the financier will be repaid directly by these distributors upon delivery of the finished production. In addition, the financier will usually require that the producer obtain a completion guarantee (often referred to as a completion bond) as a condition of the loan. The completion guarantee is a guarantee that, if the production costs exceed the budgeted costs or the loan proceeds are mishandled, the film will still be completed and/or the financier will be made whole. A completion guarantee can be satisfied in a number of ways. For example, the guarantor may loan funds to the producer to finish the production, may finish the production itself (although this is rare), or may reimburse the financier for the amount loaned to the producer (plus interest and other charges). Generally, the producer must pay an up-front amount in order to obtain a completion guarantee.

The temporary regulations provide that the costs of obtaining financing, including premium costs for completion guarantees, are production costs that are subject to the production cost limit and are deductible under section 181. In addition, if the completion guarantor loans additional funds to the producer and the funds are expended by the producer to complete the production, or if the completion guarantor incurs additional production costs on its own behalf, the additional funds are production costs under section 181.

Participations and residuals (P&R) are defined in section 167(g)(7)(B), as costs with respect to an item of property described in section 167(g)(6), the amount of which by contract varies with the amount of income earned in connection with the property. In the context of film and television production, participations are payments to actors, directors, and other talent based on a contractually-defined measure of future income from the production. Residuals are payments made pursuant to collective-bargaining agreements, such as those of the directors' and actors' guilds, based upon non-theatrical sales, under terms that differ between video, free television, and pay television sales. Participations are generally paid by the producer but may be assumed by a third-party distributor. On the other hand, residuals are generally paid by a distributor out of its gross receipts from the production. Industry accounting generally treats participation payments made by distributors as a reduction in the producer's profit rather than a production cost, and generally treats residual payments made by distributors as a distribution cost.

Various comments were received with respect to the treatment of P&R under section 181. Some comments suggested that taxpayers be permitted to elect to deduct participation payments (rather than capitalizing those payments into the basis of the production) under the income forecast method rather than section 181. Other comments suggested that Congress, by specifically excluding P&R costs paid or incurred by the taxpayer from the definition of "qualified compensation" in section 181(d)(3), intended these costs to be excluded from the production cost limit in section 181(a)(2). Comments received also suggested that P&R costs should be excluded for purposes of determining whether the production cost limit is exceeded, but nonetheless should be deductible production costs under section 181.

In addition, various comments expressed concerns about productions being subsequently disqualified if P&R costs are included in determining if the production cost limit is exceeded. For example, a taxpayer forecasts its production costs (including a reasonable amount of P&R costs based upon projected income from the production) and based upon this forecast the taxpayer determines it has a reasonable basis for making an election under section 181. However, if an unexpectedly large amount of P&R is later paid as a result of production earnings being much greater than was

initially expected, with the result that the total production cost exceeds the production cost limit, the production would become disqualified from treatment under section 181.

The temporary regulations provide that P&R costs are considered production costs for purposes of the production cost limit. The IRS and Treasury Department recognize that P&R costs are costs that are generally subject to capitalization under section 263A (see § 1.263A–1(e)(2) and § 1.263A–1(e)(3)). Nonetheless, an explicit reference to P&R costs is provided in the temporary regulations in order to avoid any uncertainty with respect to these costs.

The IRS and Treasury Department believe that the statute requires P&R costs to be included in the production cost limit. For example, the statute specifically provides that participations and residuals are excluded from the definition of compensation for purposes of determining whether the production was a qualified film or television production, as defined in section 181(d)(1). This explicit exclusion is not found in the production cost limit of section 181(a)(2) or elsewhere in section 181.

In addition, the IRS and Treasury Department are concerned that if P&R costs were excluded from the definition of production costs under section 181, section 181(b) could cause them to be nondeductible under any provision of the Internal Revenue Code. Specifically, section 181(b) states that no depreciation or amortization deduction other than the deduction provided under section 181 is allowed for the basis of a qualified film or television production for which an election has been made. Therefore, if P&R costs were excluded from the definition of production costs under section 181, a taxpayer wishing to expense P&R costs under the holding of *Associated Patentees*, 4 T.C. 979 (1945), may be barred from doing so under section 181(b), as the holding in that case is explicit that a deduction under *Associated Patentees* is a depreciation deduction of basis.

Additionally, the IRS and Treasury Department are concerned that a blanket exclusion of participations from the definition of production costs would allow taxpayers to manipulate the total production cost (and avoid the production cost limit) by structuring compensation as participation payments. Commentators argued that this potential abuse could be mitigated with an anti-abuse rule that treats only those participations that are disguised non-contingent or guaranteed payments, where the talent incurs minimal risk of non-payment (for example, participations with a payment priority over distribution cost repayment and/or production financing cost repayment) as production costs subject to the production cost limit, but does not treat other participation costs as production costs.

The IRS and Treasury Department considered excluding from the amount to be taken into consideration as production costs any residuals (payments to actors' or directors' guilds based on gross income from exploitation in secondary markets) that are paid by the distributor or other third party, under the theory that these payments are costs of exploiting the finished production. However, the same argument could be advanced for participations contingent on income, notwithstanding that most participations are taken in lieu of compensation for services (normally a production cost). In addition, a payment of residuals by a third party is still made on the producer's behalf, and the producer remains the party with ultimate liability for the payment. Thus, the temporary regulations provide that P&R costs are production costs that are deductible under section 181 and are included in the production cost limit.

Section 181(a)(2)(B) provides a higher production cost limit for a qualified film or television production "the aggregate cost of which is significantly incurred" in a designated area. Designated areas include areas eligible for designation as low-income communities or certain distressed counties and isolated areas. However, neither the statute nor its legislative history provides a definition for "significantly incurred," nor do they explain how the standard should be applied. However, Congress' stated intent in enacting section 181 was to encourage economic activity in these designated areas. Accordingly, the temporary regulations provide two different tests for establishing when production costs have been significantly incurred in a designated area. One test is based upon production costs while the other is based upon days of production. Under the first of these tests, the temporary regulations establish a 20 percent threshold for the "significantly incurred" standard (similar to the rules of § 1.199–3(g)(3)). This test compares production costs incurred in first-unit principal photography that takes place in a designated area to all production costs incurred for first-unit principal photography. First-unit principal photography typically films the primary actors, whereas second-unit principal photography typically films shots that establish location or context (exteriors of buildings, crowds, cars passing). Production costs of principal photography include, for example, compensation to actors, directors and other production personnel, location costs, camera rental and insurance, and catering. This 20 percent test is based upon production costs incurred in first-unit principal photography and ignores all other production costs such as preproduction, editing, and postproduction costs for purposes of the "significantly incurred" requirement. These other production costs often greatly exceed principal photography costs, and must be incurred where adequate production facilities exist (and it is likely that few such facilities are available in the designated areas). The IRS and Treasury Department believe that if all production costs were taken into consideration in determining whether the 20 percent "significantly incurred" threshold had been met, very few films would qualify for the higher production cost limit, even if a substantial amount of principal photography occurred in a designated area. However, we request comments regarding whether the exclusion of preproduction, editing, and postproduction costs will unfairly impact taxpayers.

Comments were received requesting that consideration be given to developing a "significantly incurred" test based upon the number of days of principal photography. The temporary regulations adopt this suggestion and provide, as an alternative to the 20 percent cost-based test, a "significantly incurred" test based upon the total number of days of principal photography. Under this test, if at least 50 percent of the total days of principal photography take place in a designated area, the production will be deemed to have satisfied the "significantly incurred" requirement of section 181(a)(2)(B). This 50 percent test may provide a simpler computation than the 20 percent cost-based test and avoids issues such as the allocation of salaries to specific days of principal photography.

A taxpayer intending to utilize the $20 million production cost limit under section 181(a)(2)(B) must maintain records adequate to demonstrate that it has a reasonable basis under the "significantly incurred" standard to support reliance on the higher dollar limitation.

*Election*

The Conference report underlying section 181 provides that, until the

Secretary publishes specific guidance, taxpayers may make a valid election under section 181 by claiming the deduction on the taxpayer's return for the year that production costs are first incurred. H. R. Conf. Rep. 108–755. The IRS published the section 181 election requirements in Notice 2006–47 (2006–20 IRB 892, May 15, 2006). See § 601.601(d)(2)(ii)(b). The Notice also includes transition rules for taxpayers that incurred costs during the period prior to October 22, 2004 (the enactment of section 181) for productions that qualify under section 181 (that is, productions for which principal photography began on or after October 22, 2004). The temporary regulations provide the same election requirements and transition rules, along with a requirement that the taxpayer have a reasonable basis for claiming the deduction.

Many films are owned by a passthrough entity with more than one owner. The temporary regulations provide that if the production is owned by a partnership, the election is made at the partnership level.

Section 181(c)(2) provides that an election under section 181 may not be revoked without the consent of the Secretary. However, the election is effectively revoked if the production costs exceed the production cost limit or if the production fails to be a qualified film or television production. In recognition of the concerns expressed by commentators over the inclusion of P&R costs in the definition of production costs under section 181, and the fact that the requirements of section 181 may ultimately not be met notwithstanding a prior reasonable basis for believing otherwise, the temporary regulations permit taxpayers to revoke a section 181 election by filing a statement with the return for the taxable year in which the revocation is effective identifying the production for which the election is revoked. The return for that taxable year must also report compliance with the recapture provisions discussed in "Special Rules" in this preamble.

*Qualified Film or Television Production (Definitions)*

Both the Senate report and the Conference report underlying section 181 state that "the provision defines a qualified film or television production as any production of a motion picture (whether released theatrically or directly to video cassette or any other format); miniseries; scripted, dramatic television episode; or movie of the week" that satisfies the 75 percent test. The definition provided in the Senate report and the Conference report arguably would exclude productions that do not fall within these delineated categories, such as reality programming, documentaries, sports programs, news programs, variety shows, game shows, live performances, interview and talk shows, commercials and "infomercials," religious/inspirational programming, educational programming, exercise shows, training videos, and others. Comments were received noting that it appeared from the legislative history that Congress intended for the provision to apply only to a motion picture, miniseries, scripted dramatic television episode, or movie of the week. Notwithstanding the legislative history, section 181(d)(2) itself defines a production as "property described in section 168(f)(3)." Section 168(f)(3) property is "any film or video tape." Accordingly, the temporary regulations adopt the broader statutory definition provided in section 168(f)(3) and specifically define a production under section 181 to include any film or video tape production the production cost of which is subject to capitalization under section 263A.

Once a film or television production is released or broadcast, the taxpayer may face additional costs to prepare the production for foreign distribution, rebroadcast (for example, editing a theatrical film for television), or release to the home video market. Consistent with the approach taken under the income forecast method (see section 167(g)(5)(A)(ii)), these costs are not treated as production costs of the film or television production for purposes of the production cost limit under section 181(a)(2), and no deduction may be taken under section 181 for such costs.

Section 181(d)(1) compares qualified compensation to total compensation in applying the 75 percent test. Although qualified compensation is defined by section 181(d)(3)(A) as compensation for services performed in the United States by actors, directors, producers, and other relevant production personnel, the 75 percent test compares this amount to the "total compensation of the production." In order to be consistent with the definition provided for in section 181(d)(3)(A), the temporary regulations define "total compensation of the production" as the total amount of compensation paid for services performed anywhere by actors, directors, producers, and other relevant production personnel in the production of the film or television production. In addition, the temporary regulations specifically provide that the terms compensation and qualified compensation include compensation paid to persons who are not directly employed by the producer.

The term *qualified compensation* is defined as compensation for services by various participants performed "in the United States." The definition of "United States" in section 7701(a)(9) includes the 50 states and the District of Columbia. Although the goal of section 181 is to encourage economic activity within the United States as defined in section 7701(a)(9), the use of a standard based upon principal photography requires the use of a slightly broader definition that takes into account that the physical act of principal photography may take place on land, at sea, or in the air. Consequently, the temporary regulations provide that a service is performed in the United States for purposes of the 75 percent test if the principal photography to which the service relates occurs within the fifty states, the District of Columbia, the territorial waters of the continental United States, or the airspace or space above the continental United States and its territorial waters.

There are some services related to a production that may physically take place at a variety of places outside the control and knowledge of the producer (for example, training, rehearsal, and pre- and post-production). However, the producer has direct or indirect control and knowledge of the shooting location of principal photography with which these other services are associated. Therefore, the IRS and Treasury Department believe that as a general rule the 75 percent test should be based upon the locations where principal photography occurs.

In this regard, the temporary regulations provide a special rule for animated productions. Although these productions may have a "principal photography" analogue, the production process is completely different and the majority of the work of the "talent" is performed independent of the actual frame photography. Computer-generated animation is not photographed at all. Hand-drawn animated films involve the creation of a storyboard (sketches of the story action) by the principal artists. Once the storyboards are approved, individual frames showing important moments in the action called "keyframes" are created by the principal artists, after which the frames in between these frames (the "in-betweens") are produced by assistant animators. These in-betweens are frequently outsourced overseas. Background art is created separately. The animation frames are transferred to plastic cels with a copier or, in some cases, are hand painted on the cels (or

both). The cels are then photographed against the background art. Voice acting, music, and Foley (sound effects) are recorded independently. All of these elements are then combined into the finished film.

The production process for computer animation is similar, except that the principal artists work directly with computer programmers to create keyframe images in the animation software. In-between work is less likely to be outsourced, as the computer can generate most in-between frames from the keyframes themselves. Background art can be created within the computer program or scanned in from physical artwork. Post-production is generally done completely in the digital realm, and the final product is output to disc.

The temporary regulations apply the 75 percent test to animated productions based upon the production locations for (at least) the keyframe animation, the in-between animation, the animation photography, and the recording of the voice acting performances instead of the location where principal photography takes place. A separate rule is provided for productions that combine animation and live action, taking into account the production locations for the animation functions in addition to the location of principal photography.

*Special Rules*

The version of the legislation that became section 181 (as originally passed by the Senate) provided a deduction for production costs up to $15 million, and allowed production costs in excess of $15 million to be depreciated using the straight-line method over a 36-month period. Jumpstart Our Business Strength (JOBS) Act, S. 1637, 108th Cong. § 321 (2003). The depreciation provision was removed in conference, with the result that the deduction does not apply to qualified film or television productions with an aggregate production cost in excess of $15 million ($20 million if a significant amount of the production costs are incurred in designated areas.) Section 181 is silent as to what should happen when a production appears to meet the requirements of section 181 in the year the election is first made, but fails to meet those requirements thereafter (for example, when the production cost exceeds $15 million, or when the production no longer meets the 75 percent test).

The temporary regulations provide a recapture provision that requires the recapture of any production costs previously deducted under section 181 in the year the election is voluntarily revoked or the production fails to meet the requirements of section 181. For property already placed in service, the taxpayer must include in income the difference between the aggregate amount claimed under section 181 and the depreciation that would have been otherwise allowable with respect to the production in the same years. For a production not yet placed in service, the taxpayer must include in income the aggregate amount claimed under section 181. The structure of the recapture provision is intended in part to alleviate concerns that including P&R in the definition of production costs under section 181 would cause taxpayers to completely forgo the benefits of section 181. Under the temporary regulations, a taxpayer with a reasonable belief that it is producing a qualified film or television production, and that the production cost will not exceed the production cost limit, will be permitted to elect to currently deduct production costs under section 181 with the understanding that a recapture may be required in a later year if circumstances or expectations change. A taxpayer that is required to recapture previously deducted production costs under section 181 will nonetheless be permitted to deduct otherwise allowable depreciation expenses in future years.

Prior to the technical correction enacted in the Gulf Opportunity Zone Act of 2005, a taxpayer could potentially incur production costs, deduct the production costs under section 181 against ordinary income, then sell the film after holding it for one year and report the proceeds (including the gain attributable to the basis reduction from the section 181 deduction) as a long-term capital gain, effectively converting ordinary income to capital gain. This potential "tax flip," existed because, as originally enacted, the statute did not specify that the deduction under section 181 is a deduction for depreciation or amortization, or state that it is subject to recapture under section 1245. The technical correction specifically treats a deduction under section 181 as a deduction for depreciation or amortization that is subject to recapture under section 1245, and the temporary regulations follow this rule.

**Effective Date**

The temporary regulations apply to qualified film and television productions with respect to which principal photography or, in the case of an animated production, in-between animation, commenced on or after February 9, 2007 and before January 1, 2009.

**Effect on Other Documents**

The following publications are modified as of February 9, 2007:

Notice 2006–47 (2006–20 IRB 892) is modified by removing section B.2. in the INTERIM PROVISIONS of Notice 2006–20.

Rev. Proc. 2002–9 (2002–1 CB 327) is modified and amplified to include the automatic changes in methods of accounting in § 1.181–2T(d)(2) and (e)(1) in the Appendix of Rev. Proc. 2002–9.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Amendments to the Regulations**

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## 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.** Sections 1.181–0T through 1.181–6T are added to read as follows:

**§ 1.181–0T Table of contents (temporary).**

This section lists the table of contents for §§ 1.181–1T through 1.181–6T.

**§ 1.181–1T Deduction for qualified film and television production costs (temporary).**

(a) Deduction.
(1) In general.
(2) Owner.
(3) Production costs.
(b) Limit on amount of production costs and amount of deduction.
(1) In general.
(2) Higher limit for productions in certain areas.
(i) In general.
(ii) Significantly incurred.
(iii) Animated film and television productions.
(iv) Productions incorporating both live action and animation.
(v) Records required.
(c) No other depreciation or amortization deduction allowed.

**§ 1.181–2T Election (temporary).**

(a) Time and manner of making election.
(b) Election by entity.
(c) Information required.
(1) Initial election.
(2) Subsequent taxable years.
(3) Deductions by more than one owner.
(d) Revocation of election.
(1) In general.
(2) Consent granted.
(e) Transition rules.
(1) Costs first paid or incurred prior to October 23, 2004.
(2) Returns filed after June 14, 2006, and before March 12, 2007.
(3) Information required.

**§ 1.181–3T Qualified film or television production (temporary).**

(a) In general.
(b) Production.
(1) In general.
(2) Special rules for television productions.
(3) Exception for certain sexually explicit productions.
(c) Compensation.
(d) Qualified compensation.
(e) Special rule for acquired productions.
(f) Other definitions.
(1) Actors.
(2) Production personnel.
(3) United States.

**§ 1.181–4T Special rules (temporary).**

(a) Recapture.
(1) Applicability.
(2) Principal photography not commencing prior to January 1, 2009.
(3) Amount of recapture.
(b) Recapture under section 1245.

**§ 1.181–5T Examples (temporary).**

**§ 1.181–6T Effective date (temporary).**

(a) In general.

(b) Application of regulation project REG–115403–05 to pre-effective date productions.

(c) Special rules for returns filed for prior taxable years.

**§ 1.181–1T Deduction for qualified film and television production costs (temporary).**

(a) *Deduction*—(1) *In general.* The owner (as defined in paragraph (a)(2) of this section) of any film or television production (as defined in § 1.181–3T(b)) that the owner reasonably expects will be, upon completion, a qualified film or television production (as defined in § 1.181–3T(a)) for which the production costs (as defined in paragraph (a)(3) of this section) will not be in excess of the production cost limit of paragraph (b) of this section may elect to treat all production costs incurred by the owner as an expense that is deductible in the taxable year in which the costs are paid (in the case of a taxpayer who uses the cash method of accounting) or incurred (in the case of a taxpayer who uses the accrual method of accounting). This deduction is subject to recapture if the owner's expectations prove to be inaccurate. This section provides rules for determining who is the owner of a production, what is a production cost, and the maximum production cost that may be incurred for a production for which an election is made under section 181 of the Internal Revenue Code (Code). Section 1.181–2T provides rules for making the election under section 181. Section 1.181–3T provides definitions and rules concerning qualified film and television productions. Section 1.181–4T provides special rules, including rules for recapture of the deduction. Section 1.181–5T provides examples of the application of §§ 1.181–1T through 1.181–4T, while § 1.181–6T provides the effective date of §§ 1.181–1T through 1.181–5T.

(2) *Owner.* For purposes of this section and §§ 1.181–2T through 1.181–6T, the owner of a production is any taxpayer that is required under section 263A to capitalize costs paid or incurred in producing the production into the cost basis of the production, or that would be required to do so if section 263A applied to that taxpayer. A taxpayer that obtains only a limited license or right to exploit a production, or receives an interest or profit participation in a production as compensation for services, generally is not an owner of the production for purposes of this section and §§ 1.181–2T through 1.181–6T.

(3) *Production costs.* (i) The term *production costs* means all costs paid or incurred by the owner in producing or acquiring a production that are required, absent the provisions of section 181, to be capitalized under section 263A, or that would be required to be capitalized if section 263A applied to the owner. These production costs specifically include, but are not limited to, participations and residuals, compensation paid for services, compensation paid for property rights, non-compensation costs, and costs paid or incurred in connection with obtaining financing for the production (for example, premiums paid or incurred to obtain a completion bond for the production).

(ii) Production costs do not include costs paid or incurred to distribute or exploit a production (including advertising and print costs).

(iii) Production costs do not include the costs to prepare a new release or new broadcast of an existing film or video after the initial release or initial broadcast of the film or video (for instance, the preparation of a DVD release of a theatrically-released film, or the preparation of an edited version of a theatrically-released film for television broadcast). Costs paid or incurred to prepare a new release or a new broadcast of a film or video that has previously been released or broadcast, therefore, are not taken into account for purposes of paragraph (b) of this section, and may not be deducted under this paragraph (a).

(iv) If a production (or any right or interest in a production) is acquired from any person bearing a relationship to the taxpayer described in section 267(b) or section 707(b)(1), and the costs paid or incurred to acquire the production are less than the seller's production cost, the purchaser must treat the seller's production cost as a production cost of the acquired production for purposes of determining whether the aggregate production cost paid or incurred with respect to the production exceeds the applicable production cost limit imposed under paragraphs (b)(1) and (b)(2) of this section. Notwithstanding this paragraph (a)(3)(iv), the taxpayer's deduction under section 181 is limited to the taxpayer's acquisition cost of the production plus any further production costs incurred by the taxpayer.

(v) The provisions of this paragraph (a) apply notwithstanding the provisions of section 167(g)(7)(D).

(b) *Limit on amount of production cost and amount of deduction*—(1) *In*

*general.* Except as provided under paragraph (b)(2) of this section, the deduction permitted under section 181 does not apply in the case of any production, the production cost of which exceeds $15,000,000.

(2) *Higher limit for productions in certain areas*—(i) *In general.* This section is applied by substituting $20,000,000 for $15,000,000 in the case of any production the aggregate production cost of which is significantly incurred in an area eligible for designation as—

(A) A low income community under section 45D; or

(B) A distressed county or isolated area of distress by the Delta Regional Authority established under 7 U.S.C section 2009aa–1.

(ii) *Significantly incurred.* The aggregate production cost of a production is significantly incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—

(A) At least 20 percent of the total production cost incurred in connection with first-unit principal photography for the production is incurred in connection with first-unit principal photography that takes place in such areas; or

(B) At least 50 percent of the total number of days of first-unit principal photography for the production consists of days during which first-unit principal photography takes place in such areas.

(iii) *Animated film and television productions.* For purposes of an animated film or television production, the aggregate production cost of the production is significantly incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—

(A) At least 20 percent of the total production cost incurred in connection with keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production is incurred in connection with such activities that take place in such areas; or

(B) At least 50 percent of the total number of days of keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production consists of days during which such activities take place in such areas.

(iv) *Productions incorporating both live action and animation.* For purposes of a production incorporating both live action and animation, the aggregate production cost of the production is significantly incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—

(A) At least 20 percent of the total production cost incurred in connection with first-unit principal photography, keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production is incurred in connection with such activities that take place in such areas; or

(B) At least 50 percent of the total number of days of first unit principal photography, keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production consists of days during which such activities take place in such areas.

(v) *Records required.* A taxpayer intending to utilize the higher production cost limit under paragraph (b)(2)(i) of this section must maintain records adequate to demonstrate qualification under this paragraph (b)(2).

(c) *No other depreciation or amortization deduction allowed.* (1) Except as provided in paragraph (c)(2) of this section, an owner that elects to deduct production costs under section 181 with respect to a production may not deduct production costs for that production under any provision of the Code other than section 181 unless § 1.181–4T(a) applies to the production. In addition, except as provided in paragraph (c)(2) of this section, an owner that has, in a previous taxable year, deducted any production cost of a production under a provision of the Code other than section 181 is ineligible to make an election with respect to that production under section 181.

(2) An owner may make an election under section 181 despite prior deductions claimed for amortization of the cost of acquiring or developing screenplays, scripts, story outlines, motion picture production rights to books and plays, and other similar properties for purposes of potential future development or production of a production under any provision of the Code if such costs were incurred before the first taxable year in which an election could be made under § 1.181–2T(a). However, the production cost of the production does not include costs that a taxpayer has begun to amortize prior to the time that the production is set for production (for further guidance, see Rev. Proc. 2004–36 (2004–1 CB 1063) and § 601.601(d)(2)(ii)(*b*) of this chapter).

**§ 1.181–2T Election (temporary).**

(a) *Time and manner of making election.* (1) Except as provided in paragraph (e) of this section, a taxpayer electing to deduct the production cost of a production under section 181 must do so in the time and manner described in this paragraph (a). Except as provided in paragraphs (a)(2) and (e) of this section, the election must be made by the due date (including extensions) for filing the taxpayer's Federal income tax return for the first taxable year in which production costs (as defined in § 1.181–1T(a)(3)) have been paid or incurred. See § 301.9100–2 of this chapter for a six-month extension of this period in certain circumstances. The election under section 181 is made separately for each production produced by the owner.

(2) An owner may not make an election under paragraph (a)(1) of this section until the first taxable year in which the owner reasonably expects (based on all of the facts and circumstances) that—

(i) The production will be set for production and will, upon completion, be a qualified film or television production; and

(ii) The aggregate production cost paid or incurred with respect to the production will, at no time, exceed the applicable production cost limit set forth under § 1.181–1T(b) of the regulations.

(3) If the election under this paragraph (a) is made in a taxable year subsequent to the taxable year in which production costs were first paid or incurred because paragraph (a)(2) of this section was not satisfied until such subsequent taxable year, the election must be made in the first such taxable year, and any production costs incurred prior to the taxable year in which the taxpayer makes the election are treated as production costs (except as provided in § 1.181–1T(c)(2)) that are deductible under § 1.181–1T(a) in the taxable year paragraph (a)(2) of this section is first satisfied and the election is made.

(b) *Election by entity.* In the case of a production owned by an entity, the election is made by the entity. For example, the election is made for each member of a consolidated group by the common parent of the group, for each partner by the partnership, or for each shareholder by the S corporation. The election must be made by the due date (including extensions) for filing the return for the later of the taxable year of the entity in which production costs are first paid or incurred or the first taxable year in which § 1.181–2T(a)(2) is satisfied.

(c) *Information required*—(1) *Initial election.* For each production to which the election applies, the taxpayer must attach a statement to the return stating

that the taxpayer is making an election under section 181 and providing—

(i) The name (or other unique identifying designation) of the production;

(ii) The date production costs were first paid or incurred with respect to the production;

(iii) The amount of production costs (as defined in § 1.181–1T(a)(3)) paid or incurred with respect to the production during the taxable year (including costs described in § 1.181–2T(a)(3));

(iv) The aggregate amount of qualified compensation (as defined in § 1.181–3T(d)) paid or incurred with respect to the production during the taxable year (including costs described in § 1.181–2T(a)(3));

(v) The aggregate amount of compensation (as defined in § 1.181–3T(c)) paid or incurred with respect to the production during the taxable year (including costs described in § 1.181–2T(a)(3));

(vi) If the owner expects that the total production cost of the production will be significantly paid or incurred in (or, if applicable, if a significant portion of the total number of days of principal photography will occur in) one or more of the areas specified in § 1.181–1T(b)(2)(i), the identity of the area or areas, the amount of production costs paid or incurred (or the number of days of principal photography engaged in) for the applicable activities described in § 1.181–1T(b)(2)(ii), (iii), or (iv), as applicable, that take place within such areas (including costs described in § 1.181–2T(a)(3)), and the total production cost paid or incurred (or the total number of days of principal photography engaged in) for such activities (whether or not they take place in such areas), for the taxable year (including costs described in § 1.181–2T(a)(3)); and

(vii) A declaration that the owner reasonably expects (based on all of the facts and circumstances at the time the election was filed) both that the production will be set for production (or has been set for production) and will be a qualified film or television production, and that the aggregate production cost of the production paid or incurred will not, at any time, exceed the applicable dollar amount set forth under § 1.181–1T(b).

(2) *Subsequent taxable years.* If the owner pays or incurs additional production costs in any taxable year subsequent to the taxable year in which production costs are first deducted under section 181, the owner must attach a statement to its Federal income tax return for that subsequent taxable year providing—

(i) The name (or other unique identifying designation) of the production;

(ii) The date the production costs were first paid or incurred;

(iii) The amount of production costs paid or incurred by the owner with respect to the production during the taxable year;

(iv) The amount of qualified compensation paid or incurred with respect to the production during the taxable year;

(v) The aggregate amount of compensation paid or incurred with respect to the production during the taxable year, and the aggregate amount of compensation paid or incurred with respect to the production in all prior taxable years;

(vi) If the owner expects that the total production cost of the production will be significantly paid or incurred in (or, if applicable, if a significant portion of the total number of days of principal photography will occur in) one or more of the areas specified in § 1.181–1T(b)(2)(i), the identity of the area or areas, the amount of production costs paid or incurred (or the number of days of principal photography engaged in) for the applicable activities described in § 1.181–1T(b)(2)(ii), (iii), or (iv), as applicable, that take place within such areas, and the total production cost paid or incurred (or the number of days of principal photography engaged in) for such activities (whether or not they take place in such areas), for the taxable year; and

(vii) A declaration that the owner continues to reasonably expect (based on all of the facts and circumstances at the time the election was filed) both that the production will be set for production (or has been set for production) and will be a qualified film or television production, and that the aggregate production cost of the production paid or incurred will not, at any time, exceed the applicable dollar amount set forth under § 1.181–1T(b).

(3) *Deductions by more than one owner.* If more than one taxpayer will claim deductions under section 181 with respect to the production for the taxable year, each owner (but not the members of an entity who are issued a Schedule K–1 by the entity with respect to their interest in the production) must provide a list of the names and taxpayer identification numbers of all such taxpayers, the dollar amount that each such taxpayer is entitled to deduct under section 181, and the information required by paragraphs (c)(1)(iii) through (vi) and (c)(2)(iii) through (vi) of this section for all owners.

(d) *Revocation of election*—(1) *In general.* An election made under this section may not be revoked without the consent of the Secretary.

(2) *Consent granted.* The Secretary's consent to revoke an election under this section with respect to a particular production will be granted if the owner—

(i) Files a Federal income tax return in which the owner complies with the recapture provisions of § 1.181–4T(a) to recapture the amount described in § 1.181–4T(a)(3); and

(ii) Attaches a statement to the owner's return clearly indicating the name (or other unique identifying designation) of the production, and stating that the election under section 181 with respect to that production is being revoked pursuant to § 1.181–2T(d)(2).

(e) *Transition rules*—(1) *Costs first paid or incurred prior to October 23, 2004.* If a taxpayer begins principal photography of a production after October 22, 2004, but first paid or incurred production costs before October 23, 2004, the taxpayer is entitled to make an election under this section with respect to those costs. If, before June 15, 2006, the taxpayer filed its Federal tax return for the taxable year in which production costs were first paid or incurred, and if the taxpayer wants to make a section 181 election for that taxable year, the taxpayer may make the election either by—

(i) Filing an amended Federal tax return for the taxable year in which production costs were first paid or incurred, and for all subsequent affected taxable year(s), on or before November 15, 2006, provided that all of these years are open under the period of limitations for assessment under section 6501(a); or

(ii) Filing a Form 3115, "Application For Change in Accounting Method," for the first or second taxable year ending on or after December 31, 2005, in accordance with the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9, 2002–1 CB 327, and § 601.601(d)(2)(ii)(*b*) of this chapter). This change in method of accounting results in a section 481 adjustment. Further, any limitations on obtaining the automatic consent of the Commissioner do not apply to a taxpayer seeking to change its method of accounting under this paragraph (e)(1). Moreover, the taxpayer must include on line 1a of the Form 3115 the designated automatic accounting method change number "100".

(2) *Returns filed after June 14, 2006, and before March 12, 2007.* If, after June 14, 2006, and before March 12, 2007, the owner of a film or television production filed its original Federal income tax return for a taxable year ending after October 22, 2004, without making an election under section 181 for production costs first paid or incurred after October 22, 2004, and if the taxpayer wants to make an election under section 181 for production costs first paid or incurred during that taxable year, the taxpayer must make the election within the time provided by paragraph (a) of this section and in the manner provided in paragraph (c)(1) of this section, except that the election statement attached to the return must include the information required in paragraphs (c)(1)(i) through (vi) of this section.

(3) *Information required.* If, in accordance with paragraph (e)(1) of this section, the taxpayer is making an election for a prior taxable year by filing amended Federal tax return(s), the statement and information required by paragraphs (c)(1) and (c)(2) of this section must be attached to each amended return. If, in accordance with paragraph (e)(1) of this section, the taxpayer is making a section 181 election for a prior taxable year by filing a Form 3115 for the first or second taxable year ending on or after December 31, 2005, the statement and information required by paragraphs (c)(1) and (c)(2) of this section must be attached to the Form 3115. For purposes of the preceding sentence, the amount of the cost or compensation paid or incurred for the production must only include the amount paid or incurred in taxable years prior to the year of change (for further guidance on year of change, see section 5.02 of Rev. Proc. 2002–9 and § 601.601(d)(2)(ii)(b) of this chapter).

**§ 1.181–3T Qualified film or television production (temporary).**

(a) *In general.* The term *qualified film or television production* means any production (as defined in paragraph (b) of this section) if not less than 75 percent of the total amount of compensation (as defined in paragraph (c) of this section) paid with respect to the production is qualified compensation (as defined in paragraph (d) of this section).

(b) *Production*—(1) *In general.* Except as provided in paragraph (b)(3) of this section, for purposes of this section and §§ 1.181–1T, 1.181–2T, 1.181–4T, 1.181–5T, and 1.181–6T, a film or television production (or production) means any film or video (including digital video) production the production cost of which is subject to capitalization under section 263A, or that would be would be subject to capitalization if section 263A applied to the owner of the production.

(2) *Special rules for television productions.* Each episode of a television series is a separate production to which the rules, limitations, and election requirements of this section and §§ 1.181–1T, 1.181–2T, 1.181–4T, 1.181–5T, and 1.181–6T apply. A taxpayer may elect to deduct production costs under section 181 only for the first 44 episodes of a television series (including pilot episodes). A television series may include more than one season of programming.

(3) *Exception for certain sexually explicit productions.* A production does not include property with respect to which records are required to be maintained under 18 U.S.C. 2257. Section 2257 of Title 18 requires maintenance of certain records with respect to any book, magazine, periodical, film, videotape, or other matter that—

(i) Contains one or more visual depictions made after November 1, 1990, of active sexually explicit conduct; and

(ii) is produced in whole or in part with materials that have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce.

(c) *Compensation.* The term *compensation* means, for purposes of this section and § 1.181–2T(c), all payments made by the owner (whether paid directly by the owner or paid indirectly on the owner's behalf) for services performed by actors (as defined in paragraph (f)(1) of this section), directors, producers, and other relevant production personnel (as defined in paragraph (f)(2) of this section) with respect to the production. Indirect payments on the owner's behalf include, for example, payments by a partner on behalf of an owner that is a partnership, payments by a shareholder on behalf of an owner that is a corporation, and payments by a contract producer on behalf of an owner. Payments for services include all elements of compensation as provided for in § 1.263A–1(e)(2)(i)(B) and (3)(ii)(D). Compensation is not limited to wages reported on Form W–2, "Wage and Tax Statement," and includes compensation paid to independent contractors. However, solely for purposes of paragraph (a) of this section, the term "compensation" does not include participations and residuals (as defined in section 167(g)(7)(B)). See § 1.181–1T(a)(3) for additional rules concerning participations and residuals.

(d) *Qualified compensation.* The term *qualified compensation* means, for purposes of this section and § 1.181–2T(c), all payments made by the owner (whether paid directly by the owner or paid indirectly on the owner's behalf) paid for services performed in the United States (as defined in paragraph (f)(3) of this section) by actors, directors, producers, and other relevant production personnel with respect to the production. A service is performed in the United States for purposes of this paragraph (d) if the principal photography to which the compensated service relates occurs within the United States and the person performing the service is physically present in the United States. For purposes of an animated film or animated television production, the location where production activities such as keyframe animation, in-between animation, animation photography, and the recording of voice acting performances are performed is considered in lieu of the location of principal photography. For purposes of a production incorporating both live action and animation, the location where production activities such as keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production is considered in addition to the location of principal photography.

(e) *Special rule for acquired productions.* A taxpayer who acquires an unfinished production from a prior owner must take into account all compensation paid by or on behalf of the seller and any previous owners in determining if the production is a qualified film or television production as defined in paragraph (a) of this section. Any owner seeking to deduct as a production cost either the cost of acquiring a production or any subsequent production costs should obtain from the seller detailed records concerning the compensation paid with respect to the production in order to demonstrate the eligibility of the production under section 181.

(f) *Other definitions.* The following definitions apply for purposes of this section and §§ 1.181–1T, 1.181–2T, 1.181–4T, 1.181–5T, and 1.181–6T:

(1) *Actors.* The term *actors* includes players, newscasters, or any other persons who are compensated for their performance or appearance in a production.

(2) *Production personnel.* The term *production personnel* includes, for example, writers, choreographers, and composers providing services during production, casting agents, camera operators, set designers, lighting technicians, make-up artists, and others who are compensated for providing services directly related to producing the production.

(3) *United States.* The term *United States* includes the 50 states, the District of Columbia, the territorial waters of the continental United States, the airspace or space over the continental United States and its territorial waters, and the seabed and subsoil of those submarine areas that are adjacent to the territorial waters of the continental United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources. The term United States does not include possessions and territories of the United States (or the airspace or space over these areas).

**§ 1.181–4T Special rules (temporary).**

(a) *Recapture*—(1) *Applicability.* The rules of this paragraph (a) apply notwithstanding whether a taxpayer has satisfied the requirements of § 1.181–2T(d). A taxpayer that, with respect to a production, claimed a deduction under section 181 in any taxable year in an amount in excess of the amount that would be allowable as a deduction for that year in the absence of section 181 must recapture deductions as provided for in paragraph (a)(3) of this section for the production in the first taxable year in which—

(i) The aggregate production cost of the production exceeds the applicable production cost limit under § 1.181–1T(b);

(ii) The owner no longer reasonably expects (based on all of the facts and circumstances at the time the election was filed) both that the production will be set for production (or has been set for production) and will be a qualified film or television production, and that the aggregate production cost of the production paid or incurred will not, at any time, exceed the applicable dollar amount set forth under § 1.181–1T(b); or

(iii) the taxpayer revokes the election pursuant to § 1.181–2T(d).

(2) *Principal photography not commencing prior to January 1, 2009.* If a taxpayer claims a deduction under section 181 with respect to a production for which principal photography does not commence prior to January 1, 2009, the taxpayer must recapture deductions as provided for in paragraph (a)(3) of this section in the taxpayer's taxable year that includes December 31, 2008.

(3) *Amount of recapture.* A taxpayer subject to recapture under this § 1.181–4T must, in the taxable year in which recapture is triggered, include in the taxpayer's gross income and add to the taxpayer's adjusted basis in the property—

(i) For a production that is placed in service in a taxable year prior to the taxable year in which recapture is triggered, the difference between the aggregate amount claimed as a deduction under section 181 with respect to the production in all such prior taxable years and the aggregate depreciation deductions that would have been allowable with respect to the property for such prior taxable years (or that the taxpayer could have elected to deduct in the taxable year that the property was placed in service) with respect to the production under the taxpayer's method of accounting; or

(ii) For a production that has not been placed in service, the aggregate amount claimed as a deduction under section 181 with respect to the production in all such prior taxable years.

(b) *Recapture under section 1245.* For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as a deduction allowable for amortization.

**§ 1.181–5T Examples (temporary).**

The following examples illustrate the application of §§ 1.181–1T through 1.181–4T:

*Example 1.* X, a corporation using a calendar taxable year, is a producer of films. X is the owner (within the meaning of § 1.181–1T(a)(2)) of film ABC. X incurs production costs in year 1, but does not commence principal photography for film ABC until year 2. In year 1, X reasonably expects, based on all of the facts and circumstances, that film ABC will be set for production and will be a qualified film or television production, and that at no time will the production cost of film ABC exceed the applicable production cost limit of § 1.181–1T(b). Provided that X satisfies all other requirements of §§ 1.181–1T through 1.181–4T and § 1.181–6T, X may deduct in year 1 the production costs for film ABC that X incurred in year 1.

*Example 2.* The facts are the same as in *Example 1.* In year 2, X begins, but does not complete, principal photography for film ABC. Most of the scenes that X films in year 2 are shot outside the United States and, as of December 31, year 2, less than 75 percent of the total compensation paid with respect to film ABC is qualified compensation. Nevertheless, X still reasonably expects, based on all of the facts and circumstances, that film ABC will be a qualified film or television production, and that at no time will the production cost of film ABC exceed the applicable production cost limit of § 1.181–1T(b). Provided that X satisfies all other requirements of §§ 1.181–1T through 1.181–4T and § 1.181–6T, X may deduct in year 2 the production costs for film ABC that X incurred in year 2.

*Example 3.* The facts are the same as in *Example 2.* In year 3, X continues, but does not complete, production of film ABC. Due to changes in the expected production cost of film ABC, X no longer expects film ABC to qualify under section 181. X files a statement with its return for year 3 identifying the film and stating that X revokes its election under section 181. X includes in income in year 3 the deductions claimed in year 1 and in year 2 as provided for in § 1.181–4T. X has successfully revoked its election pursuant to § 1.181–2T(d).

*Example 4.* The facts are the same as in *Example 2.* In year 3, X completes production of film ABC at a cost of $14.5 million and places it into service. ABC is an unexpected success in year 4, causing participation payments to drive the total production cost of film ABC above $15 million in year 4. X includes in income in year 4 as recapture under § 1.181–4T(a) the difference between the deductions claimed in year 1, year 2, and year 3, and the deductions that it would have claimed under the income forecast method described in section 167(g) of the Internal Revenue Code, a method that was allowable for the film in year 3 (the year the film was placed in service). Because X calculated the recapture amount by comparing actual deductions to deductions under the income forecast method, X must use this method to calculate deductions for film ABC for year 4 and in subsequent taxable years.

**§ 1.181–6T Effective date (temporary).**

(a) *In general.* (1) Section 181 applies to productions commencing after October 22, 2004, and shall not apply to productions commencing after December 31, 2008. Except as provided in paragraphs (b) and (c) of this section, §§ 1.181–1T through 1.181–5T apply to productions, the first day of principal photography for which occurs on or after February 9, 2007, and before January 1, 2009. In the case of an animated production, this paragraph (a) should be applied by substituting "in-between animation" in place of "principal photography". Productions involving both animation and live-action photography may use either standard.

(2) The applicability of §§ 1.181–1T through 1.181–5T expires on February 8, 2010.

(b) *Application of regulation project REG–115403–05 to pre-effective date productions.* A taxpayer may apply §§ 1.181–1T through 1.181–5T to productions, the first day of principal photography (or "in-between" animation) for which occurs after October 22, 2004, and before February 9, 2007, provided that the taxpayer applies

all provisions in §§ 1.181–1T through 1.181–5T to the productions.

(c) *Special rules for returns filed for prior taxable years.* If before March 12, 2007, an owner of a film or television production began principal photography (or "in-between" animation) for the production after October 22, 2004, and filed its original Federal income tax return for the year such costs were first paid or incurred without making an election under section 181 for the costs of the production, and if the taxpayer wants to make an election under section 181 for such taxable year, see § 1.181–2T(e) for the time and manner of making the election.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.181–1T and 1.181–2T ..... | 1545–2059 |
| * * * * * | |

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 1, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E7–2154 Filed 2–8–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### 27 CFR Part 9

**[T.D. TTB–58; Re: Notice No. 59]**

**RIN 1513–AB13**

### Establishment of the Outer Coastal Plain Viticultural Area (2003R–166P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** This Treasury decision establishes the Outer Coastal Plain viticultural area in southeastern New Jersey. The viticultural area consists of approximately 2,255,400 acres and includes all of Cumberland, Cape May, Atlantic, and Ocean Counties and portions of Salem, Gloucester, Camden, Burlington, and Monmouth Counties. We designate viticultural areas to allow bottlers to better describe the origin of their wines and to allow consumers to better identify the wines they may purchase.

**DATES:** *Effective Date:* March 12, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, P.O. Box 18152, Roanoke, VA 24014; telephone 540–344–9333.

**SUPPLEMENTARY INFORMATION:**

### Background on Viticultural Areas

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

*Requirements*

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

### Rulemaking Proceedings

*Outer Coastal Plain Petition*

James Quarella of Bellview Winery, Landisville, New Jersey, petitioned TTB to establish the "Outer Coastal Plain" as an American viticultural area in southeastern New Jersey. The proposed viticultural area covers approximately 2,255,400 acres and includes all of Cumberland, Cape May, Atlantic, and Ocean Counties and portions of Salem, Gloucester, Camden, Burlington, and Monmouth Counties. According to the petitioner, the area currently includes thirteen wineries, several vineyards, and approximately 750 acres planted to vines. We summarize below the evidence submitted in support of the petition.

Name Evidence

The Outer Coastal Plain is one of five defined physiographic regions of New Jersey. The other regions are the Inner Coastal Plain, the Newark Basin Piedmont, the Highlands, and the Appalachian Valley and Ridge.

The Outer Coastal Plain includes most of the State's Atlantic coastline and the area known as the "Pinelands" or "Pine Barrens." The petitioner states that most geology reference sources and such

government entities as the New Jersey Department of Environmental Protection, USGS, and the United States Department of Agriculture (USDA), call the region the "Outer Coastal Plain."

As evidence that the proposed viticultural area is known locally and nationally by this name, the petitioner submitted several documents that identify the area as the "Outer Coastal Plain." These documents included—

- A map from a National Park Service Web site showing landform regions in New Jersey, at *http://www.cr.nps.gov/history/online_books/nj2/chap1.htm;*
- A map entitled "Geographic Boundaries of the Outer Coastal Plain (OCP) of New Jersey," issued by the New Jersey Department of Environmental Protection; and
- A list of native trees and shrubs for the Outer Coastal Plain on the Web site of the New Jersey Agricultural Experiment Station/Cook College, Rutgers, The State University of New Jersey, at *http://www.rce.rutgers.edu/njriparianforestbuffers/nativeOUTER.htm.*

Both the Outer Coastal Plain and the Inner Coastal Plain comprise the extensive, seaward-sloping Atlantic Coastal Plain. The Atlantic Coastal Plain stretches about 2,200 miles along the coast of the Eastern United States, from Massachusetts to Florida.

Boundary Evidence

The Outer Coastal Plain encompasses the southeastern part of the State of New Jersey. The proposed viticultural area is roughly triangular in shape and comprises the most easterly and southerly portions of New Jersey, including most of the State's Atlantic coastline and the area known as the "Pinelands" or "Pine Barrens." According to the petitioner, the geographical and geological features that define the boundaries of the proposed viticultural area clearly distinguish it from surrounding areas. The proposed viticultural area's proximity to the Atlantic Ocean and Delaware Bay greatly influences its climate and its geographical and geological features, such as soils and underlying sediments. These features are described in greater detail in the following section.

The Atlantic Ocean coastline, including its barrier islands, forms the proposed viticultural area's eastern boundary, and Delaware Bay forms its southern boundary. The diagonal western boundary is immediately east of a belt of low hills, called cuestas. These cuestas, which extend in a northeasterly direction from the Delaware River lowlands in the southwest to the Atlantic Highlands overlooking Raritan Bay in the northeast, separate the proposed viticultural area from the Inner Coastal Plain. The diagonal western boundary meets the eastern boundary within the city of Long Branch, New Jersey, on the Atlantic coastline.

As historical evidence for these proposed boundaries, the petitioner cited the area's long viticultural history. According to evidence that the petitioner submitted, viticulture flourished in the area as early as the mid-19th century. Egg Harbor City, New Jersey, was the center of a thriving wine industry with hundreds of acres of grapes. In 1864, Louis Renault established Renault Winery in Egg Harbor City, where he found the soils and climate to be similar to those of his native Rheims, France. Today, Renault Winery is one of the oldest, continuous winery operations in the United States. Around the same time, Dr. Thomas Welch founded the U.S. grape juice industry in Vineland, New Jersey, with a product that became known as Welch's Grape Juice. Although Prohibition devastated the area's wineries, the wine industry has made a strong comeback in recent years, due largely to the New Jersey Farm Winery Act of 1981. The number of wineries in the State jumped from 9 in 1981 to 27 today, 13 of which are in the proposed viticultural area.

Distinguishing Features

*Soils and Geology.* The petitioner asserts that the soils and geology of the proposed viticultural area clearly distinguish it from surrounding areas. Despite its large landmass, the Outer Coastal Plain has remarkably uniform, well drained sandy soils that derived from unconsolidated sediments. The relatively low fertility and low pH of these soils, the petitioner notes, are favorable for grape growing. In contrast to the soils of the Outer Coastal Plain, the fine, silty soils of the Inner Coastal Plain to the west have both higher fertility and higher pH and the soils to the north are dense and rocky, and are derived from bedrock.

As evidence of the proposed viticultural area's distinctive geology, the petitioner submitted the "Geologic Map of New Jersey." Published by the State's Department of Environmental Protection, this map clearly shows that most of the Outer Coastal Plain is underlain by unconsolidated deposits of sand, silt, and clay of the Tertiary period and that a small coastal fringe consists of beach and estuarine deposits of the Holocene epoch. The parent material of soils in other parts of the State formed in later geologic periods. The Inner Coastal Plain, in contrast, is underlain by sand, silt, and clay of the Cretaceous period, and the northern regions of the State are underlain by sedimentary, igneous, and metamorphic rocks of still later geologic periods.

According to the petitioner, a unique feature of the proposed viticultural area is its significant aquifers, particularly the Cohansey aquifer, the largest freshwater aquifer in the mid-Atlantic region. The petitioner states that this aquifer is so important to the region's drainage and water supply that it was one reason the Pinelands National Reserve was created as a federally protected area. The Cohansey aquifer is part of the 1.93-million-acre Kirkwood-Cohansey aquifer system, the borders of which nearly correspond to those of the proposed viticultural area. The Cohansey and other aquifers, the petitioner notes, provide an abundant source of water for the proposed viticultural area's vineyards. In contrast to the Outer Coastal Plain, the adjacent Inner Coastal Plain has smaller, confined aquifers, mostly in the Potomac-Raritan-Magothy aquifer system.

*Elevation.* The petitioner states that the proposed viticultural area's elevation is another feature that distinguishes it from adjacent areas. According to an elevation map issued by the New Jersey Geological Survey, almost the entire area has elevations of less than 280 feet above sea level, and most of the area has elevations significantly below that height. The petitioner notes that the proposed viticultural area's low elevation and proximity to the Atlantic Ocean are moderating influences on its climate, as described below. Elevations in the other regions of New Jersey are higher. Elevations in the northwestern part of the State, for example, range from 1,300 to 1,680 feet.

*Climate.* According to the petitioner, the climate of the Outer Coastal Plain is strongly influenced by the Atlantic Ocean to the east and Delaware Bay to the south. Because of this maritime influence on its climate, the proposed viticultural area is generally warmer, has a longer growing season, and has more moderate temperatures than areas to the west and north. As evidence of the maritime influence, the petitioner submitted a USDA plant hardiness zone map of New Jersey and noted that the proposed viticultural area is in zones 6B, 7A, or 7B, whereas areas to the north and west are in cooler zones and have shorter growing seasons. The petitioner also submitted a climate overview published on the Web site of the New Jersey State Climatologist at

*http://climate.Rutgers.edu/stateclim_v1/njclimoverview.html*. The overview shows that the proposed viticultural area has between 190 and 217 freeze-free days per year. In contrast, the Highlands region to the north averages 163 freeze-free days and the central Piedmont region averages 179 freeze-free days. The petitioner notes that because of these climatic differences, more temperature-sensitive grape varieties may be grown in vineyards within the proposed viticultural area than in vineyards in other adjacent regions.

**Notice of Proposed Rulemaking**

On July 3, 2006, TTB published a notice of proposed rulemaking regarding the establishment of the Outer Coastal Plain viticultural area in the **Federal Register** (71 FR 37870) as Notice No. 59. In that notice, TTB invited comments by September 1, 2006, from all interested persons. We expressed particular interest in receiving comments on whether the proposed area name would result in a conflict with currently used brand names and whether the name "New Jersey Outer Coastal Plain" would more appropriately identify the proposed viticultural area. We received no comments on these or any other issues in response to that notice.

**TTB Finding**

After careful review of the petition, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the "Outer Coastal Plain" viticultural area in the State of New Jersey effective 30 days from the publication date of this document.

*Boundary Description*

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this final rule.

*Maps*

The petitioner provided the required maps, and we list them below in the regulatory text.

**Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, "Outer Coastal Plain," is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point. Consequently, wine bottlers using "Outer Coastal Plain " in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin. For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

**Regulatory Flexibility Act**

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

**Executive Order 12866**

This rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

**Drafting Information**

Jennifer Berry of the Regulations and Rulings Division drafted this document.

**List of Subjects in 27 CFR Part 9**

Wine.

**Regulatory Amendment**

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9, as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.207 to read as follows:

**§ 9.207 Outer Coastal Plain.**

(a) *Name.* The name of the viticultural area described in this section is "Outer Coastal Plain". For purposes of part 4 of this chapter, "Outer Coastal Plain" is a term of viticultural significance.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Outer Coastal Plain viticultural area are seven United States Geological Survey topographic maps. They are titled—

(1) Wilmington, Delaware-New Jersey-Pennsylvania-Maryland, 1984, 1:100,000 scale;

(2) Hammonton, New Jersey, 1984, 1:100,000 scale;

(3) Trenton, New Jersey-Pennsylvania-New York, 1986, 1:100,000 scale;

(4) Long Branch, New Jersey, 1954, photorevised 1981, 1:24,000 scale;

(5) Atlantic City, New Jersey, 1984, 1:100,000 scale;

(6) Cape May, New Jersey, 1981, 1:100,000 scale; and

(7) Dover, Delaware-New Jersey-Maryland, 1984, 1:100,000 scale.

(c) *Boundary.* The Outer Coastal Plain viticultural area includes all of Cumberland, Cape May, Atlantic, and Ocean Counties and portions of Salem, Gloucester, Camden, Burlington, and Monmouth Counties in the State of New Jersey. The boundary of the Outer Coastal Plain viticultural area is as described below.

(1) The beginning point is on the Wilmington map at the confluence of Alloway Creek with the Delaware River (within Mad Horse Creek State Wildlife Management Area) in Salem County;

(2) From the beginning point, proceed northeasterly in a straight line to the village of Hagerville; then

(3) Continue north on an unnamed road locally known as County Road (CR) 658 to its intersection with State Route (SR) 49; then

(4) Proceed northwesterly on SR 49 to its intersection with SR 45 in the center of the town of Salem; then

(5) Proceed northeasterly on SR 45 to its intersection with SR 540 at the village of Pointers; then

(6) Proceed north on SR 540 into the village of Slapes Corner; then

(7) Proceed northeasterly on an unnamed road locally known as CR 646 to its intersection with the New Jersey Turnpike near the village of Auburn; then

(8) Proceed northeasterly on the New Jersey Turnpike for approximately 18

miles to its intersection with SR 47; then

(9) Proceed south on SR 47 for approximately 0.5 mile to its intersection with SR 534 at the village of Gardenville Center; then

(10) Proceed southeasterly through Gardenville Center on SR 534 to its intersection with SR 544; then

(11) Proceed northeasterly on SR 544 to its intersection with SR 73 on the Hammonton map; then

(12) Proceed north-northwesterly on SR 73 to its intersection with SR 70 in Cropwell; then

(13) Proceed east on SR 70 to its intersection with U.S. 206 in Red Lion; then

(14) Proceed north on U.S. 206, onto the Trenton map, to the intersection of U.S. 206 and an unnamed road locally known as CR 537, in the village of Chambers Corner; then

(15) Proceed northeasterly on CR 537, through the village of Jobstown; then

(16) Continue northeasterly on CR 537, through the villages of Smithburg and Freehold, to its intersection with SR 18, east-northeast of Freehold; then

(17) Proceed easterly on SR 18 to its intersection with the Garden State Parkway; then

(18) Proceed north on the Garden State Parkway to its intersection with SR 36 and proceed east along SR 36 onto the Long Branch map; then

(19) Using the Long Branch map, continue east on SR 36 to where it intersects with Joline Avenue; then

(20) Proceed northeasterly on Joline Avenue to the Atlantic Ocean shoreline; then

(21) Follow the Atlantic Ocean shoreline south, encompassing all coastal islands, onto the Trenton, Hammonton, Atlantic City, and Cape May maps, to the city of Cape May; then

(22) Proceed west, then north, along the eastern bank of the Delaware River, onto the Atlantic City, Dover, and Wilmington maps to the beginning point.

Dated: December 4, 2006.

**John J. Manfreda,**

*Administrator.*

Approved: January 29, 2007.

**Timothy E. Skud,**

*Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).*

[FR Doc. 07–575 Filed 2–8–07; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 155

**[USCG–1998–3417]**

**RIN 1625–AA19**

## Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule; partial suspension of regulation.

**SUMMARY:** Current vessel response plan regulations require the owners or operators of vessels carrying Groups I through V petroleum oil as a primary cargo to identify in their response plans a salvage company with expertise and equipment, and a company with firefighting capability that can be deployed to a port nearest to the vessel's operating area within 24 hours of notification (Groups I–IV) or a discovery of a discharge (Group V). On January 23, 2004, a notice of suspension was published in the **Federal Register**, suspending the 24-hour requirement scheduled to become effective on February 12, 2004, until February 12, 2007 (69 FR 3236). The Coast Guard has decided to extend this suspension period for another two years to allow us to complete the rulemaking that will revise the salvage and marine firefighting requirements.

**DATES:** This extension is effective as of February 12, 2007. Termination of the suspension will be on February 12, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–1998–3417 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov;*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001;

(3) *Fax:* 202–493–2251;

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh, Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329; or

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule or the partial suspension of regulations, call Lieutenant Commander Reed Kohberger, Office of Standards Evaluation and Development, Coast Guard Headquarters, telephone 202–372–1471, or via e-mail: *Reed.H.Kohberger@uscg.mil.* For questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

**SUPPLEMENTARY INFORMATION:**

### Background and Regulatory History

Requirements for salvage and marine-firefighting resources in vessel response plans have been in place since February 5, 1993 (58 FR 7424). The existing requirements are general. The Coast Guard did not originally develop specific requirements because each salvage and marine firefighting response for an individual vessel is unique, due to the vessel's size, construction, operating area, and other variables. The Coast Guard's intent was to rely on the planholder to prudently identify contractor resources to meet their needs. The Coast Guard anticipated that the significant benefits of a quick and effective salvage and marine-firefighting response would be sufficient incentive for industry to develop salvage and marine firefighting capability parallel to the development of oil spill removal organizations.

Early in 1997, it became apparent that there was disagreement among planholders, salvage and marine-firefighting contractors, maritime associations, public agencies, and other stakeholders as to what constituted adequate salvage and marine-firefighting resources. There was also concern as to whether these resources could respond to the port nearest to the vessel's operating area within 24 hours.

On June 24, 1997, a notice of meeting was published in the **Federal Register** (62 FR 34105) announcing a workshop to solicit comments from the public on potential changes to the salvage and marine-firefighting requirements currently found in 33 CFR part 155.

A public workshop was held on August 5, 1997, to address issues related

to salvage and marine-firefighting response capabilities, including the 24-hour response time requirement, which was then scheduled to become effective on February 18, 1998. The participants uniformly identified the following three issues that they felt the Coast Guard needed to address:

(1) Defining the salvage and marine firefighting capability that is necessary in the plans;

(2) Establishing how quickly these resources must be on scene; and

(3) Determining what constitutes an adequate salvage and marine-firefighting company.

**Reason for Suspension**

On February 12, 1998, a notice of suspension was published in the **Federal Register** suspending the 24-hour requirement scheduled to become effective on February 18, 1998, until February 12, 2001 (63 FR 7069) so that the Coast Guard could address issues identified at a public workshop through a rulemaking that would revise the existing salvage and marine firefighting requirements. On January 17, 2001, a second notice of suspension was published in the **Federal Register** suspending the 24-hour requirement scheduled to become effective on February 12, 2001, until February 12, 2004 (66 FR 3876) because the potential impact on small businesses from this new rulemaking requires the preparation of an initial regulatory flexibility analysis under the Small Business Regulatory Enforcement Fairness Act of 1996. This was not determined until a draft regulatory assessment was completed in November 2000. On January 23, 2004, a third notice of suspension was published in the **Federal Register** suspending the 24-hour requirement scheduled to become effective on February 12, 2004, until February 12, 2007 (69 FR 3236) because during the preceding three years, the Coast Guard had to redirect the majority of its regulatory resources to issue security-related regulations as required by the Maritime Transportation Security Act of 2002. As a result, we were unable to complete our review of the comments we received in response to a May 10, 2002, notice of proposed rulemaking (NPRM) (67 FR 31868) on the proposed revisions to the existing salvage and marine-firefighting requirements. Now that the comments have been reviewed, and a draft programmatic environmental assessment prepared, we will begin to prepare an updated regulatory assessment.

The extension of the suspension period will continue to relieve the affected industry from complying with the existing 24-hour requirements until this rulemaking project is complete, and amendments to the salvage and marine firefighting requirements become final.

**Regulatory Evaluation**

Although the final rule published in 1996 was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget does not consider this extension a significant action. As a result, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this extension will have a significant economic impact on a substantial number of small entities. "Small entities" include 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.

This extension will not have a significant economic impact on a substantial number of small entities because it reflects existing conditions and relieves planholders from certain original requirements. Any future regulatory action on this issue will address any economic impacts, including impacts on small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this extension to a suspension of certain requirements will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates the enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This action does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Federalism**

We have analyzed this action under E.O. 13132 and have determined that it does not have implications for federalism under that Order. Because this action extends a suspension of certain requirements, it does not preempt any state action.

**Unfunded Mandates Reform Act**

This action will not result in an unfunded mandate under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538).

**Taking of Private Property**

This action will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

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

**Protection of Children**

We have analyzed this action under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

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

**Environment**

We considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available at *http://dmses.dot.gov/docimages/pdf33/50180_web.pdf*. We have also reexamined that information and determined it is still accurate.

**List of Subjects in 33 CFR Part 155**

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 155 as follows:

## PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 1. The authority citation for part 155 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

Sections 155.110–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued 33 U.S.C. 2735.

**Note:** Additional requirements for vessels carrying oil or hazardous materials appear in 46 CFR parts 30 through 36, 150, 151, and 153.

**§ 155.1050 [Amended]**

■ 2. In § 155.1050, paragraph (k)(3) is suspended until February 12, 2009.

**§ 155.1052 [Amended]**

■ 3. In § 155.1052, the last sentence in paragraph (f) is suspended until February 12, 2009.

Dated: February 5, 2007.

**J.G. Lantz,**

*Acting Assistant Commandant for Prevention, U.S. Coast Guard.*

[FR Doc. 07–572 Filed 2–6–07; 10:42 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 71

**[OST Docket No. 2006–26442]**

**RIN 2105–AD65**

## Standard Time Zone Boundary in Pulaski County, IN

**AGENCY:** Office of the Secretary (OST), the Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** DOT is relocating the time zone boundary in Indiana to move Pulaski County, Indiana, from the Central Time Zone to the Eastern Time Zone. This action serves the convenience of commerce, the statutory standard for a time zone change, and is taken in response to a petition filed by the Pulaski County Commissioners and County Council.

**DATES:** The effective date of this rule is 2 a.m. CST, Sunday, March 11, 2007, which is the changeover date from standard time to daylight saving time.

**FOR FURTHER INFORMATION CONTACT:** Judith S. Kaleta, Office of the General Counsel, U.S. Department of Transportation, Room 10428, 400 Seventh Street, SW., Washington, DC. 20590, *indianatime@dot.gov*; (202) 366–9283.

**SUPPLEMENTARY INFORMATION:**

**Current Indiana Time Observance**

Indiana is divided into 92 counties. Under Federal law, 74 Indiana counties are in the Eastern Time Zone and 18 are in the Central Time Zone. The Central Time Zone counties include seven in the northwest (Lake, Porter, La Porte, Starke, Newton, Jasper, and Pulaski) and eleven in the southwest (Knox, Daviess, Martin, Gibson, Pike, Dubois, Posey, Vanderburgh, Warrick, Spencer, and Perry). The remaining 74 counties are in the Eastern Time Zone. The entire State began to observe daylight saving time in 2006. Neighboring States observe both Eastern and Central time. Illinois and western Kentucky observe Central time, while eastern Kentucky, Ohio, and the portion of Michigan adjoining Indiana observe Eastern time.

In January 2006, DOT completed a rulemaking proceeding establishing new time zone boundaries that resulted in the current time zone observance. In that rulemaking in response to a petition from Pulaski County as well as other Indiana counties, the County was moved to the Central Time Zone. Pulaski County is bordered to the north and west by counties in the Central Time Zone and to the south and east by counties in the Eastern Time Zone. In February 2006, Pulaski County filed a Petition requesting a time zone change back to the Eastern Time Zone, and subsequently filed an Amended Petition.

In August 2006, Knox, Daviess, Martin, Pike, and Dubois Counties in Southwestern Indiana (the Southwestern Counties) filed a Joint Petition for a Time Zone Change (Joint Petition). This Final Rule addresses only Pulaski County. DOT is evaluating the Joint Petition and supplemental information from the Southwestern Counties before making a determination whether to propose a time zone change or deny the Joint Petition.

**Statutory Requirements**

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

**DOT Procedures To Change a Time Zone Boundary**

DOT has typically used a set of procedures to address time zone issues. Under these procedures, DOT will generally begin a rulemaking proceeding to change a time zone boundary if the highest elected officials in the area provide adequate supporting data for the proposed change. We ask that the petition include, or be accompanied by, detailed information supporting the requesting party's contention that the requested change would serve the convenience of commerce. The principal standard for deciding whether to change a time zone is defined very broadly to include consideration of all the impacts upon a community of a change in its standard of time. We also ask that the supporting documentation address, at a minimum, each of the following questions in as much detail as possible.

1. From where do businesses in the community get their supplies, and to where do they ship their goods or products?

2. From where does the community receive television and radio broadcasts?

3. Where are the newspapers published that serve the community?

4. From where does the community get its bus and passenger rail services; if there is no scheduled bus or passenger rail service in the community, to where must residents go to obtain these services?

5. Where is the nearest airport; if it is a local service airport, to what major airport does it carry passengers?

6. What percentage of residents of the community work outside the community; where do these residents work?

7. What are the major elements of the community's economy; is the community's economy improving or declining; what Federal, State, or local plans, if any, are there for economic development in the community?

8. If residents leave the community for schooling, recreation, health care, or religious worship, what standard of time is observed in the places where they go for these purposes?

In addition, we consider any other information that the county or local officials believe to be relevant to the proceeding. We consider the effect on economic, cultural, social, and civic activities, and how a change in time zone would affect businesses, communication, transportation, and education.

**2005–2006 Time Zone Rulemaking Proceedings**

On August 17, 2005, DOT published a notice in the **Federal Register** inviting county and local officials in Indiana that wished to change their current time zone in response to legislation adopted by the Indiana legislature (Pub. L. 243–005), to notify DOT of their request for a change by September 16, 2005 and to provide data in response to the questions above. In addition, DOT announced the opening of an internet-accessible, public docket to receive any petitions and other relevant documents concerning the appropriate placement of the time zone boundary in the State of Indiana.

Pulaski County was one of nineteen counties that petitioned for a change. Pulaski County is located in Northwestern Indiana, 95 miles from both Chicago and Indianapolis and 60 miles from both South Bend and Lafayette. It has a population of 13,783. According to "Key Economic Development Statistics," prepared for the Pulaski County Community Development Commission, dated January 6, 2004, "Although the agricultural heritage of Pulaski County is very strong, the fact remains that 83% of all employment is created in non-agricultural opportunities."

The Pulaski County Commissioners submitted a petition (original petition) for a time zone change in which they enumerated reasons for a move to the Central Time Zone based on comments made during an open public meeting. The County Commissioners commented that, at that open public meeting, "There were no citizens who were in favor of Eastern. All were in favor of leaving the time alone, by not having to change time during the year. But, if we have to choose one of the two, the choice would be Central Time." The Pulaski County Commissioners also noted the consideration of school children waiting during a late sunrise, the importance of sunlight to its farming community, television programming from South Bend and Chicago, newspapers from Indianapolis, South Bend, Logansport, and Chicago, and airports in Indianapolis and Chicago. In addition, the County Commissioners submitted annual commuting data in support of their position.

On October 31, 2005, DOT published a Notice of Proposed Rulemaking (70 FR 6228), tentatively proposing to relocate the time zone boundary in Indiana to move the time zone boundaries for several counties, but not Pulaski County. However, the notice stated that if we received additional information supporting a time zone change, we would make the change at the final rule stage of the proceeding.

On November 15, 2005, at a public hearing conducted by DOT in Logansport, Indiana, the Director of the Pulaski Community Development Commission presented information from the two major employers in the County who favored the Central Time Zone as well as from other employers. The President of the Pulaski County Council also spoke in favor of the Pulaski County petition; he noted the difficulty of being a border county and suggested that the entire state be in the same time zone. In written comments to the docket, one commenter noted that Pulaski County has regional ties to counties that are currently in the Central Time Zone or would be moved to the Central Time Zone by DOT's decision. He referred to workforce planning, economic growth, and economic development regions and said that moving Pulaski to the Central Time Zone would ensure that all counties in these regions were in the same time zone.

There were 71 comments submitted to the docket from Pulaski County. Of these comments, 41 favored the Central Time Zone, 17 favored the Eastern Time Zone, and 13 expressed interest in keeping Indiana on the same time zone, expressing no preference.

Based on the petition, comments at the hearing, and comments to the docket, Pulaski County was one of the eight counties that DOT moved from the Eastern Time Zone to the Central Time Zone under the January 2006 final rule (71 FR 3228). The final rule was to be effective on April 2, 2006.

On February 7, 2006, Pulaski County petitioned DOT for a time zone boundary change back to the Eastern Time Zone. The new petition followed DOT's final rule by only a few weeks and was submitted before the County had any experience with the new time zone changes that it had solicited. Furthermore, the new petition requested a change that was contrary to the County's original petition. The new petition stated that the original petition "was made with an understanding that our neighboring counties were favoring the same Zone of Central Time." In addition, the new petition was also contrary to information submitted to the docket in the rulemaking proceeding. In fact, the County Commissioners represented that they did not provide accurate information in their original two-page petition. The new six-page petition provided various reasons for a time zone change, but did not provide detailed information in support of its new position or the sources for the new information submitted. Therefore, before making any determination on changing the time zone boundary for Pulaski County, in a May 22, 2006, letter, DOT reminded the County officials of the legal requirements for a time zone change and asked for an explanation of the contradictions between the original petition and the new petition. DOT also requested information, and the sources of the information, from Pulaski County to assist DOT in making a careful assessment on the appropriate time zone for the County consistent with Federal requirements.

On June 27, 2006, Pulaski County submitted an Amended Petition that included answers to the questions DOT considers in making time zone determinations and exhibits in support of the answers. The Amended Petition repeatedly stated that the information set forth in the original petition in response to DOT's time zone questions "is limited, and opinion without

substantial and verifiable evidence to support the claims made." The Amended Petition provided detailed responses to DOT's questions related to community imports and exports, television and radio broadcasts, newspapers, bus and passenger rail services, airports/airline services, worker commuting patterns, the community's economy/economic development, and schooling, recreation, health care, and religious worship. These responses were significantly more detailed than the information contained in the original petition or the February 7, 2006, petition, and provided the source of the information.

In August 2006, Indiana Governor Daniels, the Indiana Economic Development Corporation, and the Indiana Department of Workforce Development submitted letters to the docket. The Governor supported the Amended Petition (as well as the Joint Petition filed by the Southwestern Counties), stating that putting more of the State on the same time zone would provide clarity on the time questions and advance economic growth. The two organizations addressed regional connections. They noted that they established their respective state regions based on their ability to deliver services. They did not establish regions based on time zones or "stream of commerce."

**Notice of Proposed Rulemaking**

On November 28, 2006, DOT published a Notice of Proposed Rulemaking (NPRM) (71 FR 68777) proposing to move the time zone boundary for Pulaski County. Based on the Amended Petition and the supporting data submitted with it, DOT found that Pulaski County provided enough information to justify proposing to change its time zone boundary from the Central Time Zone to the Eastern Time Zone.

To aid us in our consideration of whether a time zone change would be "for the convenience of commerce," we asked for comments on the impact on commerce of a change in the time zone and whether a new time zone would improve the convenience of commerce. We requested that commenters address the impact on such things as economic, cultural, social, and civic activities and how time zone changes affect businesses, communication, transportation, and education. We specifically invited comment from neighboring Indiana counties and counties in other States that may also be impacted by changing Pulaski County's time zone boundary.

We provided 30 days for public comments in this proceeding and said that we would consider late comments to the extent practicable.

**Comments to the Docket**

*An Overview*

There were over 100 comments submitted in response to the NPRM, several with multiple signatures. Elected officials from Pulaski County commented to the DOT docket. Each of the three Pulaski County Commissioners filed comments as did the Winamac Town Council. There were comments from various large and small business interests, including farming, real estate, tax services, the food industry, and banks, all voicing support of either the Eastern or Central Time Zone based on operational issues and/or employee preferences. There were also comments from individuals, expressing their personal interests and preferences, as well as their views on how a time zone change would be for the convenience of commerce. While the majority of the commenters were from Pulaski County residents, there were commenters from White and Starke Counties, counties to the south and north of Pulaski County respectively, and from Seattle, Washington.

The overwhelming majority of the commenters (93%) supported changing the time zone boundary for Pulaski County back to the Eastern Time Zone. The Pulaski County Commissioners, filing individual comments, supported a change to eliminate confusion for residents and unite with neighboring counties in the Eastern Time Zone. In support of the Eastern Time Zone for the Pulaski County, the Winamac Town Council said it would benefit the surrounding counties, school corporations, commuting residents, and that it would be helpful for the local government to be on the same time as the state government in Indianapolis. Most businesses commented on how a change back to the Eastern Time Zone would allow them more time during regular business hours to be in contact with suppliers and customers who are in the Eastern Time Zone. Two businesses sent in petitions with the names and signatures of over 200 individuals who "desire to be on the same time as our surrounding counties" and "would also prefer to be on the same time as our state capitol." Individuals said "it would be a hardship to have our county on a different time than the majority of the surrounding counties." Sharing the views of business, individuals also noted an interest in being in the same time zone as Indianapolis. Still other commenters expressed preference for the Eastern Time Zone so that they could enjoy more daylight in the evenings for recreational activities.

The commenters who favored Central Time referred to a variety of reasons to support their position. Some mentioned current work and growing markets in the greater Chicago metropolitan area, which observes Central Time. Others noted the benefits of extra daylight in the early morning. Still others suggested Pulaski County really should try to observe Central Time, saying businesses never made a change from Eastern to Central Time, but merely adjusted hours of operation and called it "Commerce Time." One Pulaski County resident noted that Starke County has "survived" the move to the Central Time Zone "quite well." A Starke County resident stated that Pulaski should remain on Central Time with Starke. A few Central Time Zone supporters expressed concern that support for Central Time "has been stifled" and that "supporters of Central have been lampooned."

There were several commenters who expressed a "One State, One Time" position, some favoring the Eastern Time Zone and others preferring the Central Time Zone. Because Pulaski County borders on counties in the both the Eastern and Central Time Zones, commenters noted the hardship that split time zones have on school children, during their academic day and after school. At least one commenter suggested dividing the State "down the middle." DOT does not have a statewide proposal before it nor has the Indiana legislature endorsed such an approach. It is beyond the scope of this proceeding, therefore, to consider this broader change to the State's time zone boundaries.

A few commenters requested that DOT eliminate Daylight Saving Time. Federal law provides that it is up to an individual State to decide whether to observe Daylight Saving Time. This final rule does not change the 2006 decision of the Indiana legislature that the entire State observe Daylight Saving Time.

In summary, as compared to 71 commenters to the docket in the first time zone proceeding, there were 272 commenters in this proceeding. Of these comments, 255 favored the Eastern Time Zone and 15 favored the Central Time Zone. Of these commenters, a few also expressed interest in having Indiana in the same time zone. In addition, 2 commenters expressed interest in having Indiana on the same time zone, expressing no preference.

We now consider comments addressing the questions that DOT asks to decide whether a time zone change

would serve the convenience of commerce.

*Community Imports and Exports*

Based upon the information submitted with the Amended Petition, the NPRM noted that it appears that the vast majority of the County's businesses and industries have their suppliers, customers and marketing connections with areas that are in the Eastern Time Zone and therefore, that moving the time zone boundary for Pulaski County to the Eastern Time Zone would serve the convenience of commerce. In proposing a change back to the Eastern Time Zone, the NRPM referred to the Amended Petition's extensive information regarding the sources of supplies and raw materials for major businesses and industries as well as the distribution points for their products and services. For example, the Joint Petition referred to the high production ranking in the state for corn and soybeans and that the inputs for these crops come from the Eastern Time Zone and that 85% of the marketing for these products occurs in the Eastern Time Zone. It also noted that agricultural fertilizer and chemical dealers marketing to the County are in the Eastern Time Zone. The markets for livestock, poultry and dairy products are in the Eastern Time Zone. The Amended Petition also noted the County's two financial institutions, both of which have branches in the Eastern and Central Time Zones. Exhibits to the Joint Petition provided data to support these claims. DOT solicited further information that would aid in determining whether a change in the time zone for Pulaski County would serve the convenience of commerce.

Several businesses, large and small, commented that the impact of being in the Central Time Zone was the loss of time to contact customers and suppliers in the Eastern Time Zone. They noted that they are losing an hour of "prime time" in the morning in reaching the Eastern Time Zone, and that they also lost contact availability around lunch time and the end of the day.

One small business with customers in White, Pulaski, Cass, and Fulton Counties noted that only Pulaski County was currently located in the Central Time Zone and it would ease problems with billing times if all its customers were in the same time zone. Another small company commented that moving to the Eastern Time Zone would benefit the company's drivers who must arrive at job sites around the state in Eastern Time Zone locations by 7:00 a.m.

Representatives of several banks, from Presidents to branch managers, submitted comments in support of the Eastern Time Zone. One noted that the majority of the bank's business came from the Eastern Time Zone and that most of its branch offices were also in the Eastern Time Zone. Placement in the Central Time Zone resulted in being "out of sync" with the rest of their organizations. It had a direct effect on inter-office computer programming, dispatching, appointments, and personnel scheduling. Another bank representative mentioned operational difficulties and problems for employees in supporting a move to the Eastern Time Zone. That bank representative also took a broader perspective and said the bank supports the Eastern Time Zone "to be with the majority of the state."

*Television and Radio Broadcasts*

In the NPRM, DOT noted that it was unable to determine whether the television and radio broadcasting aspect of the convenience of commerce standard supported a change in Pulaski County's time zone based on the Amended Petition. The Amended Petition provided information regarding television and radio broadcasting to cities in Pulaski County. It referred to Pulaski County's place in the South Bend/Elkhart Designated Market Area (DMA), noting that 8 of the 10 counties in the DMA were in the Eastern Time Zone. The Amended Petition maintained that having a part of the DMA in a different time zone makes it more difficult to timely report local news and that most of the news broadcasters covering local news are centered in the Eastern Time Zone. The Amended Petition also discussed cable TV service, Direct TV service, DISH Network, and the use of TV antennas. With regard to radio broadcasting, the Amended Petition provided a list of all Indiana radio stations, but did not indicate the strength of the radio signals in Pulaski County. DOT sought comment on the information submitted and requested any additional information on television and radio broadcasting in Pulaski County that would aid in determining whether a time zone change for Pulaski County would serve the convenience of commerce.

Few comments submitted to the docket in response to the NPRM addressed this aspect of the convenience of commerce standard. The owner of a Winamac business mentioned, "The bulk of our local media is in the eastern time zone" and spending "several thousand dollars a year on TV advertising." A Pulaski County resident commented that the County is "more oriented" to the Eastern Time Zone media markets than to the Central Time Zone. A visitor to the County noted "the TV stations are mixed, the weather channel local weather is from Valpariso (central) the local radio station is in Knox (central)." A student favored the Central Time Zone because, on Eastern Time, TV shows would be on an hour later.

*Newspapers*

In the NPRM, DOT noted that it appears that moving the time zone boundary for Pulaski County to the Eastern Time Zone would serve the convenience of commerce based on the information submitted in the Amended Petition with regard to newspapers that serve the community. The Amended Petition provided data on newspaper circulation numbers in Pulaski County and discussed the circulation of Pulaski County's two family-owned newspapers. The Amended Petition also showed Pulaski County subscribers of Eastern and Central Time Zone newspapers. DOT sought comment on the information submitted and requested any additional information on newspaper circulation in Pulaski County that would aid in determining whether changing the time zone for Pulaski County would serve the convenience of commerce.

The editor of the Francesville Tribune, one of two Pulaski County-based newspapers, submitted a comment in support of the change to the Eastern Time Zone. In addition to expressing her opinion on the benefits of a time zone change for students, parents, hospitals, and patients, she stated, "A large majority of our customers and advertisers are already in the eastern time zone and therefore communication must be done on eastern hours." The editor of the ExPress, "Pulaski County's most read and respected paper," also submitted a comment in support of a change to the Eastern Time Zone, but did not comment upon the impact of time zone on the newspaper industry.

*Bus and Passenger Rail Services*

As noted in the NPRM, DOT was unable to determine whether the bus and passenger rail services aspect of the convenience of commerce standard supports a change in Pulaski County's time zone based on the information submitted in the Amended Petition. The Amended Petition referred to the nearest bus and rail stations for north/south and east/west in support of the Eastern Time Zone, although the Amended Petition admitted, "The use of rail or bus services by Pulaski County

residents is unknown." DOT sought comment on the information submitted and requested any additional information on bus and rail services in Pulaski County that would aid in determining whether a time zone change for Pulaski County would serve the convenience of commerce.

Although a few commenters generally referred to transportation, no comments were submitted that referred to bus and passenger rail service.

*Airports/Airline Services*

In the NPRM, DOT stated that it was unable to determine whether the airports/airline aspect of the convenience of commerce standard supports a change in Pulaski County's time zone based on the information submitted in the Amended Petition. The Amended Petition identified three airports that could potentially serve Pulaski County residents: Indianapolis International Airport, 99 miles from the County; Chicago O'Hare, 124 miles from the County; and South Bend Regional Airport, 68 miles from the County. The Amended Petition admitted that "no reliable information is available to demonstrate the number of Pulaski County residents who are airline passengers to and from Chicago and Indianapolis," but referred to the County's largest employer, noting that both staff and customers use the Indianapolis Airport. The Amended Petition also referred to the operations of package delivery services by FedEx and UPS, with hubs in the Eastern Time Zone. DOT sought comment on the information submitted and requested any additional information on airport and airline services in Pulaski County that would aid in determining whether changing the time zone for Pulaski County would serve the convenience of commerce.

As noted above, a few commenters generally referred to transportation. There were no comments, however, concerning airports/airline services.

*Worker Commuting Patterns*

Based upon the information submitted with the Amended Petition with regard to worker commuting patterns, the NPRM noted that it appears that moving the time zone boundary for Pulaski County to the Eastern Time Zone would serve the convenience of commerce. The Amended Petition stated that, according to STATS Indiana Annual Commuting Trends Profile, 2004, 77% of Pulaski County residents who work do so in the County and 13% of the workforce comes from other counties. Of those coming into the County to work, more come from the Eastern Time Zone than the Central Time Zone. The Amended Petition summed up worker commuting by stating, "Of those migrating in to work, the majority come from the Eastern Time Zone. Of those going out of the County to work, a lesser number go to the Central Time Zone than the Eastern Time Zone." DOT solicited further information and data supporting or rebutting the information supplied by the Amended Petition and how it supports a change in the time zone for the convenience of commerce.

A few commenters referenced worker commuting patterns generally to favor a move to the Eastern Time Zone. Some were businesses discussing employee home and work locations. Others were individuals commenting on their personal experience. No commenters claimed that worker commuting patterns supported remaining in the Central Time Zone.

*The Community's Economy/Economic Development*

Based upon the information submitted with the Amended Petition with regard to economic development, the NPRM noted that it appears that moving the time zone boundary for Pulaski County to the Eastern Time Zone would serve the convenience of commerce. The Amended Petition stated, "Outside of its borders Pulaski County is not a 'hub' for the regional economy. It is a peripheral player." In support of this assertion, the Amended Petition referred to a study undertaken by the Pulaski County Community Development Commission that states that the employment in the County "is highly concentrated in agriculture, manufacturing, and government." DOT solicited further information and data supporting or rebutting the information supplied by the Amended Petition and how it supports a change in the time zone for the convenience of commerce.

In response to the NPRM, the Executive Director of the Pulaski County Community Development Commission expressed his support for the Eastern Time Zone, based on "a year of experience in working with this issue." He noted that "the majority" of the Commission's "contacts and clients favor the Eastern Time Zone." A member of the Pulaski County Community Development Commission expressed a different view, favoring the Central Time Zone. He noted that his company sees "growth in the markets to the greater Chicago land areas, all of which observe Central Time" and that "growth will come as a result of the continued growth of Chicago, Valparaiso, and Rensselaer."

Several agri-businesses submitted comments favoring the Eastern Time Zone, noting the agri-business community "relies on several businesses to open early to provide goods and services to * * * local and surrounding communities. It is best for all of these related businesses to be on the same time zone to communicate with one another as needed."

*Schooling, Recreation, Health Care, or Religious Worship*

Based on the information submitted in the Amended Petition with regard to higher education and recreation and possibly health care, the NPRM noted that it appears that moving the time zone boundary for Pulaski County to the Eastern Time Zone would serve the convenience of commerce. The NPRM also noted that it is unclear whether a time zone boundary change would serve primary and secondary education. DOT sought comment on the information submitted and requested additional information on schooling as it relates to the school districts that cover Pulaski County. DOT also requested comments on any other recreational activities that would be relevant to this proceeding, on whether the home health care visits by county of residence noted on page 24 of the Amended Petition were based on a per person or per visit basis, and on a time zone change and its effect on religious worship, if any.

The Amended Petition noted that there are four school districts that cover Pulaski County, serving Pulaski County and counties in the Eastern and Central Time Zones. The Amended Petition provided detailed information on the number of students in each school district and the county of residence for the faculty. In addition, it included detailed information on the athletic programs and events scheduled in Eastern and Central Time Zone counties. With regard to higher education, the Amended Petition asserted that the employees of businesses encouraging additional schooling and high school graduates unable to afford campus life will have limited opportunities if Pulaski County were to remain in the Central Time Zone. The Amended Petition noted six of the eight colleges and universities within 50 miles are located in the Eastern Time Zone.

In response to the NPRM request for comments on the impact of a time zone change with regard to schooling, the Superintendent of Schools for the Eastern Pulaski Community School Corporation wrote favoring the Eastern Time Zone, "in the best interest of * * * students, parents, staff, and

community." He noted the schools "interact with those counties in the Eastern Time Zone far more than counties in the Central Time Zone." He referred specifically to special education students commuting to Logansport and students from Fulton County in the Eastern Time Zone. Several businesses submitted comments in favor of the Eastern Time Zone due to the negative impact of the Central Time Zone on their workers who had school children. Parents, too, wrote in support of the Eastern Time Zone based on their children commuting to schools in the Eastern Time Zone. On the other hand, one commenter who favored the Central Time Zone noted that "West Central has several students who live in Jasper County (central time zone) they also have students that they transport to Rensselaer (central)." However, as one commenter who favored Central Time stated, "no matter what is decided, someone is going to have to deal with students being in different time zones." A student favored the Central Time Zone so that his father could attend his sporting events. DOT specifically requested comments from the Fulton, Marshall, Starke, and Jasper Counties that are in the same school districts as Pulaski County, but did not receive any comments from these counties.

With regard to recreation, the Amended Petition stated, "Indiana is unique in its observance of college and high school basketball as a main source of family entertainment." The Amended Petition noted that five out of the six colleges noted for collegiate sports within 100 miles of Pulaski County are in the Eastern Time Zone. The Amended Petition also noted that with regard to professional football and basketball, there is an equal split between the Eastern and Central Time Zones.

With regard to health care, the Amended Petition provided substantial information on the activities of Pulaski Memorial Hospital, which the Amended Petition identifies as "the primary health care provider in Pulaski County" and its second largest employer. Commenting on in-patient and out-patient referrals, practitioners and specialty group physicians, and in-home health care, the Amended Petition asserted, "Pulaski Memorial Hospital activities, with one (1) exception point to the Eastern Time Zone." It supported this assertion with detailed statistics.

In response to the NPRM's request for comments with regard to health care, the Chief Executive Officer submitted comments to the docket on behalf of the Pulaski Memorial Hospital Board of Trustees and the hospital's medical staff, supporting a change back to the Eastern Time Zone. He noted a "significant number of physicians who have a part time clinical practice in Winamac but whose main practice locations are in other towns in the Eastern Time Zone would be adversely affected" if Pulaski County were in the Central Time Zone. He further noted, "Reasonable access by the citizens of Pulaski County to high quality specialized medical and surgical care is dependent upon these physicians * * *" A family physician commented that "90% of the people and organizations both business and nonprofit that I deal with are on eastern time." Another family physician noted his medical referrals are "almost exclusively oriented" to the Eastern Time Zone. A nurse practitioner noted that "patients are confused as to what time it is," resulting in missed appointments. A doctor of optometry supported the Eastern Time Zone for patient scheduling purposes, patient referrals, and for buying materials and supplies. Individuals commented on their primary physicians, specialists, and dentists in the Eastern Time Zone.

The Amended Petition did not address religious worship. In response to DOT's request for comments on this aspect of the convenience of commerce standard, a few commenters mentioned time zone differences with regard to going to church services. Two religious organizations submitted comments on the impact of time zone on religious worship, supporting the Eastern Time Zone. The church leader of Grace International Ministries doing business as Church of the Heartland noted that the Church has over 400 members "involved in 5 counties with 5 campus locations." He stated, "For the sake of scheduling services, travel and for convenience of parishioners and staff, it would greatly enhance our ministries if Pulaski were moved to the Eastern Time Zone." The Pastor of the Fellowship Baptist Church noted its members lived in the Eastern Time Zone, with only one family living in Starke County in the Central Time Zone and the rest living in either Pulaski County or Fulton, Cass, or White Counties in the Eastern Time Zone.

*Regional Connections*

Based on the information submitted in the Amended Petition with regard to regional connections, the NPRM noted that it appears that moving the time zone boundary for Pulaski County to the Eastern Time Zone would serve the convenience of commerce. The Amended Petition referred to regions established by the State of Indiana and said, "These regions are properly regarded as regions for the administrative ease of delivering governmental services and should not be relied upon as decisive evidence of what time zone best serves the commercial convenience of Pulaski County. Regardless of where Pulaski County is placed in state government regions, Pulaski County is fundamentally different as a rural county and on the periphery from the major cities that comprise the hub of these regions." It further stated, "A rational basis can be asserted for including Pulaski County in a time zone that serves commercial convenience focusing on small rural populations with an agricultural/small manufacturing economy. This informal region would include the counties of Fulton, Pulaski, White, Jasper, and Newton."

Regional connections are also addressed in letters from the Indiana Economic Development Corporation and the Indiana Department of Workforce Development. They noted that they established their respective regions based on their ability to deliver services. They did not establish regions based on time zones or "stream of commerce." The data from STATS Indiana concerning employment and earnings by industry identified the source of the information as the Bureau of Economic Analysis (BEA), which produces economic statistics to help government and business decision-makers, researchers, and the American public to follow and understand the performance of the Nation's economy. Pulaski County is in BEA area 156 with other counties that are in the Eastern Time Zone (Elkhart, Fulton, Kosciusko, Lagrange, Marshall, St. Joseph Counties in Indiana and Berrien, Cass, and St. Joseph Counties in Michigan), with the exception of Starke County. Starke County, like Pulaski County, petitioned to have its time zone boundary changed to the Central Time Zone and DOT granted that petition and changed the time zone in January 2006. Starke County did not seek to change its time zone boundary back to the Eastern Time Zone. DOT sought comment on the information submitted and requested any additional information concerning regional connections that would aid in determining whether changing the time zone for Pulaski County would serve the convenience of commerce.

As noted above, the Indiana Economic Development Corporation and the Indiana Department of Workforce Development submitted letters to the docket prior to the NPRM, addressing regional connections. They noted that

they established their respective state regions based on their ability to deliver services. They did not establish regions based on time zones or "stream of commerce." A few commenters to the NPRM referred to connections with the surrounding counties in the Eastern Time Zone. These commenters did not provide any detailed information.

**DOT Determination**

Based upon the Amended Petition, information submitted with the Amended Petition, and comments submitted in response to the NPRM, DOT is relocating the time zone boundary for Pulaski County from the Central Time Zone to the Eastern Time Zone.

Pulaski County addressed all the factors we consider in these proceedings and made a convincing case that changing back to the Eastern Time Zone would serve the convenience of commerce by providing more detailed and substantiated information than the original petition and comments submitted. Written comments supported moving Pulaski County to the Eastern Time Zone. We did not receive any additional information that would persuade us to change our initial determination as proposed in the November 2006 NPRM.

DOT is unable to determine whether the transportation-related aspects (rail/bus/airports/airline services) of the convenience of commerce standard as well as the television/radio broadcast aspects of the standard support a change in Pulaski County's time zone. However, that the vast majority of the County's businesses and industries have their suppliers, customers, and marketing connections with areas that are in the Eastern Time Zone. Commenters addressing this issue make a strong case for the Eastern Time Zone. Newspapers that serve the community, worker commuting patterns, higher education, recreation, health care concerns as well as regional connections appear to favor the Eastern Time Zone.

**Conclusion**

In our experience, time zone boundary changes can be extremely disruptive to a community and, therefore, should not be made without careful consideration. Both for legal and policy reasons, the truthfulness of information submitted to the United States government is of critical importance. Indeed, it is legally required under 18 U.S.C. 1001, as we reminded the County officials in our May 22, 2006, that preceded the Amended Petition. DOT takes seriously the review of any petition seeking a change in time zone boundaries and relies upon the accuracy of data and information supporting the petition. Therefore, we have relied upon the new information and data provided by the County and other commenters and expect it to be both accurate and truthful. DOT devoted an extensive amount of time in analyzing the original petition and issuing a final rule to change the time zone boundary for Pulaski County to the Central Time Zone and to this proceeding changing the time zone boundary back to the Eastern Time Zone. We have determined that a change in the time zone boundary to the Eastern Time Zone serves the convenience of commerce, and we expect the County and its citizens to comply with this final rule.

**Regulatory Analysis & Notices**

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). We expect the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

*Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this final 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. This rule primarily affects individuals and their scheduling of activities. Although it would affect some small businesses, not-for-profits and, perhaps, a number of small governmental jurisdictions, we have not received comments asserting that our proposal, if adopted, would have a significant economic impact on small entities.

Therefore, I certify under 5 U.S.C. 605(b) that this final rule does not have a significant economic impact on a substantial number of 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 rule so that they can better implement it.

*Collection of Information*

This final rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*Federalism*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

*Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership (58 FR 58093; October 28, 1993), govern the issuance of Federal regulations that impose unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This final rule would not impose an unfunded mandate.

*Taking of Private Property*

This final rule does not result in a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Civil Justice Reform*

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

*Protection of Children*

We have analyzed this final rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety as defined by the Executive Order that may disproportionately affect children.

*Environment*

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

*Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

**List of Subjects in 49 CFR Part 71**

Time zones.

■ For the reasons discussed above, the Office of the Secretary amends Title 49 part 71 to read as follows:

## PART 71—[AMENDED]

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

**Authority:** Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; Pub. L. 106–564, 15 U.S.C. 263, 114 Stat. 2811; 49 CFR 1.59(a).

■ 2. Paragraph (b) of § 71.5, *Boundary line between eastern and central zones,* is revised to read as follows:

**§ 71.5 Boundary line between eastern and central zones.**

* * * * *

(b) *Indiana-Illinois.* From the junction of the western boundary of the State of Michigan with the northern boundary of the State of Indiana easterly along the northern boundary of the State of Indiana to the east line of LaPorte County; thence southerly along the east line of LaPorte County to the north line of Starke County; thence east along the north line of Starke County to the west line of Mashall County; thence south along the west line of Marshall County; thence west along the north line of Pulaski County to the east line of Jasper County; thence south along the east line of Jasper County to the south line of Jasper County; thence west along the south lines of Jasper and Newton Counties to the western boundary of the State of Indiana; thence south along the western boundary of the State of Indiana to the north line of Knox County; thence easterly along the north line of Knox, Daviess, and Martin Counties to the west line of Lawrence County; thence south along the west line of Lawrence, Orange, and Crawford Counties to the north line of Perry County; thence easterly and southerly along the north and east line of Perry County to the Indiana-Kentucky boundary.

* * * * *

Issued in Washington, DC on: February 5, 2007.

**Mary E. Peters,**

*Secretary.*

[FR Doc. 07–601 Filed 2–6–07; 4:10 pm]

BILLING CODE 4910–62–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 060216044–6044–01; I.D. 020207C]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; modification of a closure; request for comments.

**SUMMARY:** NMFS is opening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the A season allowance of the 2007 total allowable catch (TAC) of pollock specified for Statistical Area 610 of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 5, 2007, through 1200 hrs, A.l.t., February 7, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., February 20, 2007.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail to *610pollock@noaa.gov* and include in the subject line of the e-mail comment the document identifier: "g61plkro1" (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions at that site for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on January 22, 2007 (72 FR 2462, January 19, 2007).

NMFS has determined that approximately 2,950 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2007 TAC of pollock in Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., February 7, 2007.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data

only became available as of February 2, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for pollock in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until February 26, 2007.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 2, 2007.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 07–568 Filed 2–5–07; 2:31 pm]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 060216045–6045–01; I.D. 020507D]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Non-Community Development Quota Pollock with Trawl Gear in the Chinook Salmon Savings Areas of the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for non-Community Development Quota (CDQ) pollock with trawl gear in the Chinook Salmon Savings Areas of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 limit of chinook salmon caught by vessels using trawl gear while directed fishing for non-CDQ pollock in the BSAI.

**DATES:** Effective 12 noon, Alaska local time (A.l.t.), February 6, 2007, through 12 noon, A.l.t., April 15, 2007, and from 12 noon, A.l.t., September 1, 2007, through 12 midnight, A.l.t., December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 chinook salmon PSC limit for the pollock fishery is set at 29,000 fish (§ 679.21(e)(1)(vii). Of that limit, 7.5 percent is allocated to the groundfish CDQ program as prohibited species quota reserve (§ 679.21(e)(1)(i)). Consequently, the 2007 non-CDQ limit of chinook salmon caught by vessels using trawl gear while directed fishing for pollock in the BSAI is 26,825 animals.

In accordance with § 679.21(e)(7)(viii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 non-CDQ limit of chinook salmon caught by vessels using trawl gear while directed fishing for non-CDQ pollock in the BSAI has been reached. Consequently, the Regional Administrator is prohibiting directed fishing for non-CDQ pollock with trawl gear in the Chinook Salmon Savings Areas defined at Figure 8 to 50 CFR part 679.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for non-CDQ pollock with trawl gear in the Chinook Salmon Savings Areas. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 5, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 6, 2007.

**James P. Burgess**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 07–591 Filed 2–6–07; 2:25 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 72, No. 27
Friday, February 9, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

**[Docket No. AO–14–A77, et al.; DA–07–02]**

### Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

| 7 CFR Part | Marketing area | AO numbers |
|---|---|---|
| 1001 .... | Northeast ..... | AO–14–A77. |
| 1005 .... | Appalachian ..... | AO–388–A21. |
| 1006 .... | Florida ..... | AO–356–A42. |
| 1007 .... | Southeast ..... | AO–366–A50. |
| 1030 .... | Upper Midwest | AO–361–A43. |
| 1032 .... | Central ..... | AO–313–A52. |
| 1033 .... | Mideast ..... | AO–166–A76. |
| 1124 .... | Pacific Northwest. | AO–368–A38. |
| 1126 .... | Southwest ..... | AO–231–A71. |
| 1131 .... | Arizona ..... | AO–271–A43. |

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; Notice of public hearing on proposed rulemaking.

**SUMMARY:** A national public hearing is being held to consider and take evidence on proposals seeking to amend the Class III and Class IV product price formulas applicable to all Federal milk marketing orders.

**DATES:** The hearing will convene at 9 a.m., Monday, February 26, 2007.

**ADDRESSES:** The hearing will be held at the Holiday Inn Select—Strongsville, 15471 Royalton Road, Strongsville, Ohio 44136, phone (440) 238–8800.

**FOR FURTHER INFORMATION CONTACT:** Jack Rower, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: *jack.rower@usda.gov*.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225–4758; e-mail: *phuber@fmmaclev.com* before the hearing begins.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Holiday Inn Select, Strongsville, Ohio, beginning at 9 a.m. on Monday, February 26, 2007, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

#### Initial Regulatory Flexibility Analysis

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified that during 2005 approximately 51,060 of the 54,652 dairy producers whose milk is pooled on Federal orders are small businesses. Small businesses represent about 93 percent of the dairy farmers who participate in the Federal milk order program.

On the processing side, during June 2005 there were approximately 350 fully regulated plants (of which 149 or 43 percent were small businesses) and 110 partially regulated plants (of which 50 or 45 percent were small businesses.) In addition, there were 48 producer-handlers, of which 29 were considered small businesses for the purposes of this initial regulatory flexibility analysis, who submitted reports under the Federal milk order program during this period.

The fluid use of milk represented about 45.0 percent of total Federal milk marketing order producer deliveries during January 2006. Almost 237 million Americans, approximately 80 percent of the total U.S. population reside within the geographical boundaries of the 10 Federal milk marketing areas.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). In light of that review, it was determined that these proposed amendments would have little or no impact on reporting, record keeping, or other compliance requirements because these requirements would remain identical to those currently in effect under the Federal order program. No new or additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. Information currently

collected through the use of OMB-approved forms and the primary sources of data used to complete the forms are routinely used in business transactions. The forms require only a minimal amount of information that can be provided without data processing equipment or trained statistical staff. Thus, the information collection burden is relatively small. Requiring the same reports from all handlers does not disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap, or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments consideration was given to mitigating any negative impacts. It is expected that small producers would not experience any particular disadvantage compared to larger producers as a result of the proposed amendments. Similarly, it is expected that small handlers would not experience any particular disadvantage compared to larger handlers as a result of the proposed amendments. Possible changes to the Class III and Class IV price formulas should not have any special impacts on small handler entities. All handlers manufacturing dairy products from milk classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Minimum prices should not raise barriers regarding the ability of small handlers to compete in the marketplace.

Interested parties are invited to present evidence on the probable regulatory and information collection impact of the hearing proposals on small businesses. Also, such parties may suggest modifications of the proposal for tailoring its applicability to small businesses.

**Preliminary Economic Analysis and Detailed Analysis Information**

A preliminary economic analysis as well as additional detailed analysis, data and information used in developing the preliminary economic analysis are presented at the AMS Dairy Programs Web site, *http://www.ams.usda.gov/dairy.*

**Executive Order 12988, Civil Justice Reform**

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 8c(15)(A) of the Act (7 U.S.C. 608c (15)(A)), any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (6) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

**List of Subjects in 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131**

Milk marketing orders.

The authority citation for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

The proposed amendments, as set forth below, have not received the approval of the Department.

**Proposed by Agri-Mark Dairy Cooperative**

*Proposal 1*

This proposal seeks to amend the manufacturing allowances for Class III and Class IV product formulas, as enumerated in § 1000.50 that may include the most current plant cost survey information available. Specifically, this proposal seeks to amend § 1000.50 milk price formulas by revising the existing manufacturing allowances for butter, nonfat dry milk, cheese, and whey powder based upon evidence obtained from the hearing record. Amendments to these manufacturing allowances would directly affect the milk component values used in Federal order milk price formulas for all classes of milk.

*Proposal 2*

This proposal seeks to amend the Class III and Class IV product formulas to annually update the manufacturing allowances using an annual manufacturing cost survey of cheese, whey powder, butter and nonfat dry milk plants (located outside of California.) The proposed amendments would grant authority to the Market Administrator to administer the survey, select the sample plants, and collect, audit and assemble cost information. The proposal seeks to use the annual manufacturing cost survey data to annually update manufacturing allowances at a level that is the higher of the following:

(1) Manufacturing costs would be set at a level that would allow minimum percentages of milk volume used and plants in the entire Class III and Class IV manufacturing plant population outside of California to cover their costs; or

(2) Manufacturing allowances would be set at a level that would allow minimum percentages of the milk used by Class III and Class IV manufacturing plants and the number of plants in any specific Federal order pooling at least 2 billion pounds of milk annually to cover their costs.

**Proposed by Dairy Producers of New Mexico**

*Proposal No. 3*

This proposal seeks to amend the manufacturing allowances contained in the Class III and Class IV product price formulas. Specifically, this proposal seeks to change the butter make allowance butter from 11.5 cents to 11.08 cents, change the nonfat dry milk make allowance from 14 cents to 14.10 cents, change the cheese make allowance from 16.5 cents to 16.38 cents, and change the dry whey make allowance from 15.9 cents to 14.98 cents.

1. Amend § 1000.50 by:

(a) revising paragraph (l);

(b) revising paragraph (m);

(c) revising paragraph (n)(2) and (n)(3)(i);

(d) revising paragraph (o); and

(e) revising paragraph (q)(3).

The revisions read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA butter survey price reported by the Department for the month less 11.08 cents, with the result multiplied by 1.20.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 14.10 cents and multiplying the result by 0.99.

(n) * * *

(2) Subtract 16.38 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) * * *

(i) Subtract 16.38 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and

* * * * *

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 14.98, with the result multiplied by 1.03.

* * * * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA butter survey prices announced before the 24th day of the month, subtracting 11.08 cents from this average, and multiplying the result by 1.20.

**Proposed by Dairy Producers of New Mexico**

*Proposal No. 4*

This proposal seeks to amend the Class III and Class IV product price formulas by establishing a Class III butterfat price that would be based on the Chicago Mercantile Exchange (CME) price for 40-lb. block cheese.

1. Amend § 1000.50 by revising paragraph (l) and removing paragraph (n)(3) to read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(l) Butterfat Price. The butterfat price shall be as follows:

(1) The Class IV butterfat price per pound, rounded to the nearest one-hundredth cent. shall be the CME AA Butter price reported by the Department's Dairy Market News for the month less 11.5 cents, with the result multiplied by 1.20.

(2) The Class III butterfat price per pound, rounded to the nearest one-hundredth cent shall be the AA Butter price reported by the Department's Dairy Market News for 40-lb. block cheese for the month, less 16.5 cents and multiply the result by 1.572.

* * * * *

**Proposed by Dairy Farmers of America**

*Proposal No. 5*

This proposal seeks to amend the butterfat shrink adjustment contained in the Class III and Class IV product price formulas by adjusting the yield factor contained in the butterfat price computation from 1.20 to 1.215.

1. Amend § 1000.50 by revising paragraphs (l) and (q)(3), to read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA butter survey price reported by the Department for the month less 11.5 cents, with the result multiplied by 1.215.

* * * * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA butter survey prices announced before the 24th day of the month, subtracting 11.5 cents from this average, and multiplying the result by 1.215.

**Proposed by Dairy Producers of New Mexico**

*Proposal No. 6*

This proposal seeks to amend the Class III and Class IV product price formulas by changing the butterfat shrink adjustment and yield factor from 1.20 to 1.211, and the butterfat recovery percentage from 90 percent to 94 percent.

1. Amend § 1000.50 by:

a. revising paragraph (l);

b. revising paragraph (n)(3)(i) and (n)(3)(ii); and

c. revising paragraph (q)(3).

The revisions read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA butter survey price reported by the Department for the month less 11.5 cents, with the result multiplied by 1.211.

* * * * *

(n) * * *

(3) * * *

(i) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result from 1.653; and

(ii) Subtract 0.94 times the butterfat price computed pursuant to paragraph (1) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

* * * * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA butter survey prices announced before the 24th day of the month, subtracting 11.5 cents from this average, and multiplying the result by 1.211.

*Proposal No. 7*

This proposal seeks to amend the Class III and Class IV product price formulas by eliminating the farm-to-plant shrink and butterfat shrink adjustments to the yield factors.

*Proposal No. 8*

This proposal seeks to amend the Class III and Class IV product price formulas by changing the nonfat solids yield factor from 0.99 to 1.02 and changing the protein price yield factors for cheese from 1.383 to 1.405 and for butter from 1.572 to 1.653.

1. Amend § 1000.50 by revising paragraphs (m), (n)(2), and (n)(3)(i) to read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average nonfat dry milk survey price reported by the Department for the month less 14 cents and multiplying the result by 1.02.

(n) * * *

(2) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) * * *

(i) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.653;

* * * * *

**Proposed by International Dairy Foods Association**

*Proposal No. 9*

This proposal seeks to amend the Class III and Class IV product price formulas by adjusting the protein price formula to reflect the lower value and reduced volume of butterfat recoverable as whey cream.

**Proposed by Agri-Mark Dairy Cooperative**

*Proposal No. 10*

This proposal seeks to amend the Class III and Class IV product price formulas by reducing the protein price to reflect the lower price of whey butter.

2. Amend § 1000.50 by adding a new paragraph (n)(4), to read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(n) * * *

(4) Subtract the difference between the per pound value of AA butter and whey butter from the price computed in paragraph (n)(3) of this section.

* * * * *

*Proposal No. 11*

This proposal seeks to amend the Class III and Class IV product price formulas by reducing the adjustment for cheese manufactured in 500-pound barrels contained in the protein price formula from 3 cents to 1.5 cents.

1. Amend § 1000.50 by revising paragraph (n)(1)(ii), to read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(n) * * *

(1) * * *

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 1.5 cents;

* * * * *

**Proposed by International Dairy Foods Association**

*Proposal No. 12*

This proposal seeks to amend the Class III and Class IV product price formulas by eliminating the 3-cent cost adjustment for cheese manufactured in 500-pound barrels contained in the protein price formula.

1. Amend § 1000.50 by revising paragraph (n)(1)(ii), to read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(n) * * *

(1) * * *

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month;

* * * * *

**Proposed by Dairy Farmers of America and Northwest Dairy Association**

*Proposal No. 13*

This proposal seeks to amend the Class III and Class IV product price formulas by removing the barrel cheese price as a cost component of the protein price formula.

1. Amend § 1000.50 by:

(a) revising paragraph (n) introductory text; and

(b) removing paragraphs (n)(1), (n)(1)(i) and (n)(1)(ii).

The revision reads as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(n) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month;

* * * * *

**Proposed by Agri-Mark Dairy Cooperative**

*Proposal No. 14*

This proposal seeks to amend the Class III and Class IV product price formulas by using a combination of the weekly NASS and CME cheese price series to determine the cheese price to be used in the Class III and Class IV product price formulas.

**Proposed by Dairy Producers of New Mexico**

*Proposal No. 15*

This proposal seeks to use a combination of the NASS price series and the CME price series to determine the price of butter, cheese, nonfat dry milk and dry whey to be used in the Class III and Class IV product price formulas. In addition, this proposal would direct NASS to survey total milk components purchased and their prices during the NASS Dairy Product Price Survey.

1. Amend § 1000.50 by:

(a) revising the introductory text;

(b) revising paragraph (l);

(c) revising paragraph (m);

(d) revising paragraph (n)(1); and

(e) revising paragraphs (q) introductory text, (q)(1)(i), (q)(2)(ii), and (q)(3).

The revisions read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f) and (q) of this section shall be based on a simple average of the most recent 2 weekly prices announced by the Chicago Mercantile Exchange (CME) as reported in Dairy Market News and the prices described in paragraph (o) of this section shall be based on a weighted average for the preceding month of the weekly prices announced by the National Agricultural Statistical Service (NASS) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g) through (n) and (p) of this section shall be based on a simple daily average for the preceding month of weekly prices announced by the CME as reported in Dairy Market News and the prices described in paragraph (o) of this section shall be based on a weighted average for the preceding month of the weekly prices announced by NASS. These prices shall be announced on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the simply daily average AA Butter survey price reported by the CME as reported in Dairy Market News for the month less 11.5 cents, with the result multiplied by 1.20.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the simply daily average nonfat dry milk survey price reported by the CME as reported in Dairy Market News for the month less 14 cents and multiplying the result by 0.99.

(n) * * *

(1) Compute a simple daily average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the CME as reported in Dairy Market News for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar

cheese (38 percent moisture) reported by the CME for the month plus 3 cents;

* * * * *

(q) *Advanced pricing factors.* For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price and the Class I butterfat price for the following month, the following pricing factors shall be computed using the simple daily average of the 2 most recent CME average prices for butterfat, cheese, and nonfat dry milk as reported in Dairy Market News and the NASS weighted average dry whey price from weekly survey prices announced before the 24th day of the month:

(1) * * *

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the simple daily average of the 2 most recent weeks' CME prices for cheese and butter and the weighted average of the 2 most recent average weekly survey prices for dry whey announced before the 24th day of the month, compute a protein price and an other solids price;

* * * * *

(2) * * *

(i) Following the procedure set forth in paragraph (m) of this section, but using the simple daily average prices of the 2 most recent weeks CME prices as reported in Dairy Market News before the 24th day of the month, compute a nonfat solids price; and

* * * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a simple daily average of the 2 most recent weeks' CME AA Butter prices as reported in Dairy Market News announced before the 24th day of the month, subtracting 11.5 cents from this average, and multiplying the result by 1.20.

**Proposed by National All-Jersey Inc.**

*Proposal No. 16*

This proposal would amend the Class III and Class IV product price formulas by eliminating the other solids price and adding the equivalent value of dry whey to the protein price formula.

1. Amend § 1000.50 by:

(a) revising paragraph (i);

(b) adding new paragraph (n)(4);

(c) removing paragraph (o);

(d) revising paragraph (q)(1)(i); and

(e) removing paragraphs (q)(1)(ii) and (q)(1)(iv).

The additions and revisions read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(i) *Class III skim milk price.* The Class III skim milk price per hundredweight, rounded to the nearest cent, shall be the protein price per pound times 3.1.

* * * * *

(n) * * *

(4) Add to the amount computed pursuant to paragraph (n)(3) of this section the U.S. average NASS dry whey survey price reported by the Department for the month minus 19.56 cents, with the result multiplied by 1.96, rounded to the nearest one-hundredth cent.

* * * * *

(q) * * *

(1) * * *

(i) Following the procedure set forth in paragraph (n) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price;

* * * * *

2. Amend § 1000.53 by removing paragraph (a)(10) and redesignating paragraph (a)(11) as (a)(10).

**Proposed by National Milk Producers Federation**

*Proposal No. 17*

This proposal seeks to amend the Class III and Class IV product price formulas to incorporating a monthly energy cost adjustment based on monthly changes in the producer price indices for industrial natural gas and industrial electricity as published by the Bureau of Labor Statistics.

1. Amend § 1000.50 by:

(a) revising paragraph (l);

(b) revising paragraph (m);

(c) revising paragraph (n)(2); and

(d) revising paragraphs (n)(3) introductory text, (n)(3)(i) and (o).

The revisions and additions read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be:

(1) The U.S. average NASS AA Butter survey price reported by the Department for the month,

(2) Less a manufacturing cost allowance equal to:

(i) 12.02 cents plus,

(ii) 0.5 cents times a figure equal to the latest monthly Producer Price Index for Industrial Natural Gas reported by the Bureau of Labor Statistics minus 201.7 and divided by 201.7 plus,

(iii) 0.9 cents times a figure equal to the latest monthly Producer Price Index for Industrial Electricity reported by the Bureau of Labor Statistics minus 147.2 and divided by 147.2;

(3) With the result multiplied by 1.20.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be:

(1) The U.S. average NASS nonfat dry milk survey price reported by the Department for the month,

(2) Less a manufacturing cost allowance equal to:

(i) 15.7 cents plus

(ii) 3.0 cents times a figure equal to the latest monthly Producer Price Index for Industrial Natural Gas reported by the Bureau of Labor Statistics minus 201.7 and divided by 201.7, plus

(iii) 1.5 cents times a figure equal to the latest monthly Producer Price Index for Industrial Electricity reported by the Bureau of Labor Statistics minus 147.2 and divided by 147.2;

(3) With the result multiplied by 0.99.

(n) * * *

(2) From the price computed pursuant to paragraph (n)(1) of this section subtract a manufacturing cost allowance equal to:

(i) 16.82 cents, plus

(ii) 0.7 cents times a figure equal to the latest monthly Producer Price Index for Industrial Natural Gas reported by the Bureau of Labor Statistics minus 201.7 and divided by 201.7 plus,

(iii) 0.8 cents times a figure equal to the latest monthly Producer Price Index for Industrial Electricity reported by the Bureau of Labor Statistics minus 147.2 and divided by 147.2;

(3) Multiply the amount computed to paragraph (n)(2) of this section by 1.383, then an amount computed as follows:

(i) Subtract the manufacturing cost allowance computed pursuant to paragraph (n)(2) of this section from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572;

* * * * *

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be:

(1) The U.S. average NASS dry whey survey price reported by the Department for the month,

(2) Less a manufacturing cost allowance equal to:

(i) 19.56 cents plus,

(ii) 2.3 cents times a figure equal to the latest monthly Producer Price Index for Industrial Natural Gas reported by the Bureau of Labor Statistics minus 201.7 and divided by 201.7 plus,

(iii) 1.5 cents times a figure equal to the latest monthly Producer Price Index for Industrial Electricity reported by the Bureau of Labor Statistics minus 147.2 and divided by 147.2;

(3) With the result multiplied by 1.03.

* * * * *

**Proposed by Maine Dairy Industry Association**

*Proposal No. 18*

This proposal seeks to incorporate a factor to account for any monthly spread between component price calculations for milk and a competitive pay price for equivalent Grade A milk.

The proposal seeks to derive a factor by using an updated version of the Department's 1994–1996 simulated analysis of a competitive pay price for Grade A milk. The proposal would modify the previously used survey to adapt it to regulatory changes, specifically related to component pricing. The proposal seeks an outcome whereby a survey of plants located in nine States, including California, as performed to develop a competitive Grade A price series, would be used to identify a spread, if any between the component and competitive values of Grade A raw milk. That spread, in whole or in part, would be incorporated into Federal order minimum prices.

**Proposed by Dairy Programs, Agricultural Marketing Service**

*Proposal No. 19*

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture,

Office of the Administrator, Agricultural Marketing Service,

Office of the General Counsel,

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: February 5, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 07–570 Filed 2–6–07; 11:54 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 430

**[Docket No. EE–RM/STD–01–350]**

**RIN 1904–AA78**

### Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces and Boilers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of data availability and reopening of comment period.

**SUMMARY:** A notice of proposed rulemaking (NOPR) to amend the current minimum energy conservation standards for residential furnaces and boilers was published in the **Federal Register** on October 6, 2006. 71 FR 59204. On October 30, 2006, the Department of Energy (DOE) held a public meeting for interested parties to provide comments and discuss relevant issues. At the public meeting, DOE indicated it would respond to two particular questions that stakeholders raised regarding DOE's NOPR estimates for potential energy savings associated with regional standards for non-weatherized gas furnaces in Northern regions, and regarding new installation costs for oil-fired furnaces. This notice both addresses the stakeholders questions and reopens the comment period to provide an opportunity for public review and comment on DOE's response to each question.

**DATES:** DOE will accept comments until February 26, 2007.

**ADDRESSES:** DOE will accept comments, data, and information regarding the proposed rule no later than the date provided in the **DATES** section. Any comments submitted must include the docket number EE–RM/STD–01–350 and/or Regulatory Information Number (RIN) 1904–AA78. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail:ResidentialFBNOPRComments@ee.doe.gov.* Include the docket number EE–RM/STD–01–350 and/or RIN 1904–AA78 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC, 20585. *Telephone:* (202) 586–2945. Please submit one signed original paper copy. Electronic comments must be submitted in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (ASCII) file format. Avoid the use of special characters or any form of encryption.

Copies of public comments may be examined in the Resource Room of the Appliance Standards Office of the Building Technologies Program, Room 1J–018 in the Forrestal Building at the U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information about visiting the Resource Room.

**Please note:** the DOE's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer servicing rulemakings.

**FOR FURTHER INFORMATION CONTACT:** Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–7892, *E-mail: Mohammed.Khan@ee.doe.gov;* or Francine Pinto, U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mailstop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7432, *E-mail: Francine.Pinto@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background

II. Discussion
A. Regional Analysis
B. Installation Cost Differences

## I. Background

Part B of Title III of EPCA authorizes DOE to establish energy conservation standards for various consumer products including those residential furnaces and boilers for which DOE determines that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6295(e)) Pursuant to EPCA, DOE published a NOPR on October 6, 2006, to amend the energy conservation standards for residential furnaces and boilers. 71 FR 59204. Thereafter, DOE held a public meeting on October 30, 2006, to address the proposed rule (hereafter referred to as the October 2006 public meeting). At the October 2006 public meeting, the American Council for an Energy Efficient Economy (ACEEE) and the Appliance Standards Awareness Project (ASAP) questioned DOE's estimates of the energy savings that would likely result from regional standards for non-weatherized gas furnaces in Northern regions (cold states). (ASAP and ACEEE, No. 107.6 at pp. 153–159) [1] In addition, ACEEE requested further clarification of new installation cost increases applied in the proposed rule for oil-fired furnaces that were rated between 82 percent and 83 percent for Annual Fuel Utilization Efficiency (AFUE). (ACEEE, No. 107.6 at p. 121) Today's notice of data availability and extension of the comment period addresses both the estimates of energy savings from regional energy conservation standards for non-weatherized gas furnaces and the cost increases associated with the installation of new oil-fired furnaces. In addition, it provides an opportunity for stakeholders to review and comment on DOE's revised estimates.

## II. Discussion

### *A. Regional Analysis*

During the October 2006 public meeting, ACEEE and ASAP questioned DOE's estimates of the energy savings that would likely result from regional standards for non-weatherized gas furnaces in cold states. The estimates in the NOPR indicated that the energy savings would likely be much lower where the regions were defined using 6000 Heating Degree Days (HDD), compared to those where the regions were defined using 5000 HDD (as listed in Table VI.1.—Non-Regulatory Alternatives To Standards, 71 FR 59253).

The results presented in the NOPR for the Northern (cold states) and Southern (warm states) regions (using either the 5000 or 6000 HDD threshold) (as listed in Table VI.1.—Non-Regulatory Alternatives To Standards, 71 FR 59253) were generated by the national impact analysis (NIA) spreadsheet, which utilizes inputs generated by life-cycle cost spreadsheets constructed to separately analyze each region. DOE performed the NIA on the basis of the nine U.S. Census Bureau (cartographic) divisions, plus four large states (New York, California, Texas, and Florida), rather than on a state-by-state basis (as explained in section 10.5 of the NOPR Technical Support Document (TSD)).

Based on condensing gas furnace sales data expressed as a percentage of total gas furnace sales, as provided by the Gas Appliance Manufacturers Association (GAMA), DOE was able to derive the base case for analyzing the potential impacts of regional energy conservation standards. Then, DOE applied the state-level GAMA data to the nine U.S. Census Bureau divisions, assuming that condensing gas furnaces were installed in households solely on the basis of climate (i.e., high HDDs). In other words, within each U.S. Census Bureau division, DOE assumed that condensing gas furnaces were used primarily by households that experienced high HDDs. Thus, in the analysis, DOE assigned condensing gas furnaces to 90.4 percent of households with greater than 6000 HDD. It was this assumption that led to the relatively small energy savings estimated to result from a condensing level standard for states or regions with more than 6000 HDD (on average), and the relatively large increment of energy savings estimated to result from the same standard when applied to all states or regions with more than 5000 HDD (on average). 71 FR 59253.

Upon further examination, DOE found that its assumption, that the existing (and future) market for condensing gas furnaces (absent a standard) was likely to be concentrated in the coldest states or regions, was not consistent with the state-by-state sales data provided by GAMA. Consequently, DOE is considering alternative analyses that would reflect a distribution of condensing gas furnaces which is more consistent with the GAMA sales data.

Reliance on an alternative analysis that addresses the distribution of condensing gas furnaces will primarily impact the regulatory impact analysis. However, DOE does not anticipate that changes to the distribution of condensing gas furnaces relied upon in the NOPR analysis, will impact the determination of the appropriate energy conservation standards levels.

In view of the above, Table 1 below provides the results of one possible alternative analysis under consideration by DOE.

TABLE 1.—NON-REGULATORY ALTERNATIVES TO STANDARDS

| Policy alternatives | Energy savings (quads) | Net present value (billion $) | |
|---|---|---|---|
| | | 7% discount rate | 3% discount rate |
| Regional Performance Standards for NWGF * * *: | | | |
| Cold States (≥5000 HDD) (TSL 4) | 1.83 | 0.88 | 6.43 |
| Warm States (<5000 HDD) (TSL 2) | 0.004 | 0.01 | 0.03 |
| Regional Performance Standards for NWGF * * *: | | | |
| Cold States (≥6000 HDD) (TSL 4) | 1.32 | 0.72 | 4.90 |
| Warm States (<6000 HDD) (TSL 2) | 0.005 | 0.01 | 0.05 |

[1] A notation in the form "ASAP and ACEEE, No. 107.6 at pp. 153–159," identifies a comment in the transcript of the Public Meeting on Standards for Furnaces and Boilers held in Washington, DC, 10/30/2006, which is document number 107.6 in the docket of this rulemaking. This particular notation refers to a comment (1) by the American Council for an Energy-Efficiency Economy (ACEEE) and the Applicance Standards Awareness Project (ASAP), (2) in the document number 107.6 in the docket of this rulemaking (maintained in the Resource Room of the Building Technologies Program), and (3) appearing on pages 153–159 of document number 107.6.

The alternative assumptions for the state or regional distribution of condensing furnaces in the base case are likely to have some effect on other facets of DOE's analysis, but none of these other effects are likely to be significant.

While this alternative analysis of the possible impacts of regional standards does not have any significant effects on DOE's assessment of the benefits and burdens associated with the trial standards levels for national standards, it could affect stakeholder assessments of possible alternatives to a national standard. For this reason, DOE concluded that it should present the alternative results for stakeholder consideration and comment.

*B. Installation Cost Differences*

At the October 2006 public meeting, ACEEE requested further clarification of the new installation cost increases applied in the NOPR analysis for oil-fired furnaces rated between 82 percent and 83 percent AFUE. (Public Meeting Transcript, No. 107.6 at p. 121)

In the Advance Notice of Public Rulemaking (ANOPR), DOE calculated the installation costs for oil-fired furnaces by assuming that upgraded Category III venting systems would be needed to prevent corrosion in 100 percent of the installations rated 84 percent AFUE and above (as explained in section 6.5.5 in the ANOPR TSD). DOE presented these installation costs at the ANOPR public meeting and received the following comments from ACEEE and GAMA.

GAMA commented that Brookhaven National Lab (BNL) had done an extensive amount of work on oil venting and that DOE should ask BNL for its information as a data resource for oil-fired furnace venting systems. (Public Meeting Transcript, No. 59.8 at p. 112.)

ACEEE commented that there are oil-fired boilers rated 86 percent AFUE and oil furnaces rated 84 percent AFUE that have significant market share. ACEEE recommended that DOE reexamine the application of Category III vents at efficiency levels rated below 84 percent AFUE, determine at which efficiency level Category III vents are required 100 percent of the time, and apply some type of phase-in of the venting systems, rather than a single-step function as DOE had done in the ANOPR analysis. (Public Meeting Transcript, No. 59.8 at p. 113.)

In response to the comments both from GAMA and ACEEE, DOE further examined oil-fired furnace venting systems and consulted with BNL on furnace installation requirements. BNL indicated that some fraction of the installations rated at 83 percent AFUE may require Category III venting systems. As a result of its consultations with BNL, DOE revised its venting-model assumptions, which characterized the rate of required Category III venting systems, from using a step function to a more linear, "phase-in" function, which assigns a Category III-requirement rate of 25 percent for oil-fired furnaces rated at 83 percent AFUE, and gradually increases the percentage of installations using Category III venting systems for oil-fired furnaces rated above 83 percent AFUE. DOE's approach is further detailed and explained in section 6.5.6 of the NOPR TSD for oil-fired furnaces. DOE used a per-installation cost adder for Category III venting systems that does not change with the AFUE level of oil-fired furnaces. It is the change in the assumed frequency of installations requiring Category III venting systems which results in the cost differences. Table 2, below, compares the DOE's ANOPR and NOPR assumptions about the fraction of the oil furnaces that require Category III venting systems at certain efficiency levels:

TABLE 2.—FRACTION OF THE OIL FURNACES REQUIRING CATEGORY III VENTING SYSTEMS

| Efficiency level | ANOPR (percent) | NOPR (percent) |
|---|---|---|
| 82% and below ..... | 0 | 0 |
| 83% ..... | 0 | 25 |
| 84% ..... | 100 | 50 |
| 85% ..... | 100 | 75 |
| 86% and above .... | 100 | 100 |

DOE welcomes comment on its assumptions for use of Category III venting systems for oil-fired furnaces.

Issued in Washington, DC, on February 2, 2007.

**Alexander A. Karsner,**

*Assistant Secretary Energy Efficiency and Renewable Energy.*

[FR Doc. E7–2167 Filed 2–8–07; 8:45 am]

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 431

**[Docket Number: EE–RM/STD–00–550]**

**RIN 1904–AB08**

## Energy Conservation Program for Commercial Equipment: Distribution Transformers Energy Conservation Standards

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of data availability and request for comments.

**SUMMARY:** The Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) for liquid-immersed and medium-voltage, dry-type distribution transformers under the Energy Policy and Conservation Act (EPCA). In response to this notice, stakeholders commented that DOE's standard may prevent or render impractical the replacement of distribution transformers in certain space-constrained (e.g., vault) installations. Some stakeholders suggested that DOE's analysis of the benefits and burdens of the proposed standard should take into consideration the potential impacts of replacing transformers in space-constrained vaults. In the Notice of Proposed Rulemaking (NOPR), DOE factored weight-dependent installation costs in the analysis, but did not specifically address potential costs related to transformers installed in vaults. In today's notice, DOE requests comment on inclusion of potential costs related to size constraints of transformers installed in vaults. DOE also is considering an additional option for the final efficiency levels for liquid-immersed distribution transformers and by this notice invites public comment on this additional option.

**DATES:** DOE will accept written comments, data, and information in response to this notice, but no later than March 12, 2007. See section VI, "Public Participation," of this notice for details.

**ADDRESSES:** Any comments submitted must identify the Notice of Data Availability for Distribution Transformers Energy Conservation Standards, and provide the docket number EE–RM/STD–00–550 and/or Regulatory Information Number (RIN) 1904–AB08. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail: TransformerNOPRComment@ee.doe.gov.* Include the docket number EE–RM/STD–00–550 and/or RIN 1904–AB08 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VI. of this document (Public Participation).

*Docket:* For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: DOE's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

**FOR FURTHER INFORMATION CONTACT:** Antonio Bouza, Project Manager, Energy Conservation Standards for Distribution Transformers, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–4563, *e-mail: Antonio.Bouza@ee.doe.gov.*

Francine Pinto, Esq. or Chris Calamita, Esq., U.S. Department of Energy, Office of General Counsel, Mailstop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7432, *e-mail: Francine.Pinto@hq.doe.gov.* or *Christopher.Calamita@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Introduction
II. Transformer Size Issues-
A. DOE's Treatment of Size Issues in the NOPR Analysis
B. Summary of Comments on Size Issues for Vault Transformers
C. Size Constraints in DOE's NOPR Analysis
III. DOE's Proposed Revisions to Estimating Size Burdens
A. Vault Transformer Subgroup Analysis
B. Addressing Size Constraints for Vault Transformers
C. Potential Approaches for Estimating the Cost Impacts of Satisfying Constraints Without Vault Modifications
D. Potential Approaches for Estimating the Cost Impacts of Satisfying Constraints With Vault Modifications
IV. Summary of Size Issue
V. Consideration of Final Efficiency Levels
VI. Public Participation
A. Submission of Comments
B. Issues on Which DOE Seeks Comment

## I. Introduction

Part C of Title III of EPCA authorizes DOE to establish energy conservation standards for distributions transformers for which DOE determines that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6317(a).) Pursuant to EPCA, DOE published a NOPR for liquid-immersed and medium-voltage, dry-type distribution transformers on August 4, 2006. 71 FR 44356. Together with the NOPR, DOE published a technical support document (TSD) that details each analysis DOE conducted for the rulemaking, providing specific information on its methodology and results. These documents are available at the following DOE Web site: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/distribution_transformers.html.* DOE subsequently held a public meeting on September 27, 2006, and invited comments from stakeholders until October 18, 2006.

Some stakeholders commented that DOE had not properly considered potentially significant economic impacts of the minimum efficiency standard on space-constrained vault transformer installations. Vault transformers are distribution transformers that are used in underground distribution networks, where the transformers are installed below ground level. Often found in urban areas, these transformers are installed inside a concrete vault that is open at the top, which can be very expensive to replace or expand. As transformers are manufactured to be more energy efficient, they tend to increase in size. For this reason, stakeholders expressed concern that DOE's mandatory standard may not allow for practical replacement of transformers in certain existing space constrained installations.

In the analysis for the NOPR, DOE considered potential weight-dependent costs for installation, but DOE did not factor potential space-constraint costs of vault transformers in its analysis. DOE acknowledges the concern with space-constrained installations, and in this notice outlines for stakeholder comment analytical approaches that take into consideration potential costs related to distribution transformers installed in vaults.

This notice presents analytical approaches DOE is considering for addressing stakeholder concern on the space-constrained vault transformer issue. DOE invites stakeholders to comment on these approaches, or to propose alternatives to DOE.

## II. Transformer Size Issues

### *A. DOE's Treatment of Size Issues in the NOPR Analysis*

In the life-cycle cost (LCC) spreadsheets DOE published with the NOPR, DOE provided external dimensions and weight information for each of the distribution transformer designs it considered in its analysis. For distribution transformers, size is very closely correlated with weight, and DOE developed weight-dependent installation costs for transformers using scaling relationships developed from RS Means installation cost data (see TSD, Chapter 7).

Although DOE's LCC spreadsheets contained external dimensional information for each transformer in the design database, DOE's NOPR did not report transformer size as a function of trial standard level (TSL). For today's notice, DOE calculated the volumes of those transformers selected by the LCC spreadsheets, as a function of TSL, for the two design lines (DLs) for which transformer vault constraints are most likely to be an issue: DL4 and DL5.[1] Tables II.1 and II.2 provide the average volume distributions for DL4 and DL5, respectively. For these tables, DOE sorted the transformers from the smallest to the largest volume for the distribution of transformers purchased at each standard level. DOE then calculated the minimum volume, the maximum volume, and the transformer volume at the 10th, 25th, 50th, 75th,

[1] DL4 includes 15–500 kilovolt-ampere (kVA) liquid-immersed, three-phase transformers, and is represented in the LCC analysis by a 150 kVA transformer. DL5 includes 750–2500 kVA liquid-immersed, three-phase transformers, and is represented in the LCC analysis by a 1500 kVA transformer.

and 90th percentiles. These distributions illustrate the degree to which average transformer volumes of selected designs in the NOPR LCC analysis varied by TSL.

TABLE II.1.—TRANSFORMER VOLUME IN CUBIC FEET, NOPR LCC RESULTS FOR DESIGN LINE 4 (150 KVA)

| Design line 4 | Base case | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 |
|---|---|---|---|---|---|---|---|
| Minimum | 61.11 | 63.89 | 66.55 | 66.41 | 66.41 | 80.24 | 87.50 |
| 10th percentile | 62.50 | 66.41 | 69.01 | 69.01 | 69.01 | 80.24 | 87.50 |
| 25th percentile | 64.93 | 67.71 | 69.36 | 70.54 | 70.54 | 80.24 | 87.50 |
| 50th percentile | 69.01 | 71.61 | 75.14 | 75.87 | 75.87 | 81.60 | 87.50 |
| 75th percentile | 75.87 | 76.16 | 78.88 | 81.60 | 81.60 | 86.11 | 88.89 |
| 90th percentile | 81.94 | 81.94 | 81.94 | 85.68 | 85.68 | 87.04 | 88.89 |
| Maximum | 90.28 | 90.28 | 91.67 | 91.67 | 91.67 | 91.67 | 90.74 |

TABLE II.2.—TRANSFORMER VOLUME IN CUBIC FEET, NOPR LCC RESULTS FOR DESIGN LINE 5 (1500 KVA)

| Design line 5 | Base case | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 |
|---|---|---|---|---|---|---|---|
| Minimum | 202.22 | 223.81 | 222.96 | 229.93 | 233.41 | 247.35 | 247.35 |
| 10th percentile | 215.91 | 227.99 | 233.41 | 233.41 | 236.90 | 250.83 | 250.83 |
| 25th percentile | 226.45 | 233.41 | 236.90 | 233.41 | 236.90 | 257.80 | 257.80 |
| 50th percentile | 236.90 | 236.90 | 240.38 | 240.38 | 240.38 | 257.80 | 257.80 |
| 75th percentile | 240.38 | 240.38 | 241.03 | 243.87 | 247.35 | 257.80 | 257.80 |
| 90th percentile | 250.83 | 250.83 | 250.83 | 250.83 | 250.83 | 257.80 | 257.80 |
| Maximum | 261.28 | 261.28 | 261.28 | 261.28 | 261.28 | 257.80 | 257.80 |

Relative to the base case for DL4, the increase in volume of the smallest transformer (i.e., "minimum") is nine percent or less for TSL4 and lower, while the largest transformer (i.e., "maximum") has an increase in volume relative to the base case of two percent or less for TSL4 and lower.

Relative to the base case for DL5, the increase in volume of the smallest transformer is 16 percent or less for TSL4 and lower, while the largest transformer has no increase in volume.

*B. Summary of Comments on Size Issues for Vault Transformers*

DOE received comments on both size and weight issues from stakeholders during both the advance notice of proposed rulemaking (ANOPR) and NOPR phases of the rulemaking. In the NOPR, DOE requested comment on "whether the Department should include space occupancy costs in the cost of transformers as a means of accounting for space constraints." 71 FR 44407. In response to this request, commenters provided feedback both during the public meeting and in their written comments.

HVOLT commented that it endorsed the concept of using space occupancy costs in the evaluation of the impacts of space-constrained utility transformers. (Public Meeting Transcript, No. 108.6 at p. 129) The American Council for an Energy Efficient Economy (ACEEE) recommended that DOE calculate what "the average cost of a vault modification is times the percentage of applications that will trigger." (Public Meeting Transcript, No. 108.6 at p. 130) The Edison Electric Institute (EEI) commented that space occupancy costs should be included but that such costs may be difficult to estimate and may range from 10 percent of the cost of a transformer to 100 percent of the transformer cost. (Public Meeting Transcript, No. 108.6 at p. 129–130)

In written comments after the NOPR public meeting, ACEEE commented that vault transformer costs should be treated using methods similar to the methods DOE used for distribution transformer pole costs in the NOPR analysis. (ACEEE, No. 127 at p. 6) EEI, in its written comments, emphasized the importance of the potential costs for vault transformers since this effect could create serious service reliability issues for some utilities. (EEI, No. 137 at p. 3)

In its comments and submissions in response to the ANOPR, EEI provided limited data on potential costs that could be applicable to vault transformers. (EEI, No. 63 at pp. 20–62) In its submission, EEI provided a survey in which it asked its members, as well as members of the American Public Power Association (APPA) and the National Rural Electric Cooperative Association (NRECA), the following question: "For currently existing pad-mount units in urban areas that need to be replaced, what kind of impact would a 10%, 25%, or 50% size increase have on the installed costs?" EEI received nine responses from its members, eight responses from APPA members, and one response from an NRECA member. EEI packaged all these responses and provided them to the DOE as one comment. Of these responses, a few were directly relevant to vault transformers, with most responses noting some impact but not quantifying the size of the impacts. EEI member #6 commented that "Should the transformer pad or vault lid require replacement in order to fit the larger transformer, then additional costs ranging from $500 to $1,500 will apply." (EEI, No. 63 at p. 36) At the high end of cost estimates, APPA member #5 commented that "size would be an issue if we had to change out units to larger. Cost per location can cost approx. $15k." (EEI, No. 63 at p. 42) Other EEI, APPA, or NRECA members did not provide specific estimates for relocation, vault replacement, or vault modification costs for vault transformers.

*C. Size Constraints in DOE's NOPR Analysis*

While DOE did include size-dependent installation costs for distribution transformers in its analysis (see NOPR TSD, Chapter 7), it did not include the additional space-constraint costs that may be borne by vault transformers. Since stakeholders presented this issue as a substantial concern in their comments on the NOPR, and since DOE agrees that it did not include these costs in the NOPR analysis, DOE intends to consider these costs in its analysis for the final rule.

## III. DOE's Proposed Revisions to Estimating Size Burdens

### *A. Vault Transformer Subgroup Analysis*

In response to the stakeholder comments summarized above, DOE intends to conduct a subgroup sensitivity analysis of vault transformers to estimate space-constraint costs for the final rule. This issue is primarily of concern for liquid-immersed, three-phase distribution transformers, as this type of transformer is most often used in vault applications. Therefore DOE intends to conduct its sensitivity analysis on its two design lines that represent three-phase liquid-immersed distribution transformers, DL4 and DL5.

Information provided by Howard Industries suggests that less than 0.5 percent of transformers are used in submersible or vault applications. (Howard Industries, No. 143 at p.5) Taking that estimate of 0.5 percent of all liquid-immersed transformers are vault transformers, and assuming they are all large, three-phase units such as those in DL5, the percentage of vault transformers could account for a sizeable portion of total DL5 sales—perhaps as high as 25 percent. If the estimate of 0.5 percent of all liquid-immersed shipments were instead assumed to all be smaller three-phase transformers (i.e., DL4), the fraction of DL4 transformers affected by such space constraints is likely to be less than a few percent. Stakeholders are invited to comment on the proportion of distribution transformers sold that are installed in underground vaults, particularly with respect to the liquid-immersed, three-phase design lines, DL4 and DL5.

### *B. Addressing Size Constraints for Vault Transformers*

DOE recognizes that, where vault dimensional constraints are an issue, transformer customers have several options available to them, including:

1. Rewinding or refurbishing the existing transformer,
2. Purchasing a lower-kVA transformer and subjecting it to higher loading (or re-routing part of the load served),
3. Purchasing a transformer—constructed of higher-performing core steel and/or other materials—that is standards-compliant without being significantly larger (with added cost),
4. Rebuilding or expanding the existing vault, or
5. Petitioning DOE for waiver from energy conservation standard requirements.

DOE expects that the first two options, if available, would be cheaper than purchasing a new transformer. DOE therefore proposes to focus its analysis of the LCC impacts from dimensionally constrained vault transformers on the third and fourth options as part of an LCC subgroup analysis published with the final rule.

### *C. Potential Approaches for Estimating the Cost Impacts of Satisfying Constraints Without Vault Modifications*

Considering option 3 from the above list, DOE could estimate the cost of purchasing a transformer of the same size, but constructed of higher-performing materials, such as better grades of core steel or copper conductor, by performing a size-constrained LCC calculation for both DL4 and DL5. In this calculation, DOE could assume the standards-compliant transformer in the LCC calculation was constrained at certain sizes, e.g., at the 25th and 50th percentiles of the distribution transformer volumes in the base case.

As a function of standard level, DOE could then run the LCC spreadsheets and calculate the LCC of the space-constrained transformers (at prescribed dimensional percentiles), and compare those values to the LCC from the unconstrained transformer analysis. The difference in LCC between the two cases would quantify the impact of satisfying the space constraint with better materials as a function of efficiency level for that subgroup of dimensionally constrained vault transformers.

### *D. Potential Approaches for Estimating the Cost Impacts of Satisfying Constraints With Vault Modifications*

Considering option 4 from the above list, DOE could add an additional size-dependent installation cost to the transformers included in the LCC subgroup analysis for vault transformers to account for a relatively high underground vault-space cost. DOE invites additional stakeholder input or data on what would be reasonable fixed and variable costs (e.g., per cubic foot) for DL4 and DL5. For this option, DOE would apply the vault replacement costs (with both a fixed and variable cost) when a transformer exceeds the median volume of the transformers in the base case. Given a review of cost estimation data for utility vault reconstruction, the Department currently estimates a fixed cost for vault replacement of $1740 per vault and a variable cost of $26 per cubic foot of transformer. Vault replacement may be required for the higher TSLs (TSL5 and above for both DL4 and DL5). In its standard LCC calculation, DOE based transformer selection on the manufacturer selling price. For this calculation, however, DOE proposes to assume that the customer choice of transformer design is based on total installed cost because customers are likely to be conscious of space constraint costs.

## IV. Summary of Size Issue

DOE intends to consider space-constrained vault transformers as part of the LCC subgroup analysis for the final rule. DOE seeks comment from stakeholders on the proportion of distribution transformers sold which are installed in underground vaults, particularly with respect to the liquid-immersed, three-phase design lines, DL4 and DL5.

In this notice, DOE outlines different approaches as to how it might account for those additional installation costs. DOE requests that stakeholders review these approaches and provide comment on the methodology and inputs. DOE intends to use the same LCC spreadsheet tools for estimating LCC impacts on vault transformers, with minor modifications, as it used to analyze the other LCC subgroups in the NOPR (see NOPR TSD, Chapter 11).

## V. Consideration of Final Efficiency Levels

DOE notes that in the NOPR, the proposed final standard for liquid-immersed distribution transformers was based on the efficiency levels presented in TSL 2. 71 FR 44407. While the proposed standard was based on TSL 2, DOE-evaluated efficiency levels associated with a series of TSLs. Analysis of the other TSLs indicated that some of the efficiency levels set forth in TSL 3 and TSL 4 may be justifiable for specific liquid-immersed distribution transformer designs and capacities. (See Table IV.4 in 71 FR 44378 and Tables EA.3 through EA.10 in pages EA.6 through EA.13 of the Environmental Assessment Report published with the NOPR TSD) Referencing this analysis, some commenters suggested that DOE establish a final standard that incorporates higher efficiency levels from other TSLs, which preliminarily appeared to comply with the requirements of EPCA.

Based on the comments received to date, DOE is inclined to consider a final standard that is based on efficiency levels from TSL 2 and/or 3 for three-phase, liquid-immersed, distribution transformers and efficiency levels from TSL 2, 3, and/or 4 for single-phase liquid-immersed, distribution transformers. Today's notice provides

stakeholders an opportunity to comment on this potential consideration.

## VI. Public Participation

### *A. Submission of Comments*

DOE will accept comments, data, and information regarding this notice no later than the date provided at the beginning of this notice. Comments, data, and information submitted to the Department's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document to the address provided at the beginning of this notice. Comments, data, and information submitted to the Department via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from public sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

### *B. Issues on Which DOE Seeks Comment*

DOE is particularly interested in receiving comments and views of interested parties concerning:

(1) The proportion of distribution transformers sold that are installed in underground vaults, particularly with respect to the liquid-immersed, three-phase design lines, DL4 and DL5,

(2) The assumption that typical space-constrained vault transformers will be restricted to a volume that is approximately the median size of baseline transformers, and

(3) The approaches proposed in this notice to account for LCC impacts on space-constrained vault transformers, including the methodology and inputs.

(4) The possibility of having a liquid-immersed standard level that is based on efficiency levels from TSL 2 and/or 3 for three-phase and TSL 2, 3, and/or 4 for single-phase.

Issued in Washington, DC, on February 2, 2007.

**Alexander A. Karsner**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. E7–2168 Filed 2–8–07; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–115403–05]**

**RIN 1545–BF94**

## Section 181—Deduction for Qualified Film and Television Production Costs

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross reference to temporary regulation.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 181 of the Internal Revenue Code relating to deductions for costs of producing qualified film and television productions. These temporary regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005, and affect taxpayers that produce films and television productions within the United States. This action is necessary to provide guidance for the application of section 181. The text of the temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments and requests for a public hearing must be received by April 10, 2007.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–115403–05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–115403–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.Regulations.gov/* (IRS REG–115403–05).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Bernard P. Harvey, (202) 622–3110; concerning submissions and to request a hearing, Kelly Banks, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget. Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 10, 2007. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.181–2T(c).

This information is required to verify that the production cost of the film or television production for which the deduction under section 181 of the Internal Revenue Code is claimed does not exceed the statutory production cost limit, that at least 75 percent of the compensation from the production is compensation for services performed in the United States, that production costs deducted under section 181(a)(2)(B) are sustantially incurred in the specific areas designated in section 181(a)(2)(B), and that, in situations in which more than one taxpayer is claiming a deduction for a single production, the total deduction for the production does not exceed the statutory limit. The collection of information is mandatory. The likely recordkeepers are business or other for-profit institutions, and small businesses or organizations.

*Estimated total annual recordkeeping burden:* 1,500 hours.

The estimated annual burden per recordkeeper varies from 2 to 4 hours, depending on individual circumstances, with an estimated average of 3 hours.

*Estimated number of recordkeepers:* 500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to 26 CFR part 1 to provide regulations under section 181 of the Internal Revenue Code of 1986 (Code). Section 181 was added to the Code by section 244 of the American Jobs Creation Act of 2004, Public Law No. 108–357 (118 Stat. 1418) (Oct. 22, 2004), and was modified by section 403(e) of the Gulf Opportunity Zone Act of 2005, Public Law No. 109–135 (119 Stat. 2577) (Dec. 21, 2005).

**Explanation of Provisions**

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) to add regulations under section 181 of the Internal Revenue Code of 1986 (Code). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The proposed regulations impose a collection of information on small entities in order to demonstrate eligibilty for tax benefits under the statute, and this collection of information will require recordkeeping. This collection of information is discussed elsewhere in this preamble. However, the recordkeeping required by this collection of information does not differ significantly from the recordkeeping that a taxpayer must perform in order to determine whether the taxpayer is eligible to claim a deduction under the statute. Consequently, the economic impact on small entities resulting from the recordkeeping required under this regulation is de minimis. Accordingly, a regulatory flexibility analysis is not required. We request comment on the accuracy of this certification. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury Department generally request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

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

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

**Par. 2.** Sections 1.181–0 through 1.181–6 are added as follows:

**§ 1.181–0 Table of contents.**

[The text of this proposed section is the same as the text of § 1.181–0T published elsewhere in this issue of the **Federal Register**.]

**§ 1.181–1 Deduction for qualified film and television production costs.**

[The text of this proposed section is the same as the text of § 1.181–1T published elsewhere in this issue of the **Federal Register**.]

**§ 1.181–2 Election.**

[The text of this proposed section is the same as the text of § 1.181–2T published elsewhere in this issue of the **Federal Register**.]

**§ 1.181–3 Qualified film or television production.**

[The text of this proposed section is the same as the text of § 1.181–3T published elsewhere in this issue of the **Federal Register**.]

**§ 1.181–4 Special rules.**

[The text of this proposed section is the same as the text of § 1.181–4T published elsewhere in this issue of the **Federal Register**.]

**§ 1.181–5 Examples.**

[The text of this proposed section is the same as the text of § 1.181–5T published elsewhere in this issue of the **Federal Register**.]

**§ 1.181–6 Effective date.**

[The text of this proposed section is the same as the text of § 1.181–6T

published elsewhere in this issue of the **Federal Register**.]

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E7–2153 Filed 2–8–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 67

**[Docket No. FEMA–B–7706]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

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

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

#### National Environmental Policy Act

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

#### Regulatory Flexibility Act

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

#### Regulatory Classification

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

#### Executive Order 13132, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 13132.

#### Executive Order 12988, Civil Justice Reform

This proposed rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

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

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

#### § 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Cleveland County, Oklahoma, and Incorporated Areas** | | | | |
| Dave Blue Creek North | Approximately 100 feet downstream of State Highway 9. | None | +1120 | City of Norman. |
| | Approximately 3000 feet upstream from State Highway 9. | None | +1131 | |
| East Rock Creek | Approximately 500 feet downstream from 36th Ave | None | +1118 | City of Norman. |
| | Approximately 4500 feet upstream from 36th Ave | None | +1139 | |
| Stream B | Approximately 1000 feet upstream from confluence with North Fork River. | *1143 | +1142 | City of Moore. |
| | Approximately 1900 feet upstream from SE 19th St | None | +1165 | |
| Tributary 0 of Canadian River Tributary 1. | Confluence with Canadian Tributary 1 | *1178 | +1179 | City of Moore. |
| | Approximately 700 feet upstream from North Nottingham Way. | None | +1290 | City of Oklahoma City. |

* National Geodetic Vertical Datum.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |

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

**ADDRESSES**

**City of Moore**

Maps are available for inspection at 301 North Broadway, Moore, OK 73160.
Send comments to The Honorable Glenn Lewis, Mayor, City of Moore, 301 North Broadway, Moore, OK 73160.

**City of Norman**

Maps are available for inspection at 201 South Jones, Norman, OK 73068.
Send comments to The Honorable Harold Haralson, Mayor, City of Norman, 210 West Gray, Norman, OK 73069.

**City of Oklahoma City**

Maps are available for inspection at 420 West Main, Suite 700, Oklahoma City, OK 73102.
Send comments to The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker, Street 3rd Floor, Oklahoma City, OK 73102.

**York County, South Carolina, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Sugar Creek | At the confluence with the CatawbaRiver | *493 | +487 | York County (Unincorporated Areas). |
| | At the Railroad Bridge at the York County, SC and Mecklenburg County, NC county line. | *536 | +538 | |

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

**ADDRESSES**

**York County (Unincorporated Areas)**

Maps are available for inspection at 6 South Congress Street, York, SC 29745.
Send comments to Alfred W. Greene, County Manager, York County, P.O. Box 66, York, SC 29745.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

**David I. Maurstad,**

*Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E7–2146 Filed 2–8–07; 8:45 am]

BILLING CODE 9110–12–P

# Notices

Federal Register
Vol. 72, No. 27
Friday, February 9, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 5, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Cooperative State Research, Education, and Extension Service**

*Title:* 4–H Enrollment Report.

*OMB Control Number:* 0524–New.

*Summary of Collection:* The mission of the National 4–H Headquarters; Cooperative State Research, and Extension Service (CSREES), is to advance knowledge for agriculture, the environment, human health and well-being, and communities by creating opportunities for youth. 4–H is the premier youth development program of the United States Department of Agriculture. Originating in the early 1900's as "four-square education," the 4–H's (head-heart-hands-health) seek to promote positive youth development, facilitate learning and engage youth in the work of their community to enhance the quality of life.

*Need and use of the Information:* The annual 4–H Enrollment Report is the principal means by which the 4–H movement can keep track of its progress, as well as emerging needs, potential problems and opportunities. All of the information necessary to run the 4–H program is collected from individuals clubs, and other units. The following information will be collected: (1) Youth enrollment totals by delivery mode; (2) youth enrollment totals by type of 4–H activity; (3) youth enrollment totals by school grade; (4) youth enrollment totals by gender; (5) youth enrollment totals by place of residence; (6) adult volunteer totals; (7) youth volunteer totals; and (8) youth enrollment totals by race and ethnicity. Without the information it would be impossible to justify federal funding for the 4–H program.

*Description of Respondents:* State, Local or Tribal Government.

*Number of Respondents:* 56.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 56.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7–2147 Filed 2–8–07; 8:45 am]

BILLING CODE 3410–09–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 5, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Forest Service**

*Title:* Operating Plans.

*Omb Control Number:* 0596–0086.

*Summary of Collection:* The National Forest Management Act, 16 U.S.C. 472a (14)(c) (Act) requires timber sale operating plans on timber sales that

exceed 2 years in length. The regulations at 36 CFR 223.32 have a similar requirement. The operating plans are collected within 60 days of award of timber sale contracts and annually thereafter until harvest is complete. Timber sale purchasers may submit the required information in the form of a chart or letter using surface mail, electronic mail, or via facsimile. The information is based on the timber sale purchaser's business plan.

*Need and Use of the Information:* Forest Service (FS) will collect information to determine eligibility for additional contract time. There is no prescribed format for the collection of the information. FS officials may have contractors submit operating plans on form FS–2400–67 or in a format chosen by the contractor. In addition, the information is used to plan the agency timber sale contract administration workload and to meet other contract obligations. The information collected includes planned periods and methods of anticipated major activities, including, road construction, timber harvesting, and completion of other contract requirements.

*Description of Respondents:* Business or other for-profit; Individuals or households.

*Number of Respondents:* 2,500.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 15,200.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7–2148 Filed 2–8–07; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 6, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission @OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Untreated Oranges, Tangerines, and Grapefruit from Mexico Transiting the United States to Foreign Countries.

*OMB Control Number:* 0579–0303.

*Summary Of Collection:* Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Code of Federal Regulations, § 352.30 addresses the movement into or through the United States of untreated oranges, tangerines, and grapefruit from Mexico that transit the United States en route to foreign countries. This information collection amends the regulations to allow untreated oranges, tangerines, and grapefruit from Medico to be moved overland hy truck or rail to Corpus Christi and Houston, Texas for export to another country by water.

*Need And Use Of The Information:* The Animal and Plant Health Inspection Service (APHIS) is taking action to provide additional protection against the possible introduction of fruit flies via untreated oranges, tangerines, and grapefruit from Mexico that transit the United States. Untreated oranges, tangerines, and grapefruit from Mexico transiting the United States for export to another country must be shipped in sealed, refrigerated container and insect-proof packaging. A transportation and exportation permit must he issued by an inspector for shipments of untreated oranges, tangerines, and grapefruit from Mexico. Without the information, APHIS would not be able to allow the movement of untreated citrus to transit the United States to foreign countries.

*Description Of Respondents:* Business or other for-profit; Individual or households.

*Number Of Respondents:* 400.

*Frequency Of Responses:* Reporting: On occasion.

*Total Burden Hours:* 200.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7–2193 Filed 2–8–07; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2006–0042]**

### Notice of Request for a New Information Collection (Job Applicant Medical Information)

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request approval for a new information collection regarding the medical history and status of certain job applicants.

**DATES:** Comments on this notice must be received on or before April 10, 2007.

**ADDRESSES:** FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- *Mail, including floppy disks or CD-ROM's, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- *Electronic mail: fsis.regulationscomments@fsis.usda.gov.*
- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulation.gov* and in the "Search for Open Regulations" hox,

select "Food Safety and Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select FDMS Docket Number FSIS-calendar year-docket number to submit or view public comments and to view supporting and related materials available electronically.

All submissions received by mail or electronic mail must include the Agency name and docket number. All comments submitted in response to this document, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments will also be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/regulations_directives_&_notices/index.asp.*

**FOR FURTHER INFORMATION CONTACT:** Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

**SUPPLEMENTARY INFORMATION:**

*Title:* Job Applicant Medical Information.

*OMB Number:* 0583–xxxx.

*Type of Request:* New information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting a new information collection addressing paperwork and recordkeeping requirements regarding the medical history and status of certain FSIS job applicants. Under 5 CFR 339, FSIS is requesting to collect the medical information of applicants to certain positions in the Agency to assist FSIS in making a determination of their medical fitness for duty. Applicants for certain positions in FSIS are to complete, and have their physician/medical examiner complete, FSIS Forms Certificate of Medical Examination and Report of Medical History.

FSIS has made the following estimates based upon an information collection assessment:

*Estimate of Burden:* FSIS estimates that it will take respondents an average of 165 minutes to complete and submit both of these forms to FSIS.

*Respondents:* FSIS job applicants and physicians/medical examiners.

*Estimated No. of Respondents:* 2,400.

*Estimated No. of Annual Responses per Respondent:* 2 (each form once).

*Estimated Total Annual Burden on Respondents:* 4,500 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627,(202)720–0345.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 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. Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on: February 6, 2007.

**Bryce Quick,**

*Acting Administrator.*

[FR Doc. E7–2194 Filed 2–8–07; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Friday, February 23, 2007 at the Okanogan and Wenatchee National Forest Headquarters office, 215 Melody Lane, Wenatchee, WA. This meeting will begin at 9 a.m. and continue until 4 p.m. During this meeting Provincial Advisory Committee members will discuss Roadless Area considerations and potential Wilderness recommendations in conjunction with Forest Plan Revision for the Okanogan and Wenatchee National Forests. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Paul Hart, Designated Federal

Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–644–9200.

Dated: February 5, 2007.

**Paul Hart,**

*Designated Federal Official, Okanogan and Wenatchee National Forests.*

[FR Doc. 07–582 Filed 2–8–07; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Highwood Generating Station

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of availability of Final Environmental Impact Statement.

**SUMMARY:** Notice is hereby given that the Rural Utilities Service (RUS), an agency which administers the U.S. Department of Agriculture's Rural Development Utilities Programs (USDA Rural Development), is issuing a Final Environmental Impact Statement (EIS) for the Highwood Generating Station (HGS). The Final EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 et seq.) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1500—1508) and RUS regulations (7 CFR 1794). This document has been prepared jointly with the Montana Department of Environmental Quality (MDEQ), which has its own statutory mandates to analyze potential environmental impacts under the Montana Environmental Policy Act (MEPA) (75–1–101 *et seq.*, MCA and ARM 17.4.601 *et seq.*) and to issue permits under the Montana Clean Air Act, Montana Clean Water Act, and Montana Solid Waste Management Act. USDA Rural Development invites comments on the Final EIS.

The purpose of the EIS is to evaluate the potential environmental impacts of and alternatives to the Southern Montana Electric Transmission & Generation Cooperative, Inc. (SME) application to USDA Rural Development for a loan guarantee to construct a 250 megawatt (MW) coal-fired power plant near Great Falls, Montana. SME also proposes to construct and operate four, 1.5-MW wind turbines at the proposed project site to generate supplemental electrical power.

**DATES:** Written comments on this Final EIS will be accepted on or before March 12, 2007.

**ADDRESS FOR FURTHER INFORMATION:** To send comments or for more information, contact: Richard Fristik, USDA, Rural Development, Utilities Programs, 1400 Independence Avenue, Mail Stop 1571, Room 2237, Washington, DC 20250–1571, telephone (202) 720–5093, fax (202) 720–0820, or e-mail: *Richard.Fristik@wdc.usda.gov.*

A copy of the FEIS has been sent to affected Federal, state, and local government agencies and to interested parties. The document can be obtained or viewed online at *http://www.usda.gov/rus/water/ees/eis.htm.* The files are in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Adobe® Reader®. The Adobe® Reader® can be obtained from *http://www.adobe.com/prodindex/acrobat/readstep.html.*

Copies of the Final EIS will be available for public review during normal business hours at the following locations:

Montana State Library System, Attn: Roberta Gebhardt, P.O. Box 201800, Helena, MT 59620–1800, (406) 444–5393.

University of Montana at Missoula, 32 Campus Drive 59801, Mansfield Library, Missoula, MT 59812, (406) 243–6866.

Missoula Public Library, 301 East Main, Missoula, MT 59802–4799, (406) 721–2665, FAX: (406) 728–5900.

Montana State University Libraries, P.O. Box 173320, Bozeman, MT 59717–3320, Phone: (406) 994–3119, Fax: (406) 994–2851.

MSU-Northern Library, P.O. Box 7751, Havre, MT 59501–7751.

Great Falls Public Library, 301 2nd Ave. North, Great Falls MT 59401–2593, (406) 453–0349.

Havre-Hill County Library, 402 3rd St., Havre, MT 59501, (406) 265–2123.

Parmly Billings Library, 510 N 28th St. #1, Billings, MT 59101, (406) 657–3079.

Belt Public Library, 404 Millard Street, Belt, MT 59411–0467.

Chouteau County Library, 1518 Main, Fort Benton, MT 59442.

Branch of Chouteau County Library, Box 1247, Big Sandy, MT 59520.

Branch of Chouteau County Library, Box 316, Geraldine, MT 59446.

Stone Child College Library, RR 1 Box 1082, Box Elder, MT 59521.

Wedsworth Memorial Library, 9–½ Front St., Cascade, MT 59421–0526.

Fort Belknap College Library and Tribal Archives, P.O. Box 159, Harlem, MT 59526.

Harlem Public Library, 37 First Ave. SE., Harlem, MT 59526.

Choteau-Teton County Library, 17 Main Ave. North, Choteau, MT 59422.

Copies of the Final EIS may also be obtained by contacting either Richard Fristik at 202–720–5093 (e-mail: *Richard.Fristik@wdc.usda.gov*) or Kathy Johnson at 406–444–1760 (e-mail: *katjohnson@mt.gov*).

**SUPPLEMENTARY INFORMATION:** Presently, SME meets all of its power requirements for its cooperative member systems by purchasing power from two Federal power suppliers—the Bonneville Power Administration (BPA) and the Western Area Power Administration. The major supplier (BPA) will begin to phase out its sales of power to SME in 2008 and terminate them entirely by 2011, thus the need exists to fulfill future requirements by other means. More information on the purpose and need for the proposal is in Chapter 1 of the FEIS.

On September 24, 2004, USDA Rural Development published the Notice of Intent to prepare an EIS for the Highwood Generating Station in the **Federal Register**. The EIS focused on potential impacts to the following resources: Soils, topography and geology; water resources, air quality, biological resources, the acoustic environment, recreation, cultural and historic resources, visual resources, transportation, farmland and land use, waste management, human health and safety, the socioeconomic environment, environmental justice, and cumulative effects. In compliance with Section 7(c) of the Endangered Species Act, a Biological Assessment was prepared to evaluate potential effects to threatened and endangered species in the proposed project area. On June 29, 2006 USDA Rural Development published its Notice of Availability of the Draft EIS for the proposed project in the **Federal Register**. The 60-day comment period ended on August 30, 2006. Over 1400 comments were received on the Draft EIS; a comment/response summary is appended to the Final EIS.

Alternatives evaluated in the FEIS include: Power purchase agreements; energy conservation and efficiency; renewable non-combustible energy sources (wind energy, solar energy, hydroelectricity, geothermal energy); renewable combustible energy sources (biomass, biogas, municipal solid waste); non-renewable combustible energy sources (natural gas combined cycle, microturbines, pulverized coal, circulating fluidized bed coal, integrated gasification combined cycle coal, oil), and combinations of renewable and non-renewable sources. Site screening evaluated 4 main potential locations statewide, while site selection examined 6 alternative sites in the preferred location near Great Falls. Several same-site alternatives for project components were also studied, including using different railroad spur alignments, methods of obtaining potable water, discharging wastewater, and disposing of ash, respectively.

Alternatives assessed in detail include the: (1) No Action Alternative; (2) Proposed Action (construction/operation of the HGS at the Salem site eight miles east of Great Falls, and (3) Industrial Park Site (construction/operation of the power plant, but no wind generation, at an alternate site in a designated industrial park just north of Great Falls). The No Action Alternative avoids most direct adverse environmental effects, but potentially entails a number of indirect and cumulative impacts associated with other generation sources from which SME would have to purchase power if unable to generate its own. In most respects, with the exception of cultural and historic resources, impacts from the Proposed Action (2) and Alternative Site (3) are similar, though the proximity of the Alternative Site to greater numbers of residents intensifies some of these impacts, such as traffic, noise, and air quality; nonetheless, these impacts would not likely be significant. Potential air quality impacts at both locations would be reduced to non-significant levels through the application of CFB technology and other pollution controls. The proposed plant would comply with Montana's air quality standards, including its recent mercury rule. The agency's preferred alternative is Alternative 2.

The FEIS concludes that the Proposed Action would have significant adverse impacts on historic and visual resources, because it is located on and adjacent to the Great Falls Portage National Historic Landmark (NHL). In accordance with Section 106 of the National Historic Preservation Act, consultation was initiated with a number of consulting parties and a consulting party meeting was held in Great Falls on October 5 to discuss RUS' adverse effect finding. The results of those discussions are integrated in the FEIS, including a draft Memorandum of Agreement (MOA) that proposes on-site and off-site mitigation measures to avoid and minimize these effects. Potentially significant impacts to traffic during construction were also identified with Alternative 2; a mitigation plan would be developed in cooperation with the Montana Department of Transportation to minimize or mitigate these impacts. Other adverse but non-significant impacts of the Proposed Action include those on soils, water, air, biological resources, noise, transportation, farmland and land use, human health and safety, and environmental justice. The Proposed Action would result in moderately beneficial socioeconomic impacts, including increased employment opportunities, total purchases of goods and services, and an increase in the tax base.

Construction and operation of the proposed power plant at the Alternative Industrial Park Site would result in broadly similar impacts to those of the Proposed Action, but with some important distinctions. No wind turbines are proposed for the Industrial Park site. Due to space limitations at the Industrial Park site, ash from coal combustion would be hauled off-site to a licensed landfill for disposal. Adverse but non-significant impacts of the Alternative Site include those on soils, water, air, biological resources, noise, cultural and historic resources, visual resources, transportation, farmland and land use, human health and safety, and environmental justice. Building and operating the proposed SME power plant at the Alternative Site would produce moderately beneficial socioeconomic impacts, including increased employment opportunities, total purchases of goods and services, and an increase in the tax base.

**James R. Newby,**

*Assistant Administrator— Electric Program, Rural Development Utilities Program.*

[FR Doc. E7–2090 Filed 2–8–07; 8:45 am]

BILLING CODE 3410–15–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Addition to Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

*Comments Must Be Received On or Before:* March 11, 2007.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenter's should identify the statement(s) underlying the certification on which they are providing additional information.

**End of Certification**

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Service*

*Service Type/Location:* Full Food Service, Ft. Indiantown Gap (USPFO of PA),Annville, PA.

*NPA:* Opportunity Center, Inc, Wilmington, DE.

*Contracting Activity:* Pennsylvania Army National Guard Bureau, Annville, PA.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. E7–2187 Filed 2–8–07; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Deletions from Procurement List.

**SUMMARY:** This action from the Procurement List products and a service previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** March 11, 2007.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT OR TO SUBMIT COMMENTS CONTACT:** Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov*.

**SUPPLEMENTARY INFORMATION:**

**Deletions**

On December 15, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 75496–75497) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

**End of Certification**

Accordingly, the following products and service are deleted from the Procurement List:

*Products*

Bedspring

*NSN:* 7210–00–110–8104—Bedspring
*NSN:* 7210–00–110–8105—Bedspring
*NSN:* 7210–00–582–0984—Bedspring
*NSN:* 7210–00–582–7540—Bedspring
*NPA:* Georgia Industries for the Blind, Bainbridge, GA
*NPA:* L.C. Industries for the Blind, Inc., Durham, NC
*NPA:* Lions Volunteer Blind Industries, Inc., Morristown, TN
*NPA:* Mississippi Industries for the Blind, Jackson, MS
*NPA:* Virginia Industries for the Blind, Charlottesville, VA
*NPA:* Winston-Salem Industries for the Blind, Winston-Salem, NC
*Contracting Activity:* GSA, Southwest Supply Center, Fort Worth, TX

Box, Wood

*NSN:* 8115–00–NSH–0156—Box, Wood
*NSN:* 8115–00–NSH–0157—Box, Wood
*NSN:* 8115–00–NSH–0158—Box, Wood
*NSN:* 8115–00–NSH–0159—Box, Wood
*NSN:* 8115–00–NSH–0160—Box, Wood
*NSN:* 8115–00–NSH–0161—Box, Wood
*NSN:* 8115–00–NSH–0162—Box, Wood
*NSN:* 8115–00–NSH–0163—Box, Wood
*NSN:* 8115–00–NSH–0164—Box, Wood
*NSN:* 8115–00–NSH–0165—Box, Wood
*NSN:* 8115–00–NSH–0166—Box, Wood
*NSN:* 8115–00–NSH–0167—Box, Wood
*NSN:* 8115–00–NSH–0168—Box, Wood
*NSN:* 8115–00–NSH–0169—Box, Wood
*NSN:* 8115–00–NSH–0170—Box, Wood
*NSN:* 8115–00–NSH–0171—Box, Wood
*NSN:* 8115–00–NSH–0172—Box, Wood
*NSN:* 8115–00–NSH–0173—Box, Wood
*NSN:* 8115–00–NSH–0174—Box, Wood
*NSN:* 8115–00–NSH–0175—Box, Wood
*NSN:* 8115–00–NSH–0177—Box, Wood
*NSN:* 8115–00–NSH–0178—Box, Wood
*NSN:* 8115–00–NSH–0179—Box, Wood
*NSN:* 8115–00–NSH–0180—Box, Wood
*NSN:* 8115–00–NSH–0181—Box, Wood
*NSN:* 8115–00–NSH–0186—Box, Wood
*NSN:* 8115–00–NSH–0192—Box, Wood
*NSN:* 8115–00–NSH–0199—Box, Wood
*NSN:* 8115–00–NSH–0203—Box, Wood
*NPA:* Helena Industries, Inc., Helena, MT
*Contracting Activity:* Naval Supply Center, San Diego, CA

Brush, Wire, Scratch

*NSN:* 7920–00–223–7649—Brush, Wire, Scratch
*NPA:* Industries for the Blind, Inc., West Allis, WI
*Contracting Activity:* GSA, Southwest Supply Center, Fort Worth, TX

Cap Assembly, Plastic Water Can

*NSN:* 7240–01–380–9411—Cap Assembly, Plastic Water Can
*NPA:* L.C. Industries for the Blind, Inc., Durham, NC
*Contracting Activity:* Defense Supply Center Philadelphia, Philadelphia, PA

Coin Bags

*NSN:* 8105–00–NSH–0005—Coin Bags
*NSN:* 8105–00–NSH–0006—Coin Bags
*NSN:* 8105–00–NSH–0008—Coin Bags
*NSN:* 8105–00–NSH–0009—Coin Bags
*NSN:* 8105–00–NSH–0010—Coin Bags
*NSN:* 8105–00–NSH–0011—Coin Bags
*NSN:* 8105–00–NSH–0012—Coin Bags
*NSN:* 8105–00–NSH–0013—Coin Bags
*NSN:* 8105–00–NSH–0014—Coin Bags
*NPA:* Mount Rogers Community MH–MR Services Board, Wytheville, VA
*Contracting Activity:* Bureau of the Mint, Department of the Treasury, Washington, DC

Meal Kits

*NSN:* 8970–01–E59–0242B—Meal Kits (Infantry Kit)
*NSN:* 8970–01–E59–0243B—Meal Kits (Infantry Kits)
*NPA:* Unknown
*NSN:* 8970–01–E59–0242A—Meal Kits (MORC Kits)
*NSN:* 8970–01–E59–0243A—Meal Kits (MORC Kits)
*NPA:* Topeka Association for Retarded Citizens, Topeka, KS
*Contracting Activity:* National Guard Bureau

Pallet, Wood

*NSN:* 3990–00–NSH–0063—Pallet, Wood
*NSN:* 3990–00–NSH–0064—Pallet, Wood
*NPA:* Chesapeake Bay Industries, Inc., Easton, MD
*Contracting Activity:* Government Printing Office, Washington, DC

Sponge Rubber Mattresses Rehabilitation

*NSN:* 7699 24X73X4–1/2—Sponge Rubber Mattresses Rehabilitation
*NSN:* 7699 24X76X4–1/2—Sponge Rubber Mattresses Rehabilitation
*NSN:* 7699 26X72–1/2X3—Sponge Rubber Mattresses Rehabilitation
*NSN:* 7699 26X76–1/2X3—Sponge Rubber Mattresses Rehabilitation
*NSN:* 7699 26X76X4–1/2—Sponge Rubber Mattresses Rehabilitation
*NSN:* 7699 28X76X4—Sponge Rubber Mattresses Rehabilitation
*NSN:* 7699 28X76X6—Sponge Rubber Mattresses Rehabilitation
*NSN:* 7699 34–3/4X76X6—Sponge Rubber Mattresses Rehabilitation
*NPA:* Unknown
*Contracting Activity:* GSA, Southwest Supply Center, Fort Worth, TX

Strap Assembly

*NSN:* 5855–00–125–0762—Strap Assembly
*NPA:* Cambria County Association for the Blind and Handicapped, Johnstown, PA
*Contracting Activity:* Defense Supply Center Columbus, Columbus, OH

Table, VDT

*NSN:* 7110–01–226–1706—Table, VDT
*NSN:* 7110–01–226–9888—Table, VDT
*NPA:* Unknown
*Contracting Activity:* GSA, National Furniture Center, Arlington, VA

Tree Shade

*NSN:* 9905–00–NSH–0153—Tree Shade
*NPA:* Sunrise Enterprises of Roseburg, Inc., Roseburg, OR
*Contracting Activity:* USDA, Forest Service, Portland, Portland, OR

Service

*Service Type/Location:* Commissary Shelf Stocking, Custodial & Warehousing,Fort McPherson,Fort McPherson, GA.
*NPA:* WORKTEC, Jonesboro, GA
*Contracting Activity:* Defense Commissary Agency, Fort Lee, VA

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. E7–2188 Filed 2–8–07; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

### Office of the Secretary

**[Docket No.: 061121305–7005–02]**

### Privacy Act of 1974: System of Records

**AGENCY:** Department of Commerce.

**ACTION:** Final notice to amend a Privacy Act System of Records: COMMERCE/DEPARTMENT–18, "Employees' Personnel Files Not Covered by Notices of Other Agencies."

**SUMMARY:** The Department of Commerce (Commerce) publishes this notice to announce the amendment of a Privacy Act System of Records entitled COMMERCE/DEPARTMENT–18, "Employees' Personnel Files Not Covered by Notices of Other Agencies."

**DATES:** The system of records becomes effective on February 9, 2007.

**ADDRESSES:** For a copy of the system of records please mail requests to Phyllis Alexander, Office of Human Resources Management, Room 5001, 1401 Constitution Avenue, NW., Washington, DC 20230, 202–482–4807.

**FOR FURTHER INFORMATION CONTACT:** Phyllis Alexander, Office of Human Resources Management, Room 5001, 1401 Constitution Avenue, NW., Washington, DC 20230, 202–482–4807.

**SUPPLEMENTARY INFORMATION:** On December 11, 2006, the Commerce Department published and requested comments on a proposed amended Privacy Act System of Records entitled COMMERCE/DEPARTMENT–18, "Employees' Personnel Files Not Covered by Notices of Other Agencies." No comments were received in response to the request for comments. By this notice, the Department is adopting the proposed system as final without changes effective February 9, 2007.

Dated: February 5, 2007.

**Brenda Dolan,**

*Department of Commerce, Freedom of Information and Privacy Act Officer.*

[FR Doc. E7–2173 Filed 2–8–07; 8:45 am]

**BILLING CODE 3510–BW–P**

## DEPARTMENT OF COMMERCE

### Foreign–Trade Zones Board

**Order No. 1498**

### Grant of Authority for Subzone Status, Schott Lithotec USA Corp, (Photomask Blanks), Poughkeepsie, New York

Pursuant to its authority under the Foreign–Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for "...the establishment... of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the County of Orange, New York, grantee of Foreign–Trade Zone 37, has made application to the Board for authority to establish a special–purpose subzone at the photomask blanks manufacturing and warehousing facilities of Schott Lithotec USA Corp, located in Poughkeepsie, New York (FTZ Docket 20–2006, filed 5/24/06);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 32305, 6/5/06); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status for activity related to photomask blank manufacturing at the facilities of Schott Lithotec USA Corp, located in Poughkeepsie, New York (Subzone 37C), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 22nd day of January 2007.

**David M. Spooner,**

*Assistant Secretary of Commercefor Import Administration,Alternate ChairmanForeign–Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E7–2137 Filed 2–8–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### Foreign–Trade Zones Board

**(Docket 2–2007)**

### Foreign–Trade Zone 181 - Akron/ Canton, Ohio, Application for Reorganization

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Northeast Ohio Trade & Economic Consortium (NEOTEC), grantee of FTZ 181, requesting authority to reorganize Site 2 in Trumbull and Mahoning Counties, Ohio, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 22, 2007.

FTZ 181 was approved by the Board on December 23, 1991 (Board Order 546, 57 FR 41; 1/2/92). On March 13, 1998, the grant of authority was reissued to NEOTEC (Board Order 965, 63 FR 13837; 3/23/98). The zone was expanded in 1997 (Board Order 902, 62 FR 36044; 7/3/97), 1998 (Board Order 968, 63 FR 16962; 4/7/98), 1999 (Board Order 1053, 64 FR 51291; 9/22/99), 2002 (Board Order 1260, 67 FR 71933; 12/3/02), 2004 (Board Order 1334, 69 FR 30281; 5/27/04), and twice in 2006 (Board Orders 1479, 71 FR 59072; 10/6/06 and 1493, 71 FR 71507–71508; 12/11/06). FTZ 181 currently consists of nine sites in the northeast, Ohio area covering Summit, Trumbull, Mahoning, Columbiana, Stark, Richland, Ashtabula, Portage, Medina and Wayne Counties.

The applicant is now requesting authority to reorganize Site 2 by deleting 378 acres from the Youngstown–Warren Regional Airport in Trumbull County and adding 50 acres within the 106–acre Warren Commerce Park, located at 655 North River Road, NW, Warren, Trumbull County, and 200 acres within the 244–acre Allied Industrial Park, located at 2100 Poland Avenue, Youngstown, Mahoning County, Ohio.

Leedsworld, Inc, will be the anchor tenant for the Warren Commerce Park, which is owned by Mahoning Valley Economic Development Corporation and River Road Investments Inc. Allied Industrial Park, owned by Allied Consolidated Industries (ACI), will serve ACI's headquarters and seven of its umbrella companies.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case–by case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 600 Superior Avenue, East, Suite 700,Cleveland, Ohio, 44114-2≤

Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2814B, 1401 Constitution Avenue, NW, Washington, D.C., 20230-2≤

Dated: January 22, 2007.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E7–2136 Filed 2–8–07; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–905**

### Postponement of Final Determination of Antidumping Duty Investigation: Certain Polyester Staple Fiber from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** February 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Michael Holton or Paul Walker, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1324 or (202) 482–0413, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Postponement of Final Determination

On July 13, 2006, the Department of Commerce ("Department") initiated the antidumping duty investigation of certain polyester staple fiber from the People's Republic of China. *See Initiation of Antidumping Duty Investigation: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 41201 (July 20, 2006) ("*Initiation Notice*"). On December 26, 2006, the Department published the *Preliminary Determination* in the antidumping duty investigation of certain polyester staple fiber from the People's Republic of China. *See Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373 (December 26, 2006) ("*Preliminary Determination*"). The *Preliminary Determination* stated that the Department would make its final determination for this antidumping duty investigation no later than 75 days after the date of publication of the preliminary determination (*i.e.*, March 11, 2007).

Section 735(a)(2) of the Tariff Act of 1930 ("the Act") provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. In addition, the Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months. *See* 19 CFR 351.210(e)(2).

On January 10, 2007, several respondents[1] requested a 30-day extension of the final determination and extension of the provisional measures.[2] Thus, because our preliminary determination is affirmative, and the respondents requesting an extension of the final determination, and an extension of the provisional measures, account for a significant proportion of exports of the subject merchandise, and no compelling reasons for denial exist, we are extending the due date for the final determination by 30 days. For the reasons identified above, we are postponing the final determination until April 10, 2007.

This notice is issued and published pursuant to sections 777(i) of the Act and 19 CFR 351.205(f)(1).

Dated: February 1, 2007.

**David M. Spooner,**

*Assistant Secretaryfor Import Administration.*

[FR Doc. E7–2128 Filed 2–8–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] These respondents are: Cixi Jiangnan Chemical Fiber Co., Ltd., Ningbo Dafa Chemical Fiber Co., Ltd., Cixi Sansheng Chemical Fiber Co., Ltd., Cixi Santai Chemical Fiber Co., Ltd., Hangzhou Sanxin Paper Co., Ltd., Suzhou PolyFiber Co., Ltd., Zhaoqing Tifo New Fiber Co., Ltd., Nantong Luolai Chemical Fiber Co. Ltd., Zhejiang Waysun Chemical Fiber Co., Ltd. and Cixi Waysun Chemical Fiber Co., Ltd.

[2] On January 12, 2007, Far Eastern Industries (Shanghai) Ltd. requested a 30 day extension of the final determination, but did not request an extension of the provisional measures.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–890**

### Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Reviews and Notice of Partial Rescission

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC"). The period of review ("POR") for this administrative review is June 24, 2004, through December 31, 2005. This administrative review covers multiple producers/exporters of the subject merchandise, five of which are being individually investigated as mandatory respondents. The Department is also conducting new shipper reviews for two exporters/producers. The POR for the new shipper reviews is also June 24, 2004, through December 31, 2005.

We preliminarily determine that all five mandatory respondents in the administrative review made sales in the United States at prices below normal value. With respect to the remaining respondents in the administrative review (herein after collectively referred to as the Separate Rate Applicants), we preliminarily determine that 39 entities have provided sufficient evidence that they are separate from the state–controlled entity, and we have established a weighted–average margin based on the rates we have calculated for the five mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available to be applied to theses

separate rate entities. In addition, we have determined to rescind the review with respect to 17 entities in this administrative review. See *Partial Rescission* section below. Further, we preliminarily determine that the remaining separate rate applicants have not demonstrated that they are entitled to a separate rate, and will thus be considered part of the PRC entity. Finally, we preliminarily determine that the two new shippers made sales in the United States at prices below normal value. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer–specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument. We intend to issue the final results of this review no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** February 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0414 and (202) 482–3434, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On January 4, 2005, the Department published in the **Federal Register** the antidumping duty order on wooden bedroom furniture from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329 (January 4, 2005) ("*Amended Final Determination*"). On January 3, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC for the period June 24, 2004, through December 31, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 71 FR 89 (January 3, 2006). On February 28, 2006, the Department issued a letter to all parties in its initiation notice, giving parties notice that, due to the large number of requests for review in this case, we were considering limiting the number of respondents, and in order to facilitate the selection process and administer this review, the Department was considering implementing its existing administrative procedures. *See* Letter from Wendy Frankel, Director, AD/CVD Operations, Office 8, dated February 28, 2006. On March 7, 2006, the Department initiated the first administrative review of the antidumping duty order on wooden bedroom furniture from the PRC. *See Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China*, 71 FR 11394 (March 7, 2006) ("*Initiation Notice*"). Additionally, on March 7, 2006, the Department initiated three new shipper reviews on wooden bedroom furniture from the PRC with respect to the following companies: Dongguan Huanghouse Furniture Co., Ltd. ("Huanghouse"), Senyuan Furniture Group ("Senyuan"), and Tianjin First Wood Co., Ltd. ("First Wood"). *See Notice of Initiation of New Shipper Reviews on Wooden Bedroom Furniture from the People's Republic of China*, 71 FR 11404 (March 7, 2006) ("*New Shipper Initiation Notice*"). Between March 7, 2006, and June 5, 2006, several parties withdrew their requests for administrative review. On June 30, 2006, the Department published a notice rescinding the review with respect to the entities for whom all review requests had been withdrawn. *See Notice of Partial Rescission of the Antidumping Duty Administrative Review on Wooden Bedroom Furniture from the People's Republic of China*, 71 FR 37539 (June 30, 2006).

On March 21, 2006, the Furniture Sub–Chamber of the China Chamber of Commerce for Import & Export of Light Industrial Products and Arts–Crafts ("Furniture Subchamber of "CCCLA") filed a Market–Oriented Industry request with the Department. On April 3, 2006, the Department issued the Furniture Subchamber of CCCLA a letter explaining that the submission had not been properly served on all interested parties, and that for the Department to retain the submission on the record of this administrative review, the Furniture Subchamber of CCCLA would have to comply with the following requirements: serve all interested parties with its March 21, 2006 submission and certify to the Department that it had served all interested parties. We informed the Furniture Subchamber of CCCLA that it must comply with our instructions by no later than April 14, 2006. On May 16, 2006, we rejected the Furniture Subchamber of CCCLA's March 21, 2006, submission because it had not complied with the requirements stipulated above, (*i.e.*, did not properly serve all interested parties by the required deadline set forth in the Department's April 3 letter). *See Letter from Wendy Frankel, Director, Office 8, to Hu Weiqiao, Secretary–General, The Furniture Sub–Chamber of the China Chamber of Commerce for Import & Export of Light Industrial Products and Arts–Crafts*, dated May 16, 2006.

On May 12, 2006, Petitioners[1] submitted comments with respect to respondent selection. On June 6 and 26, 2006, Fine Furniture (Shanghai) Limited and its affiliates ("Fine Furniture") submitted comments with respect to respondent selection. On June 14, 2006, Shanghai Starcorp Funiture Co., Ltd, Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., and Shanghai Xing Ding Furniture Industrial Co., Ltd. (collectively, "Starcorp"), submitted comments with respect to respondent selection. Also, on June 14, 2006, Maria Yee, Inc., Guangzhou Maria Yee Furnishings, Ltd., and Pyla HK Limited (collectively, "Maria Yee") filed comments regarding respondent selection.

On June 8, 2006, American Signature, Inc. ("ASI") requested that the Department issue instructions to CBP to refund "excess" antidumping duty deposits made by ASI due to ministerial errors from the original investigation pursuant to 19 U.S.C. 1520. On June 16, 2006, Pacific Marketing International ("PMI") stated that it supports ASI's comments and requested that the Department direct CBP to liquidate all entries from the supplier identified in ASI's June 8, 2006, submission according to "correct" final rates rather than the "incorrect" final rates. On June 21, 2006, Petitioners submitted comments with respect to ASI and PMI's request and stated that their requests are without merit and that the Department's regulations provide for the automatic assessment of duties at the cash deposit rate "at the time of entry" if no administrative review is requested. Petitioners argue that because neither party requested a review of the exporter, the Department should liquidate their entries at the cash deposit rate in effect at the time of entry, pursuant to 19 CFR 351.212(c), which stipulates that if no review is requested the Department is to instruct CBP to assess antidumping

[1] The Petitioners in this case are the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company.

duties at rates equal to the cash deposit or bond posted on those entries. Also, on June 26, 2006, RiversEdge Furniture Company ("RiversEdge") requested that the Department issue instructions to CBP to refund excess antidumping duty deposits made by RiversEdge between the *Preliminary Determination* and the *Amended Preliminary Determination* and those posted between the *Final Determination* and the *Amended Final Determination* in the less than fair value investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 35312 (June 24, 2004) ("*Preliminary Determination*"); *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value and Amendment to the Scope: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 54643 (September 9, 2004) ("*Amended Preliminary Determination*"); *Notice of Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) ("*Final Determination*") and *Amended Final Determination*. On June 30, 2006, Petitioners submitted comments with respect to RiversEdge's request, reiterating their response to ASI and PMI's requests stating that the Department cannot grant the request because RiversEdge's entries are currently enjoined from liquidation. Additionally, on July 31, 2006, Dongguan Sunrise Furniture Co., Taican Sunrise Wood Industry Co., Ltd., Shanghai Sunrise Furniture Co., Ltd., and Fairmont Designs (collectively, "Fairmont Designs") requested the refund of certain antidumping duty deposits made by Fairmont Designs. On August 11, 2006, Petitioners submitted comments with respect to Fairmont Design's request and stated for the same reasons explained in its June 21 and June 30 submissions that Fairmont Design's request is without merit. The Department has determined that the requests made by the above parties are without merit. The Department's regulations state "if the Secretary does not receive a timely request for an administrative review, the Secretary will instruct the Customs Service to, . . . , assess antidumping duties, at rates equal to the cash deposit of, or bond for, estimated antidumping duties." *See* 19 CFR 351.212(c). Because no review is being conducted with respect to the exporter for the period covered by these entries, we will instruct CBP to liquidate the entries at the cash deposit rate in effect at the time of entry, for all entries not enjoined from liquidation.

Because of the large number of companies subject to this review, on July 3, 2006, the Department issued its respondent–selection memorandum, selecting the following five companies as mandatory respondents in this administrative review: Fine Furniture; Foshan Guanqiu Furniture Co., Ltd. ("Foshan Guanqiu"); Fujian Lianfu Forestry Co./Fujian Wonder Pacific Inc./ Fuzhou Huan Mei Furniture Co., Ltd./ Jiangsu Dare Furniture Co., Ltd. ("Dare Group"); Shanghai Aosen Furniture Co., Ltd. ("Shanghai Aosen"); and Starcorp. *See Memorandum from Wendy J. Frankel, Director, Office 8, to Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Selection of Respondents* ("*Respondent Selection Memo*"), dated July 3, 2006.

On July 28, 2006, the Department issued its questionnaire to Fine Furniture, Foshan Guanqiu, the Dare Group, Shanghai Aosen, and Starcorp. On August 30, 2006, all mandatory respondents requested an extension of time to respond to the Department's questionnaire. On August 30, 2006 the Department extended the deadline for submission of the Sections C and D questionnaire response until September 22, 2006.

On July 26, 2006, counsel for Foshan Guanqiu met with Department officials to discuss modifying the requirement to report factors of production ("FOP") for three of Foshan Guanqiu's suppliers of subject merchandise. *See Memo to the File Regarding Meeting with Counsel for Foshan Guanqiu Furniture Co.*, dated July 27, 2006. On August 3, 2006, Foshan Guanqiu submitted comments regarding this issue. On August 14, 2006, Petitioners submitted rebuttal comments arguing that the Department should require Foshan Guanqiu to submit FOP data for all of its suppliers. On August 24, 2006, we determined that Foshan Guanqiu did not have to report FOPs for two of its three suppliers of subject merchandise, Nanhai Baiyi Woodwork Co., Ltd ("Baiyi") and Zhongshan Melux Furniture Co., Ltd. ("Melux").

In August 2006, pursuant to 19 CFR 351.214(j)(3), the two new shipper respondents (*i.e.*, First Wood and Huanghouse) agreed to waive the time limits applicable to the new shipper reviews and to permit the Department to conduct the new shipper reviews concurrently with the administrative review. *See* Memorandum to the file, *Wooden Bedroom Furniture from the People's Republic of China - Alignment of the 6/24/04 - 12/31/05 Annual Administrative and New Shipper Reviews*, dated August 24, 2006.

On August 2, 2006, Huanghouse informed the Department that it would no longer participate in the new shipper review of Huanghouse. *See* Letter from Dongguan Huanghouse Furniture Co., Ltd., dated August 2, 2006.

On April 3, 2006, Senyuan withdrew its request for a new shipper review, within the 60-day time limit for withdrawal. No other party requested a review of Senyuan for this time period. Accordingly, we rescinded this new shipper review. *See Notice of Partial Rescission of New Shipper Review on Wooden Bedroom Furniture from the People's Republic of China*, 71 FR 52064 (September 1, 2006).

On September 12, 2006, the Department issued a letter to interested parties seeking comments on surrogate country selection and surrogate values. On October 3, 2006, Petitioners and the Dare Group submitted comments regarding the selection of a surrogate country. Also, on October 24, 2006, the Dare Group, Fine Furniture, Foshan Guanqiu, Starcorp, and Petitioners submitted surrogate value information.

On September 28, 2006, we extended the deadline for the issuance of the preliminary results of the administrative review and new shipper reviews until January 31, 2007. *See Wooden Bedroom Furniture from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 71 FR 59088 (October 6, 2006).

On November 3, 2006, Petitioners submitted comments responding to the respondent's surrogate value information. Also, on November 3, 2006, the Dare Group, Fine Furniture, Foshan Guanqiu, Shanghai Aosen, and Starcorp responded to Petitioners' October 24, 2006, surrogate value submission. On November 13, 2006, the Dare Group provided additional surrogate value information and responded to Petitioners' November 3, 2006, submission. On November 22, 2006, Petitioners responded to the Dare Group's November 13, 2006, submission. On December 4, 2006, the Dare Group responded to Petitioners' November 22, 2006, submission. On December 22, 2006, Petitioners responded to the Dare Group's December 4, 2006, submission.

On December 11, 2006, the Department requested that Fine Furniture, Foshan Guanqiu, Shanghai Aosen, and Starcorp provide additional surrogate value information. Between

December 18 and 21, 2006, Starcorp, Fine Furniture, Foshan Guanqiu, and Shanghai Aosen each submitted responses to the Department's request.

On January 9, 2007, First Wood withdrew its request for a new shipper review and requested that the review be terminated. See *The Application of Total Adverse Facts Available, First Wood* section below for additional discussion.

**Company–Specific Chronology**

As described above, the Department issued its antidumping questionnaire to the five mandatory respondents. Upon receipt of the various responses, the Petitioners provided comments and the Department issued supplemental questionnaires. Because the chronology of this stage of the administrative review is extensive and varies by respondent, the Department has separated this portion of the background section by company.

**Dare Group**

On August 7, 2006, the Dare Group requested a one-week extension for the submission of its Section A response. On August 25, 2006, the Dare Group submitted its Section A response to the Department's original questionnaire. On August 29, 2006, the Dare Group requested a 24-day extension for the submission of its Sections C and D response to the Department's original questionnaire. On August 30, 2006, the Department granted the Dare Group a 17-day extension. On September 12, 2006, the Dare Group requested an additional two-week extension for the submission of its Section C and D response. On September 19, 2006, the Department granted the Dare Group a further one-week extension. On September 21, 2006, the Department issued a supplemental Section A questionnaire to the Dare Group. On September 27, 2006, the Dare Group requested an additional one-day extension for the submission of its Sections C and D response, which the Department granted on September 28, 2006. On October 2, 2006, the Dare Group submitted its Section C and D response to the Department's original questionnaire. Also, on October 2, 2006, the Dare Group requested a two-week extension for the submission of its supplemental Section A response. On October 5, 2006, the Dare Group requested an additional four-day extension for the submission of its supplemental Section A response, which the Department granted. On October 16, 2006, the Dare Group submitted its supplemental Section A response. On November 22, 2006, the Department issued a supplemental Sections C and D questionnaire. On November 30, 2006, the Dare Group requested a three-week extension for the submission of its supplemental Sections C and D response. On December 4, 2006, the Department granted the Dare Group a 12-day extension for the submission of its supplemental Sections C and D response. On December 18, 2006, the Dare Group submitted its supplemental Sections C and D response. On January 9, 2007, the Department issued a second supplemental Sections A, C and D questionnaire. On January 18, 2007, the Dare Group requested a one-day extension for the submission of its supplemental Sections A, C and D response, which the Department granted. On January 22, 2007, the Dare Group submitted its supplemental Sections A, C and D response. On September 5, October 17, November 13, and December 22, 2006, Petitioners submitted comments on the Dare Group's questionnaire and supplemental questionnaire responses.

**Fine Furniture**

On August 25, 2006, Fine Furniture submitted its Section A response to the Department's original questionnaire. On September 15, 2006, Fine Furniture requested an extension of time to respond to Sections C and D of the Department's original questionnaire. On September 19, 2006, the Department extended the deadline for submission of Fine Furniture's Sections C and D responses until October 2, 2006. On September 21, 2006, the Department issued a supplemental Section A questionnaire to Fine Furniture. On October 2, 2006, Fine Furniture requested an extension of time to respond to the supplemental Section A questionnaire. Also, on October 2, 2006, Fine Furniture submitted its responses to Sections C and D of the questionnaire. On October 4, 2006, the Department extended the deadline for submission of Fine Furniture's supplemental Section A response until October 16, 2006. On November 9, 2006, the Department issued a supplemental Section D questionnaire to Fine Furniture. On November 15, 2006, Fine Furniture requested an extension of time to respond to the supplemental Section D questionnaire. On November 20, 2006, the Department extended the deadline for submission of Fine Furniture's supplemental Section D response until December 4, 2006. On November 28, 2006, Fine Furniture requested an additional extension of time to respond to the supplemental Section D questionnaire. On November 30, 2006, the Department extended the deadline for submission of Fine Furniture's supplemental Section D response until December 6, 2006. Also, on November 30, 2006, the Department issued a supplemental Section C questionnaire to Fine Furniture. On December 6, 2006, Fine Furniture submitted its supplemental Section D response. Also, on December 11, 2006, Fine Furniture requested an additional extension of time to respond to the Section C supplemental questionnaire. On December 14, 2006, the Department extended the deadline for submission of Fine Furniture's supplemental Section C response until December 20, 2006. On December 20, 2006, Fine Furniture submitted its supplemental Section C response. On December 27, 2006, the Department issued its second supplemental Section D questionnaire. On January 3, 2007, Fine Furniture requested an extension of time to respond to the second supplemental Section D questionnaire. Also, on January 3, 2007, the Department issued its second supplemental Section C questionnaire. On January 4, 2007, the Department extended the deadline for submission of Fine Furniture's second supplemental Section D response until January 12, 2007. On January 12, 2007, Fine Furniture requested an extension of time to respond to the second supplemental Section C and D questionnaire. On January 16, 2007, Fine Furniture submitted its responses to the second supplemental Sections C and D questionnaires. On September 5, October 13, November 21, and December 19 and 22, 2006, Petitioners submitted comments on Fine Furniture's questionnaire and supplemental questionnaire responses.

**Foshan Guanqiu**

On August 25, 2006, Foshan Guanqiu submitted its Section A response to the Department's original questionnaire. On October 2, 2006, Foshan Guanqiu submitted its Sections C and D response to the Department's original questionnaire. The Department issued a supplemental Section A questionnaire to Foshan Guanqiu on October 4, 2006, to which Foshan Guanqiu responded on October 25, 2006. On November 8, 2006, the Department issued a supplemental Sections C and D questionnaire to Foshan Guanqiu, to which Foshan Guanqiu responded on November 30, 2006. The Department issued a supplemental questionnaire on surrogate values submitted by Foshan Guanqiu on December 11, 2006, and received a response on December 21, 2006. The Department issued a second supplemental Section C and D questionnaire to Foshan Guanqiu on

December 29, 2006, and received a response on January 12, 2007. On September 5, October 20, November 13, and December 13, 2006, Petitioners submitted comments on Foshan Guanqiu's questionnaire and supplemental questionnaire responses.

**Shanghai Aosen**

On August 28, 2006, Shanghai Aosen submitted its Section A response to the Department's original questionnaire. On September 15, 2006, Shanghai Aosen requested a two-week extension to respond to Section D of the Department's original questionnaire. On September 19, 2006, the Department granted the extension for Shanghai Aosen to file its Section D response by September 29, 2006. On September 25, 2006, Shanghai Aosen submitted its Section C response to the Department's original questionnaire.

On October 2, 2006, Shanghai Aosen submitted its Section D response to the Department's original questionnaire. On October 3, 2006, the Department issued a supplemental Section A questionnaire to Shanghai Aosen. On October 5, 2006, Shanghai Aosen requested a one-week extension to respond to the supplemental Section A questionnaire. On October 10, 2006, the Department granted a full extension until October 18, 2006. On October 18, 2006, Shanghai Aosen submitted its supplemental Section A response.

On November 8, 2006, the Department issued a supplemental Section C questionnaire to Shanghai Aosen. On November 16, 2006, Shanghai Aosen requested a two-week extension to respond to the supplemental Section C questionnaire. The Department granted a partial extension on November 21, 2006, and instructed Shanghai Aosen to respond to the supplemental Section C questionnaire by November 29, 2006. On November 28, 2006, the Department issued a supplemental Section D questionnaire to Shanghai Aosen. On November 30, Shanghai Aosen submitted its supplemental Section C response.

On December 7, 2006, Shanghai Aosen requested a 17-day extension to respond to the supplemental Section D questionnaire. The Department granted a partial extension until December 19, 2006. On December 12, 2006, the Department issued a supplemental Section D questionnaire specific to Shanghai Aosen's FOPs to be due by December 19, 2006. On December 18, 2006, Shanghai Aosen requested a three-day extension to respond to this supplemental Section D questionnaire. The Department granted a partial extension until December 21, 2006. On December 20, 2006, Shanghai Aosen submitted its supplemental Section D response. On December 21, 2006, Shanghai Aosen submitted its response to the supplemental Section D questionnaire specific to its FOPs.

On January 5, 2007, the Department issued a second supplemental Sections C and D questionnaire. On January 22, 2007, Shanghai Aosen submitted its second supplemental Sections C and D response. On September 6, October 23, November 13, and December 13 and 27, 2006, and January 18, 2007, Petitioners submitted comments on Shanghai Aosen's questionnaire and supplemental questionnaire responses.

**Starcorp**

On August 25, 2006, Starcorp submitted its Section A questionnaire response. On October 2, 2006, Starcorp submitted its Sections C and D questionnaire responses. The Department issued a supplemental Section A questionnaire to Starcorp on October 3, 2006, to which Starcorp responded on October 27, 2006. The Department issued a supplemental Section D questionnaire to Starcorp on November 3, 2006, to which Starcorp responded on November 29, 2005. On November 21, 2006, the Department issued a supplemental Section C questionnaire and second supplemental Sections A and D questionnaires to Starcorp, to which Starcorp responded on December 12, 2006. On December 11, 2006, the Department issued a third supplemental Section D questionnaire to Starcorp, to which Starcorp responded on December 18, 2006. On December 20, 2006, the Department issued a fourth supplemental Section D questionnaire to Starcorp, to which Starcorp responded on January 8, 2007. On December 28, 2006, the Department issued a second supplemental Section C questionnaire, to which Starcorp responded on January 8, 2007. Further, on January 12, 2007, the Department issued a third supplemental Section C questionnaire, to which Starcorp responded on January 17, 2007. On September 6, October 16, November 9, and December 13, 19, and 21, 2006, and January 12, 2007, Petitioners submitted comments on Starcorp's questionnaire and supplemental questionnaire responses. Finally, on December 18, 2006, and January 19, 22, and 26, 2007, Starcorp submitted responses to Petitioners' comments of December 7 and 12, 2006, and January 12 and 23, 2007, respectively.

**First Wood**

On March 14, 2006, the Department issued its standard antidumping questionnaire to First Wood. First Wood submitted its Section A response on April 19, 2006, and its Sections C and D responses on May 11, 2006. The Department issued a supplemental Sections A, C, and D questionnaire to First Wood on July 14, 2006, to which First Wood responded on August 17, 2006. The Department issued a second supplemental Sections A, C, and D questionnaire to First Wood on December 7, 2006, to which First Wood responded on January 3, 2006. Petitioners provided no comments.

**Period of Review**

The POR is June 24, 2004, through December 31, 2005.

**Scope of the Order**

The product covered is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non–wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand–alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe–type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests–on-chests[2],

[2] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

highboys[3], lowboys[4], chests of drawers[5], chests[6], door chests[7], chiffoniers[8], hutches[9], and armoires[10]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand–up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non–bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate[11]; (9) jewelry armories[12]; (10) cheval mirrors[13]; (11) certain metal parts[14]; and (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser–mirror set.

Imports of subject merchandise are classified under subheading 9403.50.9040 of the Harmonized Tariff Schedule of the United States ("HTSUS") as "wooden...beds" and under subheading 9403.50.9080 of the HTSUS as "other...wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as "parts of wood" and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as "glass mirrors...framed." This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[3] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[4] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[5] A chest of drawers is typically a case containing drawers for storing clothing.

[6] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[7] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[8] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[9] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[10] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[11] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[12] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24" in width, 18" in depth, and 49" in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. See Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, (71 FR 38621) (July 7, 2006).

[13] Cheval mirrors, *i.e.*, any framed, tiltable mirror with a height in excess of 50" that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, (72 FR 948) (January 9, 2007).

[14] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheading 9403.90.7000.

**Partial Rescission of Administrative Review**

On April 17, 2006, Dongguan Landmark Furniture Products Ltd. ("Dongguan Landmark") submitted a separate rate application to the Department with regard to the first administrative review of wooden bedroom furniture from the PRC. Concurrently, Dongguan Landmark was participating in the first new shipper review of wooden bedroom furniture from the PRC covering the period June 24, 2004, through June 30, 2005, ("04/05 NSR"). On December 6, 2006, the Department completed this new shipper review, and determined Dongguan Landmark to be eligible for a separate rate. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004–2005 Semi–Annual New Shipper Reviews*, 71 FR 70739 (December 6, 2006) ("*Final New Shipper Review*"). On December 22, 2006, Dongguan Landmark responded to the Department's December 12, 2006, supplemental questionnaire with respect to its April 17 separate–rate application, stating that it had only one sale to the United States during the POR, which the Department reviewed and verified during the 04/05 NSR. Since the Department examined this sale in a previous segment of this proceeding, and it is not the Department's practice to examine the same sale(s) in multiple segments of a proceeding, the Department is rescinding this review with respect to Dongguan Landmark.

On July 28, 2006, Maria Yee conditionally withdrew its request for review based on the premise that should the Department rescind the review, it would instruct CBP to liquidate Maria Yee's entries for the first administrative review period at the assessment rate of 6.65 percent (and refund all excess antidumping duty deposits with interest) in accordance with the final court decision,[15] pursuant to section 516a(c) of the Tariff Act of 1930, as amended ("the Act"). Also, Maria Yee requested in the alternative that, if the

[15] During the investigation, because the Department determined that Maria Yee had not demonstrated separateness from the PRC government, Maria Yee received the PRC-wide rate of 198.08 percent. As a result of Maria Yee's litigation on the investigation, the Department determined on remand that Maria Yee was entitled to a separate rate. On June 22, 2006, when Maria Yee's litigation was concluded, the Department issued an amended final determination, revising Maria Yee's cash deposit rate to 6.65 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value/Pursuant to Court Decision:Wooden Bedroom Furniture from the People's Republic of China*: 71 FR 35870 (June 22, 2006).

Department does not agree to issue liquidation instructions for the first administrative review period in accordance with the court decision (see footnote 15), the Department instruct CBP to refund the difference in the duties deposited at the 198.08–percent rate and the duties that would have been deposited on those entries at the 6.65–percent rate. Additionally, Maria Yee requested the Department to instruct CBP to refund the difference in antidumping duties deposited on Maria Yee's January 1, 2006, through June 21, 2006, entries (the first half of the second administrative review) to account for the difference between these two deposit rates.

Although Maria Yee submitted its withdrawal request after the 90-day regulatory deadline, Maria Yee submitted the request very soon after the close of the appeal date (see footnote 15), which occurred shortly after the 90-day regulatory deadline for withdrawals of request for review. In order to preserve its rights with respect to the ultimate deposits on the entries in question, Maria Yee had to retain its request for review in place until the possibility of all appeals had been exhausted. Additionally, the Department had already completed its selection of mandatory respondents and Maria Yee was not selected as a mandatory respondent in this administrative review. Therefore, the Department's selection process of the mandatory respondents for this administrative review was not compromised by Maria Yee's request for withdrawal. Furthermore, the Department did not expend significant resources as of the date Maria Yee withdrew its request for review. Therefore, the Department is rescinding this review with respect to Maria Yee, and we will instruct to CBP to liquidate Maria Yee's entries for the first administrative review period (*i.e.*, June 24, 2004, through December 31, 2005) at the assessment rate of 6.65 percent.

Furthermore, the Department is rescinding this review with respect to the following companies (*i.e.*,Bao An Guan Lan Winmost Furniture Factory; Bouvrie International Limited; Dongguan Sea Eagle Furniture Company Limited; Guangdong New Four Seas Furniture Mfg.;Huizhou Jadom Furniture Co., Ltd.; Hwang Ho New Century Furniture (Dongguan) Corp. Ltd.; Inni Furniture Mfg. Ltd.; Jadom Furniture Co., Ltd.; Qingdao Beiyuan Industry Trading Co., Ltd.; Red Apple Furniture Co. Ltd.; Shenzhen Tiancheng Furniture Co. Ltd.; Sino Concord (Zhangzhou) Furniture Co., Ltd.; Top Goal Furniture Co., Ltd (Shenzhen); Trade Rich Furniture (Dongguan) Corp. Ltd.; and Winbuild Industrial Ltd.) because 1) the respondent could not demonstrate that it made sales of subject merchandise to the United States during the POR or 2) record evidence demonstrates that the respondent did not have any exports of subject merchandise during the POR.

**Non–Market Economy Country Status**

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act , any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

**Surrogate Country**

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's FOPs. The Act further instructs that valuation of the FOPs shall be based on the best available information in a surrogate market economy country or countries considered to be appropriate by the Department. *See* Section 773(c)(1) of the Act. When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. *See* Section 773(c)(1) of the Act. The sources of the surrogate values ("SV") are discussed under the *Normal Value* section below and in the Memorandum to the File, *Factors Valuations for the Preliminary Results of the Administrative Review*, dated January 31, 2007 ("*Factor Valuation Memorandum*"), which is on file in the CRU.

The Department first determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* Memorandum to the File, *Administrative Review of Wooden Bedroom Furniture from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated August 7, 2006, ("*Policy Memo*") which is on file in the CRU.

On September 12, 2006, the Department issued a request for parties to submit comments on surrogate country selection. On October 3, 2006, Petitioners submitted comments regarding the selection of a surrogate country.[16] Also, on October 3, 2006, the Dare Group submitted comments regarding the selection of a surrogate country.[17] On October 13, 2006, Petitioners submitted comments responding to the Dare Group's comments.[18] Also, on October 13, 2006, the Dare Group and Starcorp submitted comments responding to Petitioners' comments.[19] On October 23, 2006, Petitioners submitted rebuttal comments to the Dare Group's October 13, 2006, comments.[20] No other party to the proceeding submitted information or comments concerning the selection of a surrogate country.

Petitioners assert that India is the appropriate surrogate country for the PRC because India is at a level of economic development comparable to that of the PRC and is a significant producer of comparable merchandise. Additionally, Petitioners note that the Department selected India as the surrogate country in the original investigation.

The Dare Group claims that the method by which the Department selected the five surrogate countries is arbitrary and flawed. The Dare Group argues the surrogate country list in the *Policy Memo* is unsupported by record evidence and is contrary to the Department's regulations. The Dare Group argues that because India's per capita GNI is less than half that of the PRC, India cannot reasonably be described as "economically comparable" to the PRC, and would

[16] Letter dated October 3, 2006, from King & Spalding to Secretary of Commerce, Re: Wooden Bedroom Furniture from the People's Republic of China.

[17] Letter dated October 3, 2006, from Kay Scholer to Secretary of Commerce, Re: Wooden Bedroom Furniture from the People's Republic of China.

[18] Letter dated October 13, 2006, from King & Spalding to Secretary of Commerce, Re: Wooden Bedroom Furniture from the People's Republic of China.

[19] *See* Letter dated October 13, 2006, from Kay Scholer to Secretary of Commerce, Re: Wooden Bedroom Furniture from the People's Republic of China, and Letter dated October 13, 2006, from Steptoe & Johnson to Secretary of Commerce, Re: Wooden Bedroom Furniture from the People's Republic of China.

[20] Letter dated October 23, 2006, from King & Spalding to Secretary of Commerce, Re: Wooden Bedroom Furniture from the People's Republic of China.

thus not be an appropriate surrogate in this review. The Dare Group argues that the Philippines is a more appropriate choice for a surrogate country because it is at a level of economic development comparable to that of the PRC and is a significant producer of comparable merchandise.

Starcorp, a mandatory respondent in this review, urges the Department "to not automatically revert to its 'default' position of selecting India as the surrogate country for this proceeding, despite the fact that it determined that India was the appropriate surrogate country in the less than fair value ("LTFV") investigation." Starcorp agues that the Department's surrogate country determination in the LTFV investigation was made on the basis of 2001 data. Starcorp contends that the PRC's per capita GNI growth has significantly outpaced India's GNI growth since 2001. Starcorp states that at this stage of the review it cannot rule out or endorse India or any other potential surrogate country and requests that the Department address the question anew in light of updated data placed on the record of this proceeding by the Dare Group.

On January 22, 2007, the Department issued its surrogate country memorandum in which we addressed the parties' comments. *See* Memorandum to the File, *Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Selection of a Surrogate Country*, dated January 22, 2007 ("*Surrogate Country Memorandum*"), which is on file in the CRU. After evaluating concerns and comments, the Department determined that India is the appropriate surrogate country to use in this review. The Department based its decision on the following facts: 1) India is at a level of economic development comparable to that of the PRC; 2) India is a significant producer of comparable merchandise; and, 3) India provides the best opportunity to use quality, publicly available data to value the FOPs. *See Surrogate Country Memorandum.*

Therefore, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the respondents' FOPs, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. *See Factor Valuation Memorandum.* In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value FOPs until 20 days after the date of publication of these preliminary results.

**Affiliation**

Section 771(33) of the Act directs that the following persons will be considered affiliated: (A) Members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person.

For purposes of affiliation, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. *See* Section 771(33) of the Act. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents. Moreover, stock ownership is not the only evidentiary factor that the Department may consider to determine whether a person is in a position to exercise restraint or direction over another person, *e.g.*, control may be established through corporate or family groupings, or joint ventures and other means as well. *See* The Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("*SAA*"), H.R. Doc. 103–316, 838 (1994). *See also Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review*, 61 FR 42833, 42853 (August 19, 1996); and *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53810 (October 16, 1997).

To the extent that the affiliation provisions in section 771(33) of the Act do not conflict with the Department's application of separate rates and the statutory NME provisions in section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding. *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004) ("*Mushrooms*"), unchanged in *Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 70 FR 54361 (September 14, 2005).

**The Dare Group**

Following these guidelines, we preliminarily determine that Fujian Lianfu Forestry Co. Ltd./Fujian Wonder Pacific Inc./Fuzhou Huan Mei Furniture Co., Ltd./Jiangsu Dare Furniture Co., Ltd., collectively, ("Dare Group") are affiliated pursuant to sections 771(33)(A), (E) and (F) of the Act and that these companies should be treated as a single entity for the purposes of the antidumping administrative review of wooden bedroom furniture from the PRC. Based on our examination of the evidence presented in the Dare Group's questionnaire responses, we have determined that: (1) Fujian Lianfu Forestry Co. Ltd./Fujian Wonder Pacific Inc./Fuzhou Huan Mei Furniture Co., Ltd./Jiangsu Dare Furniture Co., Ltd. have overlapping managers and directors; (2) Fujian Lianfu Forestry Co. Ltd./Fujian Wonder Pacific Inc./Fuzhou Huan Mei Furniture Co., Ltd./Jiangsu Dare Furniture Co., Ltd. have some common ownership; (3) There is a familial relationship between persons with significant ownership interests in all three companies. *See* Memorandum to Wendy Frankel, Director, Office 8, NME/China Group, through Robert Bolling, Program Manager, From Eugene Degnan, Case Analyst, *Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Fujian Lianfu Forestry Co. Ltd./Fujian Wonder Pacific Inc./Fuzhou Huan Mei Furniture Co., Ltd./Jiangsu Dare Furniture Co., Ltd. and Treatment as a Single Entity*, dated October 28, 2005 ("*Affiliation/Single Entity Treatment Memorandum*").

**Separate Rates**

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The five mandatory respondents (*i.e.*, Dare Group, Fine Furniture, Foshan Guanqiu, Shanghai Aosen, and Starcorp) and 64 separate–rate respondents have provided company–specific information

and each has stated that it meets the standards for the assignment of a separate rate.

We have considered whether each of these companies referenced above is eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See, e.g., Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994) ("*Silicon Carbide*"). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

*1. Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Our analysis shows that, for the each of the mandatory respondents located in the PRC and certain separate–rate respondents, the evidence on the record supports a preliminary finding of *de jure* absence of government control based on record statements and supporting documentation showing the following: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) the applicable legislative enactments decentralizing control of the companies; and 3) any other formal measures by the government decentralizing control of companies. *See* Memorandum to Wendy J. Frankel, Director, Office 8, Import Administration, from Charles Riggle, Program Manager, *Wooden Bedroom Furniture from the People's Republic of China: Separate Rates for Producers/ Exporters that Submitted Separate Rate Certifications and Applications* ("*Separate–Rates Memo*"), dated January 31, 2007.

*2. Absence of De Facto Control*

Through previous cases, the Department has learned that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/ or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

We determine that, for the mandatory respondents located in the PRC and certain separate- rate respondents, the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: 1) each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) each exporter has the authority to negotiate and sign contracts and other agreements; and 4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this administrative review by each of the mandatory respondents and certain separate–rate respondents demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the subject merchandise, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, for the purposes of these preliminary results, we have granted separate, company–specific rates to each of the five mandatory respondents and certain separate–rate respondents[21] that shipped wooden bedroom furniture to the United States during the POR. For a full discussion of this issue and list of separate–rate respondents, please see the *Separate–Rates Memo*.

Furthermore, we have found that certain separate–rate applicants[22] have

[21] Fujian Lianfu Forestry Co. Ltd./Fujian Wonder Pacific Inc.; Fuzhou Huan Mei Furniture Co., Ltd.; Jiangsu Dare Furniture Co., Ltd.; Fine Furniture (Shanghai) Limited; Foshan Guanqiu Furniture Co., Ltd.; Shanghai Aosen Furniture Co., Ltd., Starcorp Furniture Co., Ltd, Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., and Shanghai Xing Ding Furniture Industrial Co., Ltd.; Tianjin First Wood Co., Ltd.; Ace Furniture & Crafts Ltd. (a.k.a. Deqing Ace Furniture and Crafts Limited); Baigou Crafts Factory of Fengkai; Best King International Ltd.; Dalian Pretty Home Furniture; Decca Furniture Limited; Der Cheng Wooden Works of Factory; Dongguan Dihao Furniture Co., Ltd.; Dongguan Hua Ban Furniture Co., Ltd; Dongguan Mingsheng Furniture Co., Ltd.; Dongguan New Technology Import & Export Co., Ltd.; Dongguan Sunpower Enterprise Co., Ltd.; Dongguan Yihaiwei Furniture Limited; Kalanter (Hong Kong) Furniture Company Limited; Furnmart Ltd.; Guangzhou Lucky Furniture Co. Ltd.; Hong Yu Furniture (Shenzhen) Co. Ltd.; Hung Fai Wood Products Factory, Ltd.; Hwang Ho International Holdings Limited; King Wood Furniture Co., Ltd.; Meikangchi Nantong Furniture Company Ltd.; Nantong Yangzi Furniture Co., Ltd.; Po Ying Industrial Co.; Profit Force Ltd.; Qingdao Beiyuan-Shengli Furniture Co., Ltd.; Qingdao Shenchang Wooden Co., Ltd.; Red Apple Trading Co. Ltd.; Shenyang Kunyu Wood Industry Co., Ltd.; Shenzhen Dafuhao Industrial Development Co., Ltd.; Shenzhen Shen Long Hang Industry Co., Ltd.; Sino Concord International Corporation; T.J. Maxx International Co., Ltd.; Top Goal Development Co.; Transworld (Zhangzhou) Furniture Co. Ltd.; Wan Bao Chen Group Hong Kong Co. Ltd.; Winmost Enterprises Limited; Xilinmen Group Co. Ltd.; Yongxin Industrial (Holdings) Limited; and Zhongshan Gainwell Furniture Co. Ltd.

[22] Conghua J. L. George Timber & Co., Ltd., Four Seas Furniture Manufacturing Ltd., King Kei Furniture Factory, King Kei Trading Co. Ltd, Jiu

Continued

not demonstrated an absence of government control over their export activities, both in law and in fact, and are therefore, subject to the PRC–entity rate. *See Separate–Rates Memo.* For several of these entities,[23] the Department has found that additional information is necessary in order to determine whether they are eligible for separate–rate status, however, we did not address these issues in our supplemental questionnaires. Therefore, the Department will issue an additional supplemental questionnaire to these entities, and will re–evaluate their separate–rate status for the final results. *See Separate–Rates Memo.*

Finally, in the recently completed new shipper reviews, see *Final New Shipper Review*, the Department determined that Shenyang Kunyu Wood Industry Co., Ltd. ("Kunyu") and Meikangchi (Nantong) Furniture Company Ltd. ("Meikangchi") demonstrated their eligibility for separate–rate status and as such calculated an individual rate for each of these companies. The Department then instructed CBP to liquidate their entries for the new shipper review period, June 24, 2004, through June 30, 2005, at their respective assessment rates. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004–2005 Semi–Annual New Shipper Reviews*, 71 FR 70739 (December 6, 2006). Both Kunyu and Meikangchi are also subject to this administrative review where both have preliminarily been granted a separate rate. If both continue to demonstrate their eligibility for separate–rate status for the final results, the Department will instruct CBP to liquidate their entries for the period July 1, 2005, through December 31, 2005, at their respective assessment rates.

**Margins for Separate–Rate Applicants**

Exporters subject to this review that submitted responses to the Department's separate–rate application and had sales of the subject merchandise to the United States during the POR, but were not selected as mandatory respondents ("Separate–Rate Applicants") have applied for separate–rate status and provided information for the Department to consider for this purpose. Therefore, for the Separate–Rate Applicants that provided sufficient evidence that they are separate from the state–controlled entity, we have established a weighted–average margin based on an average of the rates we calculated for the five mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available. That rate is 62.94 percent. Entities receiving this rate are identified by name in the "Preliminary Results of Review" section of this notice and our *Separate–Rates Memo.*

**Application of Facts Available**

Section 776(a)(1) and (2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See SAA* at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

**Application of Total Adverse Facts Available**

**Huanghouse**

As discussed below, the Department initiated a new shipper review of Huanghouse's exports of merchandise covered by the antidumping duty order on wooden bedroom furniture from the PRC. *See New Shipper Initiation Notice.* On July 19, 2006, the Department issued Huanghouse a supplemental Section A questionnaire. On August 2, 2006, Huanghouse responded to the supplemental questionnaire but informed the Department that it did not intend to participate further in this new shipper review. We find that because Huanghouse ceased participation in the review, and none of the submitted information can be verified, Huanghouse has not demonstrated its entitlement to a separate rate and is, therefore, subject to the PRC–wide rate.

**Kong Fong Art Factory and Kong Fong Mao Iek Hong**

On April 18, 2006, Kong Fong Art Factory and Kong Fong Mao Iek Hong ("Kong Fong") submitted its separate–rate application to the Department. On

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Ching Trading Co., Ltd., Kong Fong Mao Iek Hong and Kong Fong Art Factory, Kunwa Enterprise Company, Macau Youcheng Trading Co., Ngai Kun Trading , Putian Ou Dian Furniture Co., Ltd., Speedy International, Ltd., Sanxiang Top Art Furniture, Top Art Furniture, Triple J Enterprises Co. and Mandarin Furniture (Shenzhen) Co. Ltd., Zhejiang Niannian Hong Industrial Co., Ltd., Zhongshan Winny Furniture Ltd., Winny Universal, Ltd., and Winny Overseas Ltd. (collectively "Winny"), and Zhongshan Youcheng Wooden Arts & Crafts Co. Ltd.

[23] Conghua J. L. George Timber & Co., Ltd., Four Seas Furniture Manufacturing Ltd., King Kei Furniture Factory, King Kei Trading Co. Ltd, Jiu Ching Trading Co., Ltd., Kunwa Enterprise Company, Macau Youcheng Trading Co., Ngai Kun Trading, Sanxiang Top Art Furniture, Top Art Furniture, and Zhongshan Youcheng Wooden Arts & Crafts Co. Ltd.

December 15, 2006, the Department issued Kong Fong a supplemental questionnaire on its separate–rate application. On January 12, 2007, Kong Fong informed the Department that it did not intend to participate further in the administrative review and it would not provide a response to the Department's supplemental questionnaire.

**Putian Ou Dian Furniture Co., Ltd.**

On April 18, 2006, Putian Ou Dian Furniture Co., Ltd. ("Putian") submitted its separate–rate application to the Department. On November 8, 2006, the Department issued Putian a supplemental questionnaire on its separate–rate application. On November 30, 2006, Putian informed the Department of its intent to withdraw from the administrative review, and stated that it would not provide a response to the Department's supplemental questionnaire. Pursuant to 19 CFR 351.214(f)(1), the Department "will rescind an administrative review, if the party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the review. The Department may extend this time limit if it determines that it is reasonable to do so." In this case, the 90-day regulatory deadline was June 5, 2006; however, Putian did not submit its withdrawal request until November 30, 2006, more than five months past the regulatory deadline and after receiving the Department's supplemental questionnaire. During that time, the Department expended resources in reviewing Putian's separate–rate application and issuing a supplemental questionnaire. Where a party withdraws its request for review after the regulatory deadline and the Department has already expended resources in reviewing that respondent's data, the Department does not permit the party to withdraw from the proceeding.[24] Therefore, the Department denies Putian's withdrawal because we have already expended resources in the conduct of this administrative review.

**Speedy International, Ltd. ("Speedy")**

Speedy is a company incorporated in the British Virgin Islands, and located on Taiwan. Speedy has a branch office in the PRC, but that entity does not have legal person status. Speedy claims that its owner is a citizen of Taiwan. The SRA states that firms owned by entities located in market–economy countries need only fill out the certifications contained in the application and provide supporting documentation for the fields in the application that are marked with an asterisk, "provided that the ultimate owners are also located in market–economy countries." Speedy responded only to those items marked with an asterisk; however, the documentation that it provided in its questionnaire response failed to support its claim that its owner was a citizen of Taiwan. Consequently, we preliminary determine that Speedy is not eligible for separate–rate status.

**Triple J Enterprises Co. Ltd. And Mandarin Furniture (Shenzhen) Co. Ltd. ("Triple J")**

Triple J submitted an SRA on April 18, 2006. On November 17, 2006 the Department issued a supplemental questionnaire to Triple J, establishing a due date of November 27, 2006 for Triple J's response. The Department telephoned Bruce Aitken of Aitken Berlin & Vrooman, counsel for Triple J, twice on November 17, 2006, both times leaving messages on Mr. Aitken's voice mail informing him that the supplemental questionnaire was available for pickup. The Department left voice messages again on November 22, 2006 and November 27, 2006 informing Mr. Aitken that the supplemental questionnaire still had not been picked up. Mr. Aitken did not return the Department's calls and Triple J did not pick up the supplemental questionnaire or submit a supplemental questionnaire response, nor did it request an extension of the deadline to respond to the supplemental questionnaire. The Department determined that the SRA contained several areas in which additional information was required for the Department to consider Triple J's eligibility for separate–rate status. For instance, the Department asked that Triple J explain how the submitted sales–related documents tied to one another to demonstrate that they related to the same sale. The Department also requested that Triple J submit a complete, fully translated copy of its business registration. In addition, the Department requested that Triple J correct inaccuracies found by the Department in the translation of the submitted Shareholder Certificate, and proof that the ultimate owners were citizens of a market–economy country. Consequently, we find that Triple J does not merit a separate rate and will remain part of the PRC entity because by not responding to the Department's request for information, it has not demonstrated an absence of government control either in law, or in fact.

**Zheijiang Niannian Hong Industrial Co., Ltd ("Nanaholy")**

On April 18, 2006, Nanaholy submitted its SRA. On October 23, 2006, the Department issued a supplemental questionnaire to Nanaholy. The due date for Nanaholy's response to the supplemental questionnaire was November 6, 2006. Nanaholy did not submit a response to the supplemental questionnaire nor did it request an extension of the due date to respond. Nanaholy's importer and U.S. customer, acting on Nanaholy's behalf in this proceeding, claimed that it never received the Department's October 23, 2006 supplemental questionnaire. On November 17, 2006, the Department provided Nanaholy with another opportunity to complete the supplemental questionnaire.

After analyzing Nanaholy's supplemental questionnaire response, the Department has determined the response to be deficient. First, Nanaholy failed to provide the requested auditor's notes that accompanied its capital statement. Second, the Department requested detailed information on the relationship between Nanaholy and its U.S. customer Starlin Interiors. Nanaholy stated it had an exclusive 10-year contract with Starlin Interiors, but did not provide a copy of this contract as requested by the Department. Third, the Department requested a fully translated copy of Nanaholy's audited financial statements. Nanaholy resubmitted a translated copy of what appears to be a summary of its financial statements, but did not submit the requested fully translated copy. Thus, the Department has preliminarily determined that Nanaholy is not eligible for a separate rate because it has failed to demonstrate an absence of government control of its export activities, in law and in fact.

**Zhongshan Winny Furniture Ltd. ("Winny")**

Winny submitted its SRA on April 17, 2006. However, information contained in Winny's application indicates that is the manufacturer of the subject merchandise, and that the subject merchandise was exported by during the POR by its affiliate Winny Overseas Ltd. ("Winny Overseas"). On December 11, 2006, the Department issued to Winny Overseas a supplemental questionnaire requesting that Winny Overseas submit an SRA under its own name. Winny Overseas did not respond to the Department's supplemental questionnaire and failed to submit an

[24] *See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 71 FR 65458 (November 8, 2006).

SRA in its own name. As a result, we preliminarily find that Winny is not eligible for a separate rate because it did not export subject merchandise to the United States during the POR.

**The PRC–Wide Entity**

The Department issued a letter to all respondents identified in the *Initiation Notice* informing them of the requirements to respond to both the Department's Quantity and Value Questionnaire and either the separate–rate application or certification, as appropriate. Although Time Crown (U.K.) International Ltd, and China United International Co., (collectively "China United") and Hainan Ruiai Furniture Co., Ltd, ("Ruiai Furniture") requested an administrative review, they did not respond to the Quantity and Value Questionnaire and the separate–rate application/certification. Also, several separate–rate applicants (*i.e.*, Kong Fong, Putian, Speedy, Triple J, Nanaholy, and Winny) did not respond to the Department's supplemental questionnaires. *See Separate–Rates Memo.* Additionally, Huanghouse, one of the companies subject to a new shipper review, informed the Department, after responding to the supplemental Section A questionnaire, that it would no longer participate in the new shipper review (see *Huanghouse* above). Therefore, the Department determines preliminarily that there were exports of merchandise under review from PRC producers/exporters that did not respond to the Department's questionnaire and consequently did not demonstrate their eligibility for separate–rate status. As a result, the Department is treating these PRC producers/exporters as part of the countrywide entity.

Additionally, because we have determined that the companies named above are part of the PRC–wide entity, the PRC–wide entity is now under review. Pursuant to section 776(a) of the Act, we further find that because the PRC–wide entity (including the companies discussed above) failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, submitted information that cannot be verified, or otherwise impeded the proceeding, it is appropriate to apply a dumping margin for the PRC–wide entity using the facts otherwise available on the record. Additionally, because these parties failed to respond to our requests for information, we find an adverse inference is appropriate.

**First Wood**

As noted above, the Department initiated a new shipper review of First Wood's exports of merchandise covered by the antidumping duty order on wooden bedroom furniture from the PRC. *See New Shipper Initiation Notice.* On March 14, 2006, the Department issued its antidumping duty questionnaire to First Wood. The Department received First Wood's Section A response on April 18, 2006, and its Sections C, and D questionnaire responses on May 11, 2006. The Department issued its first supplemental questionnaire to First Wood (addressing deficiencies in the response to Sections A, C and D) on July 14, 2006, and received the company's response on August 17, 2006 ("First Wood 1st Supplemental Response"). On December 7, 2006, the Department issued First Wood a second supplemental questionnaire (again addressing deficiencies in the company's response to Sections A, C, and D, repeating many of the questions asked in the original and first supplemental questionnaires), to which First Wood responded on January 3, 2007 ("First Wood 2nd Supplemental Response"). In that supplemental response, First Wood indicated that it would be amenable to withdrawing its request for review if the Department would consider allowing the late withdrawal.

On January 9, 2007, First Wood clarified this statement by submitting a withdrawal of its request for review. Pursuant to 19 CFR 351.214(f)(1), the Department "may rescind a new shipper review under this section...if a party that requested a review withdraws its request not later then 60 days after the date of publication of notice of initiation of the requested review." In this case, the 60-day regulatory deadline was May 7, 2006; however, First Wood did not submit its withdrawal until January 9, 2007, more than 7 months past the regulatory deadline. During that time, the Department expended considerable resources reviewing First Wood's original questionnaire response, issuing two sets of supplemental questionnaires, each addressing Sections A, C, and D of its response and reviewing the two supplemental responses. Where a party withdraws its request for review after the regulatory deadline and the Department has already expended considerable resources in reviewing that respondent's data, the Department does not permit the party to withdraw from the proceeding.[25] Therefore, the Department denies First Wood's request because we have already expended considerable resources in the conduct of this new shipper review.

With respect to First Wood's Section A questionnaire responses and its information regarding separate–rate eligibility, the Department has determined that First Wood has responded fully to this part of the questionnaire. Moreover, First Wood has not declined to participate in verification and, therefore, has not impeded the proceeding with respect to the issue of its separate–rate status. For a further discussion of the preliminary decision that First Wood has demonstrated its eligibility for a separate rate, please see the *Separate–Rates Memo.*

However, notwithstanding the fact that the Department issued two full sets of supplemental questionnaires to First Wood regarding its reported sales and factors information, repeating many of the same questions in both supplemental questionnaires, First Wood withheld crucial sales and production information requested by the Department and failed to report information in the form or manner requested as described in sections 776(a)(2)(A) and (B) of the Act. As a consequence, the Department has preliminarily determined that it does not have sufficient information on the record of this review to calculate a margin for First Wood based on the respondent's submitted data, pursuant to section 776(a)(1) of the Act. Specifically, in the original and first and second supplemental questionnaires, the Department requested that First Wood provide sales and cost reconciliations reconciling its reported POR sales and FOPs to its financial statements. Sales and cost reconciliations serve as the starting point for the Department to use a respondent's data as they provide a road map for how the reported information is an accurate reflection of the information contained in the company's books and records and its financial statements. Without these reconciliations, the Department is unable to ascertain whether the sales and factor information submitted by the respondent are consistent with its financial statements. Nor, can the Department conduct a verification of the sales and factor information. Additionally, in the original and two subsequent

[25] *See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 71 FR 65458 (November 8, 2006).

supplemental questionnaires, the Department requested that First Wood report quantifiable units of measure for its reported consumption of FOPs. For example, for a certain input, First Wood reported "bottle" as the unit of measure. However, it never specified a manner of quantifying the amount of the FOP actually consumed (*e.g.*, liter bottle or quart bottle). Due to the proprietary nature of this discussion, please *see Application of Adverse Facts Available, Tianjin First Wood Co. Ltd. ("First Wood") in the Preliminary Results in the New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China*, dated January 31, 2007 ("*First Wood AFA Memo*"). Without quantifiable measurements for the reported FOPs, the Department is unable to determine the actual consumption rate or calculate a value for those FOPs and consequently is unable to calculate a margin using the reported data. For further discussion of First Wood's reporting failures, *see First Wood AFA Memo*.

Sections 776(a)(2)(A), (B), (C) and (D) of the Act authorize the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act in this proceeding, significantly impedes the proceeding, or provides such information, but the information cannot be verified.

The Department has preliminarily determined that, pursuant to Section 782(e) of the Act, it cannot rely on the information provided by First Wood and that the use of facts otherwise available is warranted for First Wood pursuant to each of the four criteria identified in section 776(a)(2) of the Act. Specifically, First Wood withheld the sales and cost reconciliations as well as extensive FOP data requested by the Department as discussed above. In addition, First Wood failed to provide the units of measure for its FOP consumption in a form or manner requested by the Department. Further, First Wood reported its FOP consumption in units of measure in a manner that does not allow the Department to identify the actual consumption rates or calculate the value for the FOP consumed in the production of subject merchandise, thereby significantly impeding the proceeding. *See First Wood AFA Memo*. Furthermore, First Wood's failure to provide the requisite sales and FOP (cost) reconciliations has resulted in the sales and FOP data being unverifiable, as discussed above.

Section 782(d) of the Act requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency and give the respondent an opportunity to remedy or explain the deficiency. In addition to its original questionnaire, the Department issued two supplemental questionnaires to First Wood. In each of these three questionnaires, the Department requested that First Wood provide sales and cost reconciliation documents demonstrating how it identified the sales and cost information it reported to the Department and reconciling the reported sales and cost data to its financial statements, as well as the reported units of measure for its FOPs. Despite being afforded three opportunities to supply the requested information and/or provide a reason for its inability to do so, First Wood failed to furnish the required sales and cost reconciliations and units of measure for quantifying inputs. *See First Wood AFA Memo*. Consequently, the Department has determined that the information submitted by First Wood is inappropriate for use pursuant to section 782(e) of the Act. Specifically, as discussed above, the sales and FOP information cannot be verified; further, the information is so incomplete (see discussion of FOP units of measure and *First Wood AFA Memo*) it cannot serve as a reliable basis for reaching the applicable determination and cannot be used without undue difficulties, and First Wood has not demonstrated that it acted to the best of its ability to comply with the Department's requests for information. Therefore, the Department has preliminarily determined that the use of total facts available are warranted with respect to First Wood for this new shipper review.

Moreover, we have determined that First Wood has not acted to the best of its ability in providing the requested data. While the standard for cooperation does "not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping." *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003). In this instance, First Wood requested that it be a reviewed as a new shipper, but then failed to adequately respond to our requests for information. In addition, First Wood did not apprise the Department of any reason why it could not furnish the requested information. Considering that this type of information is expected to be normally part of the financial statement and accounting ledgers that First Wood maintains, First Wood was not acting as a "reasonable respondent" nor was it acting "to the best of its ability," as required by the statute. Based on First Wood's lack of cooperation, we preliminarily determine that it has failed to cooperate to the best of its ability in responding to the Department's requests for information. Therefore, we preliminarily determine that, when selecting from among the facts otherwise available, an adverse inference is warranted for First Wood pursuant to section 776(b) of the Act.

**Selection of the Adverse Facts Available Rate**

In sum, because the PRC–wide entity failed to respond to our request for information, it has failed to cooperate to the best of its ability. Further, as discussed above, First Wood also failed to cooperate to the best of its ability with respect to responding to the Department's requests for information. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate pursuant to section 776(b) of the Act for both the PRC–wide entity and First Wood.

In deciding which facts to use as adverse facts available ("AFA"), section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See SAA* at 870. See also, *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005).

Generally, it is the Department's practice to select, as AFA, the highest rate in any segment of the proceeding. *See, e.g., Certain Cased Pencils from the People's Republic of China; Notice of Preliminary Results of Antidumping*

*Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005).

The Court of International Trade ("CIT") and the Court of Appeals for the Federal Circuit ("Fed. Cir.") have consistently upheld the Department's practice. *See Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990) (upholding the Department's presumption that the highest margin was the best information of current margins) ("*Rhone Poulenc*"); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in an LTFV investigation); *Kompass Food Trading International v. United States*, 24 CIT 678, 683 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondents' prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." *See Rhone Poulenc*, 899 F. 2d at 1190.

As AFA, we have preliminarily assigned to the PRC–wide entity and to First Wood a rate of 216.01 percent, the highest calculated rate from the most recently completed new shipper reviews of wooden bedroom furniture from the PRC which is the highest rate on the record of all segments of this proceeding. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the highest calculated rate from the recently published new shipper review to determine an AFA rate is subject to the requirement to corroborate secondary information. *See* the *Corroboration of Secondary Information* section below.

**Application of Partial Facts Available**

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department or when an interested party fails to provide the information requested in a timely manner and in the form required. Additionally, section 776(b) of the Act provides for the use of AFA when an interested party has failed to cooperate by not acting to the best of its ability. We have concluded that the Dare Group and Starcorp each did not cooperate to the best of its ability, see below for specific explanations for each mandatory respondent.

**Dare Group**

We have preliminarily determined that the use of a partial adverse inference is warranted for certain FOPs reported by the Dare Group.

The information the Department requested is incomplete for several of the Dare Group's sales, and as a result, the Department is unable to calculate margins for these sales based on the information supplied. Specifically, the Dare Group's December 18, 2006, Section D database inexplicably reported labor usages of zero for numerous control numbers. On December 16, 2006, the Department notified the Dare Group that its FOP database reported these zero values. *See* January 16, 2007, Memorandum to the File from Eugene Degnan re: *Telephone Conversation with Counsel for the Dare Group*. In its January 22, 2007, supplemental Sections A, C, and D response, the Dare Group explained the basis for these erroneous zero amounts reported, and stated that it had rectified the errors and reported labor for all of its control numbers. However, numerous control numbers in the Dare Group's January 22, 2007, FOP database continue to have zero values reported for both indirect and packing labor.

Because the Dare Group has not provided the Department with complete information with respect to indirect and packing labor for certain control numbers, as requested in the Department's questionnaires, the Department does not have adequate information to calculate margins for the sales in question. Thus, the information on the record cannot serve as a reliable basis for this review under section 782(e) of the Act. Accordingly, we have determined that we must calculate margins for the sales in question using facts otherwise available in accordance with sections 776(a)(2)(A) and 776(a)(2)(B) of the Act.

We have further concluded that when selecting from among the facts available, an adverse inference is appropriate pursuant to section 776(b) of the Act. In this instance, the Department fully notified the Dare Group of the deficiencies in its submission to the Department, and has further provided the Dare Group with the opportunity to correct its deficiencies. Despite these efforts, the Dare Group failed to provide us with all of the missing data. The courts have recognized that, notwithstanding the Department's obligations to notify parties of deficiencies in submissions received, a respondent also has the burden to create a complete and accurate record. *See e.g. Pistachio Group of Association Food Industries v. United States*, 671 F. Supp. 31, 39–40 (CIT 1987). Because the Dare Group did not provide us with information we requested, despite being provided multiple opportunities to do so, we find that it has not cooperated to the best of its ability, pursuant to section 776(b) of the Act, when providing us with the requisite information from which we could calculate margins for the sales in question.

Therefore, in accordance with sections 776(a)(2) and 776(b) of the Act, we have applied partial AFA in calculating the Dare Group's margin. For each of the Dare Group's transactions that have a zero value for indirect and/or packing labor, we have applied the highest value of the respective CONNUM from the Dare Group's FOP database. *See* Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, from Eugene Degnan, Case Analyst, *Analysis for the Preliminary Results of Wooden Bedroom Furniture from the People's Republic of China: Fujian Lianfu Forestry Co./Fujian Wonder Pacific Inc./ Fuzhou Huan Mei Furniture Co., Ltd./ Jiangsu Dare Furniture Co., Ltd. ("Dare Group")* ("*Analysis Memo Dare Group*"), dated January 31, 2007.

**Starcorp**

We have preliminarily determined that the use of a partial adverse inference is warranted for certain U.S. sales made by Starcorp.

In its questionnaire responses, Starcorp reported that it operates four separate plants, which produce finished subject merchandise from raw material inputs. *See* Starcorp's Section A response, dated August 25, 2006. For respondents with multiple production plants, the Department's normal practice is to weight–average plant–specific FOPs by control number. The Department's questionnaire requires

that the respondent provide information regarding the weighted–average FOPs across all of the company's plants that produce the subject merchandise. *See* Section D of the Department's Questionnaire, released to parties on July 28, 2006. The Department normally finds that, due to differences in product mixes and production efficiencies at each plant, this methodology ensures that the Department's calculations are as accurate as possible. *See e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695–02 (April 17, 2006); *Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 70 FR 67420, (November 7, 2005); *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003), and the accompanying Issues and Decision Memorandum at Comment 19.

In its October 2, 2006, Section D questionnaire response ("DQR"), rather than submit weighted–average information from its four production facilities, Starcorp instead submitted an FOP database based on data maintained in what it refers to as its "combined" financial statements. In this questionnaire response, Starcorp asserted that its combined data reflected its actual factors consumption during the POR. Starcorp further stated that it reported its FOPs based on "a standard cost allocation methodology that allocated its total actual consumption of a given raw material to each unit of a particular model sold during the POR." *See* pages D–10–11 of the DQR. However, in this questionnaire response, Starcorp did not acknowledge that some of its control numbers sold during the POR were not produced during the POR. In fact, Starcorp's response was misleading in that it stated "Starcorp has reported the per unit consumption of all raw materials used to produce the subject merchandise in its FOP data file in Field No.2.1 to Field No.2.69. Starcorp grouped these Fields into 11 categories based on the allocation methodology it used to determine the appropriate per–unit factor of production for each of the CONNUMs produced and sold during the POR," *See* DQR at page 11, thus indicating that the merchandise sold had all been produced during the POR.

In our first supplemental questionnaire, we instructed Starcorp to provide separate databases for each of its four plants. In its response, Starcorp declined to comply with our request and continued to assert the accuracy and relevance of the "combined" database, arguing that the "combined" financial system truly reflects the full integration of the four plants. *See* pages 1–2 of Starcorp's November 29, 2006, supplemental Section D questionnaire response ("SDQR"). In that same response, Starcorp went on to argue that it did not in fact maintain a standard cost system, but rather maintained a "bill of materials" and that its own term "'standard usage rate' is an inaccurate way to describe the net volume of material needed to produce a given product. 'Standard usage rate' represents the quantities of each input that actually comprise the finished good." *See* SDQR at pages 3–4. In other words, according to Starcorp, "standard usage rate" reflects the net consumption contained in the finished product, not the gross consumption used to produce the finished product. In continuing to explain its calculation methodology, Starcorp explained that it "allocated the actual consumption of factors over the net volume of materials." Starcorp further explained that, using the "standard usage rate" from the bill of materials, it "multiplied the net volume of surface area of different types of materials by the production quantity for each product produced during the POR, and aggregated the results to derive the total net volume of different materials." *See* SDQR at pages 4–5. Again, there is no indication in Starcorp's response that it did not actually produce during the POR all the merchandise it sold during the POR.

In our second supplemental Section D questionnaire, the Department asked Starcorp to provide additional information to support its claim that the plant–specific databases are inappropriate for use in the margin calculation. *See* the Department's Supplemental Questionnaire dated December 20, 2006, at question 2. In its second supplemental Section D questionnaire response, dated January 8, 2007, Starcorp finally submitted the multiple FOP databases the Department had requested initially, along with a revised combined Starcorp–wide database, and what it purported was a weighted–average database of the data from the four individual plants. However, after analyzing the data submitted, we found that the four individual plant–specific FOP databases are missing control numbers that were included in both the "combined" and weighted–average databases. Additionally, our analysis revealed reported U.S. sales of control numbers for which there is no corresponding FOP data in any of the four plant–specific databases.

In response to comments submitted by Petitioners on January 16, 2007, reflecting an analysis similar to that described above, Starcorp, in a submission on January 19, 2007, attempting to explain the above discrepancies, stated that the "combined" database provided factors for all control numbers in the U.S. sales database, even those not produced during the POR, while the four individual plant databases only provided FOPs for merchandise produced during the POR. Starcorp also stated, for the first time, that the weighted–average database is based on the control numbers of the four individual plant databases plus additional control numbers reflecting merchandise sold but not produced during the POR. *See* Starcorp's January 19, 2007, submission at page 6. In its January 19, 2007, submission, Starcorp relayed for the first time in this proceeding certain information regarding the contents of its combined and so–called weighted–average databases. Specifically, Starcorp stated that the four individual plant databases reflect the production quantities and FOPs of products produced during the POR, while the "combined" and weighted–average databases also include 1) data that reflect the sales quantities and FOPs of products which were sold but not produced during the POR, and 2) sales quantities and FOPs of certain products sold as sets, which are produced as only separate parts by the individual plants.

The revelation by Starcorp that the "combined" database, as well as the weighted–average database, reflected sales quantities and FOPs for products which were sold but not produced, appears not to be in line with the information Starcorp provided in its earlier responses, in which Starcorp stated it was reporting production quantities in its FOP database. Specifically, in its initial questionnaire, the Department instructed respondents to provide a reconciliation tying their reported sales and production quantities to their internal accounting documents and financial statements. In responding to this request, Starcorp provided schedules which clearly indicate differences between production amounts and sales amounts, and which indicate that the combined database reflected production, not sales quantities. *See* Exhibits SD–26 and SD–29 of the November 29, 2006, response.

Nevertheless, in piecing together Starcorp's methodology from its contradictory and confusing submissions, it appears that Starcorp may have allocated the variance between its actual consumption of inputs during the POR to the model–specific "standard usage rate" reflected on its bill of materials for each product sold during the POR and the total net volume. However, since actual consumption would vary from year–to-year based on the product mix produced, it is unclear how applying the consumption ratio that occurred in one year's production reflects the consumption ratio that would have resulted from the prior year's production which may have yielded a different product mix. Thus, for all products that Starcorp did not produce during the POR, it did not even attempt to identify accurate consumption rates.

For the preliminary results, we have determined to use the four plant–specific individual databases in our margin calculation program, because the record indicates that these databases contain the FOPs for those products which were produced by each plant, and do not incorporate sales quantities in the allocation of factor consumption to each control number. While Starcorp has provided what it stated was a weighted–average database for all four plants, we find that this is not the case and, therefore, it is inappropriate for use in our margin calculation. Similarly, the "combined" FOP database, by Starcorp's own admission, also does not reflect actual production during the POR. Thus, the Department has determined to use the four plant–specific individual databases, which appear to be based on the plant–specific production quantities and FOPs. However, this database is missing certain control numbers, which leaves certain U.S. transactions without a corresponding FOP. Thus, information on the record cannot serve as a reliable basis for calculating a margin on these transactions for this determination under section 782(e) of the Act. Therefore, the Department must use the facts otherwise available to calculate margins for all of Starcorp's U.S. sales that do not have a matching FOP control number in the four individual plant databases. We have concluded that Starcorp did not cooperate to the best of its ability because it did not disclose, in a timely manner, the nature of all its reported FOP and quantity data that would allow the Department to conduct a meaningful analysis or calculate a margin based on all the U.S. sales it reported. Despite being asked to submit the four individual databases much earlier in the proceeding, Starcorp only submitted these databases on January 8, 2007. Moreover, Starcorp only first identified the nature of reporting less than two weeks before the deadline for the preliminary results of review. Therefore, in accordance with sections 776(a)(2) and 776(b) of the Act, we have applied AFA to all of Starcorp's U.S. sales that do not have a matching control number in the individual plant databases. As AFA, we have applied 216.01 percent, the rate calculated for another respondent in the recently completed new shipper review. *See* Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, from Lilit Astvatsatrian, Case Analyst, *Analysis for the Preliminary Results of Wooden Bedroom Furniture from the People's Republic of China: Shanghai Starcorp Furniture Co., Ltd., Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., and Shanghai Xing Ding Furniture Industrial Co., Ltd.* ("*Analysis Memo Starcorp*"), dated January 31, 2007.

**Application of Facts Available**

**Dare Group**

We have preliminarily determined that the use of facts available is warranted for certain sales reported by the Dare Group.

The information the Department requested is incomplete for several of the Dare Group's sales and, as a result, the Department is unable to calculate margins for these sales based on the information supplied. Specifically, in its October 2, 2007, Section C submission, the Dare Group reported the unit weight in kilograms in its U.S. sales database. On November 22, 2006, the Department issued a supplemental Section C & D questionnaire requesting that the Dare Group provide a field in its U.S. sales database for the gross unit weight. In its December 18, 2006, supplemental Section C and D response, the Dare Group submitted a U.S. sales database with a field for gross unit weight. However, this field reported quantities of zero for numerous transactions.

Because the Dare Group has not provided the Department with complete information with respect to the gross unit weights of these sales, the Department cannot calculate dumping margins for the sales with reported quantities of zero. Accordingly, we find that for the sales at issue, we must calculate dumping margins using the facts otherwise available pursuant to sections 776(a)(2)(A) and (B) of the Act.

In accordance with section 776(a)(2) of the Act, we have applied facts available to the Dare Group's sales with reported quantities of zero. As facts available, we have applied the Dare Group's weighted–average margin to these sales. *See Analysis Memo Dare Group*. At this time we do not find an adverse inference is appropriate because we did not identify the deficiency and did not provide the Dare Group with an opportunity to remedy the deficiency. The Department will issue supplemental questionnaires after issuance of these preliminary results of review, and further analyze these transactions for the final results.

**Fine Furniture**

We have preliminarily determined that the use of a facts available is warranted for certain sample sales made by Fine Furniture.

Despite the Department's requests for information, Fine Furniture has not provided us with complete and accurate information with respect to certain U.S. sample sales it made during the POR. For certain of these U.S. sample sales, while Fine Furniture reported the invoice price of the transactions for all of its U.S. sample sales, it failed to report control numbers for these sales. For certain other U.S. sales Fine Furniture provided control numbers in its U.S. database that do not correspond to control numbers in its FOP database. Furthermore, Fine Furniture has not provided any explanation that sheds light on these discrepancies. Absent this information, (*i.e.*, accurate control numbers, needed to compare NV to U.S. price), the Department cannot calculate dumping margins for the sample sales in question. Thus, the information on the record cannot serve as a reliable basis for this determination under section 782(e) of the Act. Accordingly, we find that for the sample sales at issue, we must calculate dumping margins using the facts otherwise available pursuant to sections 776(a)(2)(A) and (B) of the Act.

In accordance with section 776(a)(2) of the Act, we have applied facts available for each of Fine Furniture's U.S. sample sales that do not have a control number. As facts available, we have applied Fine Furniture's weighted–average margin to these sales. *See* Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, from Paul Stolz, Case Analyst, *Analysis for the Preliminary Results of Wooden Bedroom Furniture from the People's Republic of China: Fine Furniture (Shanghai) Limited and its affiliates* ("*Analysis Memo Fine Furniture*"), dated January 31, 2007. At this time we do not find an

adverse inference is appropriate because we did not identify the deficiency and did not provide the Fine Furniture with an opportunity to remedy the deficiency. The Department will issue supplemental questionnaires after issuance of these preliminary results of review, and further analyze these transactions for the final results.

**Corroboration**

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise. *See SAA* at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (Nov. 6, 1996) (unchanged in the final determination). Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003) (unchanged in final determination); and, *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005).

The AFA rate that the Department is now using was determined in the recently published new shipper review. *See Final New Shipper Review* 71 FR 70741. In the new shipper review, the Department calculated a company–specific rate, which was above the PRC–wide rate established in the LTFV investigation. Because this new rate is a company–specific calculated rate, we have determined this rate to be reliable.

To assess the relevancy of the new rate used, the Department examined the highest rate from the recently completed new shipper review. We find that the highest rate from the new shipper proceeding of 216.01 percent is relevant to this proceeding because: (1) it is a company–specific calculated rate; and (2) the new shipper review period overlaps this administrative review period by twelve months (*i.e.*, June 24, 2004, through June 30, 2005). Therefore, we have determined the 216.01 percent rate to be relevant for use in this administrative review.

As the adverse margin is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that this rate, meets the corroboration criteria established in section 776(c) that secondary information have probative value. As a result, the Department determines that the margin is corroborated for the purposes of this administrative review and may reasonably be applied to First Wood, Huanghouse, Starcorp, and the PRC–wide entity as AFA.

Because these are preliminary results of review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final adverse margin. *See Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000).

**Export Price**

For the Dare Group, Fine Furniture, Foshan Guanqui, and Starcorp, we based the U.S. price on export price ("EP"), in accordance with section 772(a) of the Act, because EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. Additionally, we calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States.

For the Dare Group, we calculated EP based on delivered prices to unaffiliated purchaser(s) in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight expenses for inter–factory shipping, inland freight from the plant to the port, foreign brokerage and handling, U.S. brokerage and handling, and import duties. We also deducted certain customer discounts from the gross unit price.

For the Dare Group, the Department has denied its claim for a U.S. price adjustment (i.e., Other Revenue) for the preliminary results. From the information that the Dare Group has submitted on the record, we have determined that this may be a circumstance–of-sale adjustment rather than an adjustment to U.S. price, and since the Department is not able to make circumstance–of-sale adjustments in NME proceedings, we have denied this adjustment. For a detailed description of all adjustments, see *Analysis Memo Dare Group*.

For Foshan Guanqui, we calculated EP based on delivered prices to unaffiliated purchaser(s) in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included inland freight - plant/warehouse to port of exit. Additionally, for certain sales, we deducted brokerage and handling, international ocean freight, and market economy brokerage and handling expenses from the gross unit price, in accordance with section 772(c) of the Act.

For Foshan Guanqui, the Department has denied its claim for a U.S. price adjustment (*i.e.*, Convenience Fee) for the preliminary results. From the information that Foshan Guanqui has submitted on the record, we have determined that this convenience fee does not have any relationship to Foshan Guanqui sales of subject merchandise to the United States. Therefore, we have denied this adjustment. For a detailed description of all adjustments, see Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, from Hua Lu, Case Analyst, *Analysis for the Preliminary Results of Wooden Bedroom Furniture from the People's Republic of China: Foshan Guanqiu Furniture Co., Ltd.* ("*Analysis Memo Foshan Guanqiu*"), dated January 31, 2007.

For Shanghai Aosen, we calculated EP based on delivered prices to unaffiliated purchaser(s) in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight and foreign brokerage and handling expenses. For a detailed description of all adjustments, see Memorandum to The File Through

Robert Bolling, Program Manager, China/NME Group, from Hilary Sadler, Case Analyst, *Analysis for the Preliminary Results of Wooden Bedroom Furniture from the People's Republic of China: Shanghai Aosen Furniture Co., Ltd.* ("*Analysis Memo Shanghai Aosen*"), dated January 31, 2007.

For Starcorp, we calculated EP based on delivered prices to unaffiliated purchaser(s) in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included inland freight from the plant to the port of exit and domestic brokerage and handling charges. For a detailed description of all adjustments, see *Analysis Memo Starcorp*.

**Constructed Export Price**

In accordance with section 772(b) of the Act, we used Constructed Export Price ("CEP") methodology for Fine Furniture because the first sale to the unaffiliated person was made by Fine Furniture's U.S. affiliate, Fine Furniture Design & Marketing LLC ("FFDM"). We calculated the CEP for Fine Furniture based on the sales made by FFDM to unaffiliated U.S. customers. We based CEP on delivered prices to the first unaffiliated purchaser in the United States.

For Fine Furniture, we made adjustments to the gross unit price for revenue item(s), foreign inland freight from the processing facility to the port of exit, export fees, international ocean freight, marine insurance, and U.S. import duties. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including commissions, warranty expenses, credit expenses, discounts, rebates, billing adjustments, royalties, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. *See Analysis Memo Fine Furniture.*

For the Dare Group, Fine Furniture, and Starcorp, we note that each entity provided a separate database of free–of-charge merchandise, as requested in our original questionnaire. *See* Original Questionnaire dated July 28, 2006. For the preliminary results, we have not included any of these transactions in our margin calculation programs. However, we have not had an opportunity to issue supplemental questionnaires with respect to these sales; therefore, the Department will issue supplemental questionnaires after issuance of the preliminary results of review to further analyze these transactions for the final results.

**Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOP, because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 772(c)(3) of the Act, FOPs include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used FOPs reported by respondents for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value to value FOPs, but when a producer sources an input from a market economy and pays for it in market–economy currency, the Department will normally value the factor using the actual price paid for the input. See 19 CFR 351.408(c)(1); *see also Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994). However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use SVs to determine the NV. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) ("*TRBs 1998–1999*"), and accompanying Issues and Decision Memorandum at Comment 1.

It is the Department's consistent practice that, where the facts developed in the United States or third–country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non–industry specific export subsidies), it is reasonable for the Department to find that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See TRBs 1998–1999* at Comment 1; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1; *see also China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1338–39 (CIT 2003).

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized, but rather relies on information that is generally available at the time of its determination. *See also* H.R. Rep. 100–576, at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24.

We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. Through other proceedings, the Department has learned that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, finds it reasonable to infer that all exports to all markets from these countries may be subsidized. See, *e.g.*, *TRBs 1998–1999* at Comment 1. Accordingly, we have disregarded prices from Indonesia, South Korea and Thailand in calculating the Indian import–based SVs because we have reason to believe or suspect such prices may be subsidized.

**Factor Valuations**

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POR. To calculate NV, we multiplied the reported per–unit factor quantities by publicly available Indian SVs (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997). Due to the extensive

number of SVs it was necessary to assign in this administrative review, we present a discussion of the main factors. For a detailed description of all SVs used to value the respondent's reported FOPs, see Factor Valuation Memorandum.

The mandatory respondents reported that certain of their reported raw material inputs were sourced from a market–economy country and paid for in market–economy currencies. Pursuant to 19 CFR 351.408(c)(1), when a mandatory respondent source inputs from a market–economy supplier in meaningful quantities (*i.e.*, not insignificant quantities), we use the actual price paid by respondents for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997). The Dare Group, Fine Furniture, Shanghai Aosen, and Starcorp's reported information demonstrates that the quantities of certain raw materials purchased from market–economy suppliers are significant. For a detailed description of all actual values used for market–economy inputs, see the company–specific analysis memoranda dated January 31, 2007. Where the quantity of the input purchased from market–economy suppliers is insignificant, the Department will not rely on the price paid by an NME producer to a market–economy supplier because it cannot have confidence that a company could fulfill all its needs at that price. For two mandatory respondents (*i.e.*, the Dare Group and Fine Furniture), the Department found certain of their inputs purchased from market–economy suppliers to be insignificant. *See Analysis Memo Dare Group* and the *Analysis Memo Fine Furniture*. In these instances, for the preliminary results, we valued the market economy purchase using the appropriate SV for this input. *Id.* For wood inputs (*e.g.*, lumber of various species), wood veneer of various species, processed woods (*e.g.*, fiberboard, particleboard, plywood, etc.), adhesives and finishing materials (*e.g.*, glue, paints, stains, lacquer, etc.), hardware (*e.g.*, nails, staples, screws, bolts, knobs, pulls, drawer slides, hinges, clasps, etc.), other materials (*e.g.*, mirrors, glass, leather, marble, cloth, foam, etc.), and packing materials (*e.g.*, cardboard, cartons, styrofoam, bubblewrap, labels, tape, etc.), we used import values from the World Trade Atlas® online ("Indian Import Statistics"), which were published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POR. Where data appeared to be aberrational within selected HTS values, we removed the aberrational data from the calculation of these selected HTS values. For a complete listing of all the inputs and the valuation for each mandatory respondent see the *Factor Valuation Memorandum*.

Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund. *See Factor Valuation Memorandum*; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517, 2522 (January 17, 2006) ("*TRBs 2003–2004*").

For the purposes of the preliminary results, the Department has used http://www.allmeasures.com and other publicly available information where interested parties did not submit alternative conversion values for specific FOPs. Due to the complexity and number of the conversions, however, the Department has preliminarily determined to use the allmeasures website to convert certain values. For the final results, the Department will continue to consider other appropriate conversion ratios.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's website, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, http://ia.ita.doc.gov/wages/index.html. The source of these wage–rate data is the Yearbook of Labour Statistics 2004, ILO (Geneva: 2003), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1998 to 2003. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. *See Factor Valuation Memorandum*.

To value electricity, we used data from the International Energy Agency Key World Energy Statistics (2003 edition). Because the value for electricity was not contemporaneous with the POR, we adjusted the values for inflation. *See Factor Valuation Memorandum*.

To calculate the value for domestic brokerage and handling, the Department used information available to it contained in the public version of two questionnaire responses placed on the record of separate proceedings. The first source was December 2003–November 2004 data contained in the public version of Essar Steel's February 28, 2005, questionnaire submitted in the antidumping duty administrative review of hot–rolled carbon steel flat products from India. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006)(unchanged in final results). This value was averaged with the February 2004–January 2005 data contained in the public version of Agro Dutch Industries Limited's ("Agro Dutch") May 24, 2005, questionnaire response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India. *See Fresh Garlic from the People's Republic of China: Final Results of Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006). The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions is ranged data. The Department first derived an average per–unit amount from each source. Then the Department adjusted each average rate for inflation using the WPI. Finally, the Department averaged the two per–unit amounts to derive an overall average rate for the POR. *See Factor Valuation Memorandum*.

To value international freight, the Department obtained a generally publicly available price quote from http://www.maersksealand.com/HomePage/appmanager/, a market–economy provider of international freight services. *See Factor Valuation Memorandum*.

The Department valued steam coal using the 2003/2004 Tata Energy Research Institute's Energy Data Directory & Yearbook ("TERI Data"). The Department was able to determine, through its examination of the 2003/2004 TERI Data, that: a) the annual TERI Data publication is complete and comprehensive because it covers all sales of all types of coal made by Coal India Limited and its subsidiaries, and b) the annual TERI Data publication prices are exclusive of duties and taxes. Because the value was not contemporaneous with the POR, the Department adjusted the rate for

inflation. *See Factor Valuation Memorandum.*

We used Indian transport information in order to value the freight–in cost of the raw materials. The Department determined the best available information for valuing truck and rail freight to be from www.infreight.com. This source provides daily rates from six major points of origin to five destinations in India during the POR. The Department obtained a price quote on the first day of each month of the POR from each point of origin to each destination and averaged the data accordingly. *See Factor Valuation Memorandum.*

To value factory overhead, selling, general, and administrative expenses ("SG&A"), and profit, we used the audited financial statements for the fiscal year ending March 31, 2005, from the following producers: Ahuja Furnishers Pvt. Ltd., Akriti Perfections India Pvt. Ltd., Fusion Design Private Ltd., Huzaifa Furniture Industries Pvt. Ltd., Imperial Furniture Company Pvt. Ltd., Indian Furniture Products, Ltd., and Nizamuddin Furnitures Pvt. Ltd., all of which are Indian producers of comparable merchandise. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy ("ML&E") costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. For further discussion, see *Factor Valuation Memorandum.*

**Preliminary Results of Review**

We preliminarily determine that the following weighted–average dumping margins exist for the period June 24, 2004, through December 31, 2005:

WOODEN BEDROOM FURNITURE FROM THE PRC

| Producer/Exporter | Weighted–Average Margin (Percent) |
|---|---|
| Fujian Lianfu Forestry Co. Ltd. /Fujian Wonder Pacific Inc. (Dare Group) | 58.84 |
| Fuzhou Huan Mei Furniture Co., Ltd. (Dare Group) | 58.84 |
| Jiangsu Dare Fumiture Co., Ltd. (Dare Group) | 58.84 |
| Fine Fumiture (Shanghai) Limited | 2.13 |
| Foshan Guanqiu Furniture Co., Ltd. | 13.26 |
| Shanghai Aosen Furniture Co., Ltd. | 1.24 |
| Starcorp Funiture Co., Ltd, Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., and Shanghai Xing Ding Furniture Industrial Co., Ltd. | 74.69 |
| Dongguan Huanghouse Furniture Co., Ltd. | 216.01 |
| Tianjin First Wood Co., Ltd. | 216.01 |
| Ace Furniture & Crafts Ltd. (a.k.a. Deqing Ace Fumiture and Crafts Limited) | 62.94 |
| Baigou Crafts Factory of Fengkai | 62.94 |
| Best King International Ltd. | 62.94 |
| Dalian Pretty Horne Fumiture | 62.94 |
| Decca Furniture Lirnited | 62.94 |
| Der Cheng Wooden Works of Factory | 62.94 |
| Dongguan Dihao Fumiture Co., Ltd. | 62.94 |
| Dongguan Hua Ban Furniture Co., Ltd. | 62.94 |
| Dongguan Mingsheng Fumiture Co., Ltd. | 62.94 |
| Dongguan New Technology Import & Export Co., Ltd. | 62.94 |
| Dongguan Sunpower Enterprise Co., Ltd | 62.94 |
| Dongguan Yihaiwei Furniture Limited | 62.94 |
| Kalanter (Hong Kong) Fumiture Cornpany Limited | 62.94 |
| Fummart Ltd. | 62.94 |
| Guangzhou Lucky Furniture Co. Ltd. | 62.94 |
| Hong Yu Fumiture (Shenzhen) Co. Ltd. | 62.94 |
| Hung Fai Wood Products Factory, Ltd. | 62.94 |
| Hwang Ho International Holdings Lirnited | 62.94 |
| King Wood Furniture Co., Ltd. | 62.94 |
| Meikangchi Nantong Fumiture Company Ltd. | 62.94 |
| Nantong Yangzi Fumiture Co., Ltd. | 62.94 |
| Po Ying Industrial Co. | 62.94 |
| Profit Force Ltd. | 62.94 |
| Qingdao Beiyuan–Shengli Furniture Co., Ltd. | 62.94 |
| Qingdao Shenchang Wooden Co., Ltd. | 62.94 |
| Red Apple Trading Co. Ltd. | 62.94 |
| Shenyang Kunyu Wood Industry Co., Ltd. | 62.94 |
| Shenzhen Dafuhao Industrial Developrnent Co., Ltd. | 62.94 |
| Shenzhen Shen Long Hang Industry Co., Ltd. | 62.94 |
| Sino Concord International Corporation | 62.94 |
| T.J. Maxx International Co., Ltd. | 62.94 |
| Top Goal Development Co. | 62.94 |
| Transworld (Zhangzhou) Furniture Co. Ltd. | 62.94 |
| Wan Bao Chen Group Hong Kong Co. Ltd. | 62.94 |
| Winmost Enterprises Lirnited | 62.94 |
| Xilinmen Group Co. Ltd. | 62.94 |
| Yongxin Industrial (Holdings) Lirnited | 62.94 |
| Zhongshan Gainwell Furniture Co. Ltd. | 62.94 |
| PRC–Wide Rate | 216.01 |

**Disclosure**

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Further, parties submitting written comments are requested to provide the Department with an additional copy of those comments on diskette. Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d).

The Department will issue the final results of these administrative reviews, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with 19 CFR 351.213(h)(1), unless the time limit is extended.

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of these new shipper and administrative reviews. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer–or customer–specific assessment rate or value for merchandise subject to these reviews. For these preliminary results, we divided the total dumping margins for the reviewed sales by the total entered quantity of those reviewed sales for each applicable importer. In these reviews, if these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of these administrative reviews for shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(1)( C ) and (a)(2)( C ) of the Act: (1) for the Dare Group, Fine Furniture, Foshan Guanqui, Shanghai Aosen, and Starcorp, and the separate–rate applicants being granted a separate rate, the cash deposit rate will be that established in the final results of these reviews; (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 216.01 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these preliminary results of administrative review and new shipper reviews in accordance with sections 751(a) and 777(i)(1) of the Act, and 19 CFR 351.221(b) and 351.214(h).

Dated: January 31, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7–2130 Filed 2–8–07; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Notice of Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Year 2005.

**SUMMARY:** The National Oceanic and Atmospheric Administration's (NOAA's) Damage Assessment, Remediation, and Restoration Program (DARRP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal year (FY) 2005. The indirect cost rates for this fiscal year and dates of implementation are provided in this notice. More information on these rates and the DARRP policy can be found at the DARRP Web site at *www.darrp.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Brian Julius at 301–713–4248, ext. 199, by fax at 301–713–4389, or e-mail at *Brian.Julius@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The mission of the DARRP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARRP consists of three component organizations: the Office of Response and Restoration (ORR) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel for Natural Resources (GCNR). The DARRP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources. During FY 2005, the ORR underwent a reorganization and the former Damage Assessment and Restoration Program was renamed DARRP. Previous notices reported indirect rates for the Damage Assessment Center (DAC), which was a division of ORR prior to the reorganization. This notice reports an indirect rate for the larger ORR.

Consistent with Federal accounting requirements, the DARRP is required to

account for and report the full costs of its programs and activities. Further, the DARRP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARRP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

**The DARRP's Indirect Cost Effort**

In December 1998, the DARRP hired the public accounting firm Rubino & McGeehin, Chartered (R&M) to: Evaluate cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARRP. A **Federal Register** notice on R&M's effort, their assessment of the DARRP's cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611). The notice and report by R&M can also be found on the DARRP Web site at *http://www.darrp.noaa.gov*.

R&M continued its assessment of DARRP's indirect cost rate system and structure for FYs 2000 and 2001. A second federal notice specifying the DARRP indirect rates for FYs 2000 and 2001 was published on December 2, 2002 (67 FR 71537).

In October 2002, DARRP hired the accounting firm of Cotton and Company LLP (Cotton) to review and certify DARRP costs incurred on cases for purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARRP component organizations are consistent with Federal accounting requirements. Consistent with R&M's previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARRP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from the Oak Ridge Institute for Science and Education (ORISE) and I.M. Systems Group (IMSG) also were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. ORISE and IMSG provided on-site support to the DARRP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. IMSG continues to provide on-site support to the DARRP. A third federal notice specifying the DARRP indirect rates for FY 2002 was published on October 6, 2003 (68 FR 57672), a fourth notice for the FY 2003 indirect cost rates appeared on May 20, 2005 (70 FR 29280), and a fifth notice for the FY 2004 indirect cost rates was published on March 16, 2006 (71 FR 13356). Cotton's reports on these indirect rates can also be found on the DARRP Web site at *http://www.darrp.noaa.gov*.

Cotton reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2005 indirect cost rates.

**The DARRP's Indirect Cost Rates and Policies**

The DARRP will apply the indirect cost rates for FY 2005 as recommended by Cotton for each of the DARRP component organizations as provided in the following table:

| DARRP component organization | FY 2005 indirect rate (percent) |
|---|---|
| Office of Response and Restoration (ORR) | 180.42 |
| Restoration Center (RC) | 166.70 |
| General Counsel for Natural Resources (GCNR) | 169.59 |

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2005 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2005 and September 30, 2006. DARRP will use the FY 2005 indirect cost rates for future fiscal years until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARRP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

The DARRP indirect cost rate policies and procedures published in the **Federal Register** on December 7, 2000 (65 FR 76611), on December 2, 2002 (67 FR 71537), October 6, 2003 (68 FR 57672), May 20, 2005 (70 FR 29280), and March 16, 2006(71 FR 13356) remain in effect except as updated by this notice.

Dated: February 5, 2007.

**Captain Ken Barton,**

*Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. E7–2203 Filed 2–8–07; 8:45 am]

BILLING CODE 3510–JE–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 020507C]**

### Marine Mammals; File No. 42–1642

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Mystic Aquarium, 55 Coogan Boulevard, Mystic, CT 06355 (Dr. Lisa Mazzaro, Principal Investigator) has requested an amendment to scientific research Permit No. 42–1642.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before March 12, 2007.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 42–1642.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Jennifer Skidmore, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 42–1642, which was most recently amended on April 28, 2004 (69 FR 24586), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 42–1642 authorizes the permit holder to conduct nutritional research on captive Steller sea lions (*Eumetopias jubatus*) and to receive, import, and export samples from pinniped and cetacean species for nutritional and health-related research. The permit holder requests authorization to increase the number of blood samples received, imported, or exported from 1000 per year to 10,000 per year. No takes from live animals are requested. The increase is requested to accommodate the availability of banked serum samples from other institutions for Brucella analysis. The amendment would be effective until the expiration date of the permit, October 15, 2007.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 5, 2007.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–2200 Filed 2–8–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 020507E]**

### Endangered Species; File No. 1447

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that the South Carolina Department of Natural Resources 217 Fort Johnson Road, Charleston, South Carolina 29412 [Responsible Party/Principal Investigator: Mark Collins, PhD], has been issued a permit to conduct scientific research on shortnose sturgeon (*Acipenser brevirostrum*).

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Protected Resources Division, Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Carrie Hubard, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On September 09, 2003, notice was published in the **Federal Register** (68 FR 53140) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the South Carolina Department of Natural Resources. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The South Carolina Department of Natural Resources [Dr. Mark Collins, Principal Investigator], is authorized to sample and track shortnose sturgeon in South Carolina coastal waters. Annually, up to 100 fish will be taken via gill nets, measured, weighed, PIT and Dart tagged, anaesthetized, and gastric lavaged. A subset of 50 fish will be fitted with radio/sonic transmitters and tracked during the study. Additionally, the researcher will deploy buffer pads as substrate to collect up to 100 sturgeon eggs annually to verify spawning periodicity. Two fish are authorized annually as unintentional mortality. The permit will terminate on February 28, 2012.Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 6, 2007.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–2199 Filed 2–8–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Intent To Grant a Partially Exclusive License; Symbiont Enterprises, Inc.

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 35 U.S.C. 209(e) and 37 CFR 404(a)(1)(i), the Department of the Army announces the intent to grant a revocable, non-assignable, partially exclusive license to Symbiont Enterprises, Inc., Huntsville, AL, for the AWarE Video Elements (AVE) government-owned software for archiving and conducting searches of video data.

**DATES:** Anyone wishing to object to the grant of this license can file written objections, along with supporting evidence, if any, within 15 days from the date of this publication.

**ADDRESSES:** Written objections are to be filed with the Office of Research and Technology Applications, SDMC–RDTC–TDL (Ms. Susan D. McRae), Bldg. 5220, Von Braun Complex, Redstone Arsenal, AL 35898.

**FOR FURTHER INFORMATION CONTACT:** Ms. Joan Gilsdorf, Patent Attorney, e-mail: *joan.gilsdorf@smdc.army.mil;* (256) 955–3213 or Ms. Susan D. McRae, Office of Research and Technology Applications, e-mail: *susan.mcrae@smdc.army.mil;* (256) 955–1501.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 07–586 Filed 2–8–07; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent to Prepare a Draft Supplemental Environmental Impact Statement to Evaluate Construction of Authorized Improvements to the Federal Gulfport Harbor Navigation Project in Harrison County, MS

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** This notice of availability announces the public release of the Draft Supplemental Environmental Impact Statement (DSEIS) to evaluate construction of authorized improvements to the Federal Gulfport Harbor Navigation Project in Harrison County, MS. The Mobile District, U.S. Army Corps of Engineers (Corps) published in the **Federal Register**, March 31, 2006, (71 FR 16294) a Notice of Intent to Prepare a DSEIS to address the potential impacts associated with construction of authorized improvements to the Federal Gulfport Harbor Navigation Project in Harrison County, MS. The DSEIS was used as a basis to ensure compliance with the National Environmental Policy Act (NEPA) and for evaluating the following two alternative plans: "No Action" and widening to the authorized project dimensions. Gulfport Harbor is authorized to (a) a channel 38 feet deep by 400 feet wide and about 8 miles long across Ship Island Bar; (b) a channel 36 feet deep by 300 feet wide and about 12 miles long through Mississippi Sound; and (c) a stepped anchorage basin at Gulfport Harbor 32 to 36 feet deep by 1,120 feet wide and 2,640 feet long. The tentatively recommended alternative includes construction of the authorized project dimensions.

**DATES:** The public comment period for the DSEIS will extend through April 2, 2007.

**ADDRESSES:** To receive a copy of the DSEIS, or to submit comments, contact U.S. Army Corps of Engineers, Mobile District, Coastal Environment Team, P.O. Box 2288, Mobile, AL 36628–0001. A copy of the full document may also be viewed in the Mobile Public Library (Main Branch) or in the Mobile District.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and the DSEIS should be addressed to Ms. Linda T. Brown, Coastal Environment Team, phone (251) 694–3786, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628 or e-mail address: *linda.t.brown@sam.usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** Public comments can be submitted through a variety of methods. Written comments may be submitted to the Corps by mail, facsimile, or electronic methods. Additional comments (written or oral) may be presented at the public hearing on March 8, 2007 at the 19th Street Community Center, 3319 19th Street, Gulfport, MS. Additional information on the public hearing will be mailed in a public notice to the agencies and public and announced in news releases.

Dated: January 31, 2007.

**Kenneth P. Bradley,**

*Chief, Environment and Resources Branch.*

[FR Doc. 07–585 Filed 2–8–07; 8:45 am]

BILLING CODE 3710–CR–M

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Inland Waterways Users Board

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

*Name of Committee:* Inland Waterways Users Board (Board).

*Date:* March 14, 2007.

*Location:* New Orleans Marriott at the Convention Center Hotel, 859 Convention Center Boulevard, New Orleans, Louisiana 70130, (504–613–2890).

*Time:* Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at 1 p.m.

*Agenda:* The Board will consider its project investment priorities for the next fiscal year. The Board will also hear briefings on the status of both the funding for inland navigation projects and studies, and the Inland Waterways Trust Fund, and be provided updates of various inland waterways projects.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark R. Pointon, Headquarters, U.S. Army Corps of Engineers, CECW–CO, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–4258.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 07–584 Filed 2–8–07; 8:45 am]

BILLING CODE 3710–92–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 10, 2007.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the

Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 5, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Revision of a currently approved collection.

*Title:* Annual Performance Reporting (APR) Forms for NIDRR Grantees (RERCs, RRTCS, FIPs, ARRTs, DBTACs, DRRPs) (JS).

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions (primary); Businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:*

Responses: 271.

Burden Hours: 13,550.

*Abstract:* NIDRR will use the information gathered through these forms to comply with EDGAR, enable grantees to complete 5248 reporting requirements, and provide OMB information required for assessment of performance on GPRA indicators and the PART evaluation. Respondents are approximately 270 grantees in 10 NIDRR programs.

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 3277. 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., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. 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* 202–245–6566. 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. E7–2138 Filed 2–8–07; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary EducationOverview Information; Office of Indian Education—Demonstration Grants for Indian Children; Notice inviting applications for new awards for fiscal year (FY) 2007

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.299A.

**DATES:** Applications Available: February 9, 2007.

*Deadline for Transmittal of Applications:* March 12, 2007.

*Deadline for Intergovernmental Review:* May 10, 2007.

*Eligible Applicants:* Eligible applicants for this program are State educational agencies (SEAs); local educational agencies (LEAs); Indian tribes; Indian organizations; federally supported elementary or secondary schools for Indian students; Indian institutions (including Indian institutions of higher education); or a consortium of any of these entities.

An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must include a signed consortium agreement with the application. Letters of support do *not* meet the requirement for a consortium agreement.

Applicants applying in consortium with or as an "Indian organization" must demonstrate eligibility by showing how the "Indian organization" meets all the criteria outlined in 34 CFR 263.20.

The term "Indian institution of higher education" means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College), authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

We will reject any application that does not meet these requirements.

*Estimated Available Funds:* The Administration has requested $19,399,000 for this program for FY 07, of which $1,934,000 is available for new awards. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

*Estimated Range of Awards:* $100,000–$300,000.

*Estimated Average Size of Awards:* $276,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 7.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the Demonstration Grants for Indian Children program is to provide financial assistance to projects that develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary Indian students.

*Priorities:* This competition contains two absolute priorities and two competitive preference priorities.

*Absolute Priorities:* For FY 2007 these priorities are absolute priorities. In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 263.21(c)(1) and (3)). Under 34 CFR 75.105(c)(3), we consider only applications that meet one or both of the following priorities.

*These priorities are:*

*Absolute Priority One*

School readiness projects that provide age appropriate educational programs and language skills to three- and four-year-old Indian students to prepare them for successful entry into school at the kindergarten school level.

*Absolute Priority Two*

College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including mathematics and science, to enable Indian students to transition successfully to postsecondary education.

*Competitive Preference Priorities:* Within these absolute priorities, we give competitive preference to applicants that address the following priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on the extent to which the application meets one or both of these priorities.

These priorities are:

*Competitive Preference Priority One*

In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from

section 7121 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 7441(d)(1)(B). We award five competitive preference priority points to an applicant that presents a plan for combining two or more of the activities described in section 7121(c) of the ESEA over a period of more than one year.

**Note:** For Competitive Preference Priority One, the combination of activities is limited to the activities described in the Absolute Priorities.

*Competitive Preference Priority Two*

In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 7143 of the ESEA, 20 U.S.C. 7473. We award five competitive preference priority points to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five competitive preference points. These competitive preference points are in addition to the five competitive preference points that may be given under Competitive Preference Priority One.

**Note:** A consortium agreement, signed by all parties, must be submitted with the application in order for the application to be considered a consortium application. Letters of support do *not* meet the requirement for a consortium agreement. We will reject any application from a consortium that does not meet this requirement.

**Note:** The term "Indian institution of higher education" means an accredited college or university within the United States that in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College), authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

*Program Authority:* 20 U.S.C. 7441.

*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. (b) The regulations for this program in 34 CFR part 263.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration has requested $19,399,000 for this program for FY 07, of which $1,934,000 is available for new awards. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program

*Estimated Range of Awards:* $100,000–$300,000.

*Estimated Average Size of Awards:* $276,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 7.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

## III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program are SEAs; LEAs; Indian tribes; Indian organizations; federally supported elementary or secondary schools for Indian students; Indian institutions (including Indian institutions of higher education); or a consortium of any of these entities.

An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must submit the consortium agreement, signed by all parties, with the application. Letters of support do *not* meet the requirement for a consortium agreement.

Applicants applying in consortium with or as an "Indian organization" must demonstrate eligibility by showing how the "Indian organization" meets all the criteria outlined in 34 CFR 263.20.

The term "Indian institution of higher education" means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College), authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

We will reject any application that does not meet these requirements.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:* Projects funded under this competition should plan to budget for a one-and-one-half-day Project Directors' meeting in Washington, DC during each year of the project period.

## IV. Application and Submission Information

1. *Address to Request Application Package:* Applications for grants under this competition must be submitted electronically through the Grants.gov Apply site (*http://www.Grants.gov*). However, if you would like a paper copy of the application to review, you may order one from the 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), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

You may also obtain an electronic copy of the application package by downloading it from the following Web site: *http://www.ed.gov/about/offices/list/oese/oie/index.html*.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**.

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 competition.

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 Part III to no more than 35 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 12 point or larger but no smaller than 10 point.

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, you must include all of the application narrative in Part III.

The page limit of 35 pages for Part III is mandatory. We will reject your application if:

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

*Applications Available:* February 9, 2007.

*Deadline for Transmittal of Applications:* March 12, 2007.

Applications for grants under this competition 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 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.**

*Deadline For Intergovernmental Review:* May 10, 2007.

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 of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition 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 Demonstration Grants for Indian Children, CFDA Number 84.299A 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 Demonstration Grants for Indian Children at *http://www.Grants.gov*. You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.299, not 84.299A).

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 consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. 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 competition 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 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 elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** 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: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5C152, Washington, DC 20202–6335. FAX: (202) 260–4149.

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 84.299A), 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 84.299A), 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 84.299A), 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 selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

**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 Notification (GAN). We may also notify you informally.

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 of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of 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 specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Demonstration Grants for Indian Children program: (1) The percentage of pre-school American Indian and Alaska Native students who possess school readiness skills gained through a scientifically based research curriculum that prepares them for kindergarten; (2) the percentage of American Indian and Alaska Native high school students successfully completing (as defined by receiving a passing grade) challenging classes in core subjects (including English, mathematics, science, and history); and (3) the percentage of American Indian and Alaska Native high school students attaining at least the district average score in national college entrance examinations (the ACT and the SAT) and preliminary college entrance examinations (the PSAT).

We encourage applicants to demonstrate a strong capacity to provide reliable data on these measures in their responses to the selection criteria "Quality of project services" and "Quality of the project evaluation."

All grantees will be expected to submit, as part of their performance report, information with respect to these performance measures.

**VII. Agency Contact**

For Further Information Contact: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5C152, Washington, DC 20202–6335. Telephone: (202) 205–2528 or by e-mail: *Indian.education@ed.gov.*

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

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

**VII. Other Information**

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

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

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 1, 2007.

**Raymond Simon,**

*Deputy Secretary for Education.*

[FR Doc. E7–1983 Filed 2–8–07; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Safe and Drug-Free Schools Overview Information; Grants To Reduce Alcohol Abuse Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.184A.

**DATES:** *Applications Available:* February 9, 2007.

*Deadline for Transmittal of Applications:* March 26, 2007.

*Deadline for Intergovernmental Review:* May 25, 2007.

*Eligible Applicants:* Local educational agencies (LEAs).

The Secretary limits eligibility under this discretionary grant program competition to applicants that do not currently have an active grant under the Grants to Reduce Alcohol Abuse (CFDA No. 84.184A) Program. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

*Estimated Available Funds:* The Administration's budget request for FY 2007 does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

**Note:** The Secretary may reserve up to 25 percent of these funds to award grants to low-income and rural LEAs.

Contingent upon the availability of funds, we may make additional awards in FY 2008 from the list of un-funded applications from this competition.

*Estimated Range of Awards:* $200,000–$400,000.

*Estimated Average Size of Awards:* $300,000.

*Estimated Number of Awards:* 20.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* This program provides grants to LEAs to develop and implement innovative and effective programs to reduce alcohol abuse in secondary schools.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 4129 of the Safe and Drug-Free Schools and Communities Act, 20 U.S.C. 7139.

*Absolute Priority:* For FY 2007 and any subsequent year in which we make

awards on the basis of the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

**Alcohol Abuse Reduction**

A project must develop and implement innovative and effective programs to reduce alcohol abuse in secondary schools.

*Program Authority:* 20 U.S.C. 7139.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of eligibility requirement for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369).

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration's budget request for FY 2007 does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

**Note:** The Secretary may reserve up to 25 percent of funds for grants to low-income and rural LEAs.

Contingent upon the availability of funds, we may make additional awards in FY 2008 from the list of non-funded applications from this competition.

*Estimated Range of Awards:* $200,000–$400,000.

*Estimated Average Size of Awards:* $300,000.

*Estimated Number of Awards:* 20.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

## III. Eligibility Information

1. *Eligible Applicants:* LEAs.

*Eligible Applicants:* Local educational agencies (LEAs). The Secretary limits eligibility under this discretionary grant program competition to applicants that do not currently have an active grant under the Grants to Reduce Alcohol Abuse (CFDA No. 84.184A) Program. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other:* To be eligible to receive a grant under this competition, an LEA's application must include—

a. A description of the activities to be carried out under the grant;

b. An assurance that such activities will include one or more of the proven strategies for reducing underage alcohol abuse as determined by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services;

c. An explanation of how other activities to be carried out under the grant that are not part of a SAMHSA model program will be effective in reducing underage alcohol abuse, including references to the past effectiveness of such activities; and

d. An assurance that the applicant will submit to the Secretary an annual report concerning the effectiveness of the programs and activities funded under the grant.

## 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), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs be sure to identify this competition as follows: CFDA number 84.184A.

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

You may also obtain the application package electronically by downloading it from the following Web site: *http://www.ed.gov/programs/dvalcoholabuse/index.html*.

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 competition.

3. *Submission Dates and Times:* Applications Available: February 9, 2007. Deadline for Transmittal of Applications: March 26, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.

6. *Other Submission Requirements* in this notice.

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 of this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 25, 2007.

4. *Intergovernmental Review:* This competition 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 competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

*a. Electronic Submission of Applications*

To comply with the President's management Agenda, we are participating as a partner in the Government wide Grants.gov Apply site. The Grants to Reduce Alcohol Abuse (CFDA) number: 84.184A, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Government wide 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.

You may access the electronic grant application for the Grants to Reduce Alcohol Abuse at *http://www.grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.184, not 84.184A).

Please note the following:

- Your participation in Grants.gov is voluntary.

• 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 consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. 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 competition 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 submit your application in paper format.

• If you submit your application electronically, 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 42—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, 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 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 elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** 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.

*b. Submission of Paper Applications by Mail*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.184A),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 84.184A),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, or

(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, or

(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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.184A),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 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment 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

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 75.210 and in the application package for this competition.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is rural and low-income status.

Applications from rural and low-income applicants will be read and scored separately and up to 25 percent of the available funds will be reserved for awards to these LEAs. The following is the suggested definition of rural and low-income that has been used by this program in previous competitions; however, LEAs that want to be considered as rural and low-income applicants may provide other supporting evidence of their status as rural and low-income.

A rural and low-income LEA is one (a) that is designated with a locale code of 6, 7, or 8, as determined by the Department's National Center for Education Statistics (NCES); and (b) in which 20 percent or more of the children ages 5 through 17 years served by the LEA are from families with incomes below the poverty line.

**Note:** Applicants wishing to be considered under this factor must be both rural and low-income.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will 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 of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of 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 specified by the Secretary in 34 CFR 75.718.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), three measures have been developed for evaluating the overall effectiveness of the Grants to Reduce Alcohol Abuse Program: (1) The percentage of grantees whose target students show a measurable decrease in binge drinking; (2) the percentage of grantees that show a measurable increase in the percentage of target students who believe that alcohol abuse is harmful to their health; and (3) the percentage of grantees that show a measurable increase in the percentage of target students who disapprove of alcohol abuse. These three measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these three measures in conceptualizing the design, implementation, and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their annual performance reports about progress toward these goals.

## VII. Agency Contact

*FOR FURTHER INFORMATION CONTACT:* Amalia Cuervo, U.S. Department of Education, 400 Maryland Ave., SW., Room 3E342, Washington, DC 20202–6450. Telephone: (202) 205–2855 or by e-mail: *amalia.cuervo@ed.gov* or Phyllis Scattergood, U.S. Department of Education, 400 Maryland Ave., SW., room 3E212, Washington DC, 20202–6450. Telephone: (202) 260–0504, or by e-mail: *phyllis.scattergood@ed.gov*.

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

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the program contact persons listed in this section.

## VIII. Other Information

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

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

**Note:** The official version of this document is the document published in the **Federal**

**Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 1, 2007.

**Deborah A. Price,**

*Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. E7–1982 Filed 2–8–07; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Safe and Drug-Free Schools and Communities Advisory Committee

**AGENCY:** Office of Safe and Drug-Free Schools, ED

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of an upcoming open meeting of The Safe and Drug-Free Schools and Communities Advisory Committee. The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

*Date:* Tuesday, February 20, 2007 and Wednesday, February 21, 2007.

*Time:* February 20, 2007: 8:30 a.m. to 5 p.m.; February 21, 2007: 8 a.m. to 11:30 a.m.

**ADDRESSES:** The Committee will meet at the U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Catherine Davis, Executive Director, The Safe and Drug-Free Schools and Communities Advisory Committee, Room 1E110B, 400 Maryland Avenue, SW., Washington, DC, telephone: (202) 205–4169, e-mail: *OSDFSC@ed.gov.*

**SUPPLEMENTARY INFORMATION:** The Committee was established to provide advice to the Secretary on federal, state, and local programs designed to create safe and drug-free schools, and on issues related to crisis planning. The focus of this meeting is to discuss requirements for data under the No Child Left Behind Act. The agenda includes a panel presentation by invited speakers providing an overview of the issue, as well as discussion by the Committee. Further, the Committee will address strategies to accomplish their mission as stated in the Committee charter.

Individuals who need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or materials in alternative formats) should notify Catherine Davis at *OSDFSC@ed.gov* or (202) 205–4169 no later than February 13, 2007. 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.

Individuals interested in attending the meeting must register in advance because limited space is available at the meeting site. Please notify Catherine Davis at *OSDFSC@ed.gov* or (202) 205–4169 of your intention to attend the meeting.

Opportunities for public comment are available on February 21 from 8:40–9:15 a.m. on a first come, first served basis. Comments presented at the meeting are limited to 5 minutes in length. Written comments to accompany oral remarks are optional. Five copies of written comments are recommended and should be submitted to the committee Chairman at the meeting.

*Request for Written Comments:* We invite the public to submit written comments relevant to the focus of the Advisory Committee. We would like to receive written comments from members of the public no later than April 30, 2007.

*Addresses:* Submit all comments to the Advisory Committee using one of the following methods: 1. *Internet.* We encourage the public to submit comments through the Internet to the following address: *OSDFSC@ed.gov;* 2. *Mail.* The public may also submit comments via mail to Catherine Davis, Office of Safe and Drug-Free Schools, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110B, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

Records are kept of all Committee proceedings and available for public inspection at the staff office of the Committee located at the U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110B, Washington, DC 20202 between the hours of 9 a.m. to 5 p.m.

**Raymond Simon,**

*Deputy Secretary, U.S. Department of Education*

[FR Doc. 07–579 Filed 2–8–07; 8:45 am]

**BILLING CODE 4001–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2004–0015 and EPA–HQ–OAR–2004–0016; FRL–8277–3]**

### Agency Information Collection Activities; Proposed Collections; Comment Request; Part 70 Operating Permit Regulations, EPA ICR No. 1587.07, OMB Control No. 2060–0243; Part 71 Federal Operating Permit Regulations, EPA ICR No. 1713.06, OMB Control No. 2060–0336

**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 two existing approved Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). These ICRs are scheduled to expire on March 31, 2007. Before submitting these ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before April 10, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0015 (part 70 ICR) or EPA–HQ–OAR–2004–0016 (part 71 ICR), by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Fax:* (202) 566–7944.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW., Mail Code 2822T, Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0015 or EPA–HQ–OAR–2004–0016. 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 to be protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to us without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

**FOR FURTHER INFORMATION CONTACT:** Jeff Herring, Office of Air Quality Planning and Standards, Air Quality Policy Division (C504–05), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–3195; fax number: (919) 541–5509; e-mail address: *herring.jeff@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**How Can I Access the Docket and/or Submit Comments?**

The EPA has established public dockets for these ICRs under Docket ID Nos. EPA–HQ–OAR–2004–0015 (part 70 ICR) and EPA–HQ–OAR–2004–0016 (part 71 ICR) which are available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. 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 Air and Radiation Docket is (202) 566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collections 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 numbers identified in this document.

**What Information Particularly Interests EPA?**

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 numbers assigned to these actions in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**To What Information Collection Activity or ICR Does This Apply?**

Docket ID Nos. EPA–HQ–OAR–2004–0015 (part 70 ICR) and EPA–HQ–OAR–2004–0016 (part 71 ICR).

*Affected entities:* Entities potentially affected by this action are those which must apply for and obtain an operating permit under title V of the Clean Air Act (Act). These, in general, include sources which are defined as "major" under any title of the Act.

*Titles:* Part 70 Operating Permit Regulations; Part 71 Federal Operating Permit Regulations.

*ICR numbers:* For the part 70 regulations, EPA ICR No. 1587.07 and OMB Control No. 2060–0243. For the part 71 regulations, EPA ICR No. 1713.05 and OMB Control No. 2060–0336.

*ICR status:* These ICRs are currently scheduled to expire on March 31, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* Title V of the Act requires States to develop and implement a program for issuing operating permits to all sources that fall under any Act definition of "major" and certain other non-major sources that are subject to Federal air quality regulations. The Act further requires EPA to develop regulations that establish the minimum requirements for those State operating permits programs, to oversee implementation of the State programs, and to operate a Federal operating permits program in areas not subject to an approved State program.

The EPA regulations setting forth requirements for the State operating permits programs are at part 70, title 40, chapter I of the Code of Federal Regulations. These are referred to as the "Part 70 Operating Permit Regulations," which are the subject of one of the ICRs addressed in this notice. The EPA regulations for the Federal operating permits program are at part 71, title 40, chapter I of the Code of Federal

Regulations. These are referred to as the "Part 71 Federal Operating Permit Regulations," which are the subject of the second ICR addressed in this notice. The part 71 program is being implemented for sources located in Indian country, Outer Continental Shelf sources, and in areas that do not have part 70 programs.

In implementing title V of the Act and EPA's part 70 operating permits regulations, State and local permitting agencies must develop programs and submit them to EPA for approval (section 502(d)), and sources subject to the program must develop operating permit applications and submit them to the permitting authority within 1 year after program approval (section 503). Permitting authorities will then issue permits (section 503(c)) and thereafter enforce, revise, and renew those permits at no more than 5–year intervals (section 502(d)). Permit applications and proposed permits will be provided to, and are subject to review by, EPA (section 505(a)). All information submitted by a source and the issued permit shall also be available for public review except for confidential information which will be protected from disclosure (section 503(e)). Sources will semi-annually submit compliance monitoring reports to the permitting authorities (section 504(a)). The EPA has the responsibility to oversee implementation of the program and to administer a Federal operating permits program in the event a program is not approved for a State (section 502(d)(3)) or if EPA determines the permitting authority is not adequately administering its approved program (section 502(i)(4)). The activities to carry out these tasks are considered mandatory and necessary for implementation of title V and the proper operation of the operating permits program. This notice provides updated burden estimates from previously approved ICRs.

*Burden Statement:* The annual public reporting and recordkeeping burden for the part 70 collection of information is estimated to average 248 hours per permitted source, and the annual burden for permitting authorities to administer a part 70 program is estimated to average 10,179 hours. The annual public reporting and recordkeeping burden for the part 71 collection of information is estimated to average 221 hours per permitted source.

**Are There Changes in the Estimates From the Last Approval?**

There is an increase of 206 thousand hours in the part 70 total estimated respondent annual burden compared with that identified in the ICR currently approved by OMB. This increase in part 70 burden for sources and permitting authorities is an adjustment due to changes in burden estimates, primarily an increase in permit renewal activities. These changes in burden are not program changes, as no federal mandates, including the part 70 and part 71 regulations, have changed in any way that would affect these ICRs since the last ICR updates.

For the part 71 program, there is a decrease of 22 thousand hours in the total estimated annual burden compared with that identified in the ICR currently approved by OMB. This burden reduction is also an adjustment, due to changes in assumptions, primarily due to a reduction in expected EPA oversight activities for delegated part 71 programs.

**What Is the Next Step in the Process for This ICR?**

The EPA will consider the comments received and amend the ICRs as appropriate. The final ICR packages 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 ICRs to OMB and the opportunity to submit additional comments to OMB. If you have any questions about these ICRs or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: January 31, 2007.

**Jenny Noonan Edmonds,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. E7–2180 Filed 2–8–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–8114–7]**

## Access to Confidential Business Information by Logistics Management Institute

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized Systems Research Applications (SRA) Corporation's subcontractor, Logistics Management Institute (LMI) of McLean, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data will occur no sooner than February 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline–epa.gov.*

*For technical information contact:* Pam Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8956; fax number: (202) 564–8955; e-mail address: *pamela.moseley–epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Notice Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket's index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30

p.m.,Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

**II. What Action is the Agency Taking?**

Under EPA contract number EP–W–05–024, and dependent task orders, subcontractor LMI of 2000 Corporate Ridge, McLean, VA, will assist SRA and the Office of Pollution Prevention and Toxics (OPPT) in implementing OPPT's Target Information Architecture, which involves enterprise architecture documentation, development, requirements analysis, design, testing, change management, and updates to the information management systems that store TSCA CBI data.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number EP–W–05–024, LMI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. LMI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide LMI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

LMI will be authorized access to TSCA CBI at EPA Headquarters under the EPA *TSCA CBI Protection Manual.*

Clearance for access to TSCA CBI under this contract may continue until April 14, 2010, unless such access is extended.

LMI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

**List of Subjects**

Environmental protection, Confidential Business Information.

Dated: January 31, 2007.

**Todd S. Holderman,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. E7–2110 Filed 2–8–07; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6683–9]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

**Draft EISs**

*EIS No. 20060235, ERP No. D–CGD–B03015–MA,* Neputune Liquefied Natural Gas (LNG), Construction and Operation, Deepwater Port LicenseApplication, (Docket Number USCG–2004–22611) Massachusetts Bay, Gloucester and Boston, MA.

*Summary:* EPA expressed environmental concerns about impacts to air and water quality and to marine organisms, and offered suggestions regarding measures to avoid, minimize and mitigate for unavoidable impacts. Rating EC2.

*EIS No. 20060342, ERP No. D–FHW–L65520–WA,* WA–520 Bridge Replacement and HOV Project, Replace WA–520 Portage Bay and Evergreen Point Bridges and Improve Roadway between I–5 in Seattle and Bellevue Way or 108th Avenue Northeast on the Eastside, U.S. Coast Guard Permit and U.S. Army COE Section 10 and 404 Permits, King County, WA.

*Summary:* EPA expressed environmental concerns about impacts to endangered species, and aquatic resources, and indirect and cumulative impacts. Rating EC2.

*EIS No. 20060392, ERP No. D–FRC–K03029–00,* North Baja Pipeline Expansion Project, Docket Nos. CP06–61–000 and CP01–23–000, Construction and Operation of a Natural Gas Pipeline System, Land Use Plan Amendment, Right-of-Way Grant, Temporary Use Permits and U.S. Army COE Section 10 and 404 Permits, La Paz County, AZ and Riverside and Imperial Counties, CA.

*Summary:* EPA expressed environmental concerns about indirect impacts on air quality and water quality, and recommended that the FEIS discuss appropriate mitigation measures.Rating EC2.

*EIS No. 20060452, ERP No. D–AFS–L65527–WA,* Natapoc Ridge Restoration Project, To Improve Forest Health and Sustainability, and ReduceWildfire and Hazardous Fuels, Wenatchee River Ranger District, Okanogan—Wenatchee NationalForest, Chelan County, WA.

*Summary:* EPA requested further clarification of several points, but expressed lack of objections with the preferred alternative. Rating LO.

*EIS No. 20060493, ERP No. D–IBR–K36146–CA,* Folsom Dam Safety and Flood Damage Reduction Project, Addressing Hydrologic, Seismic, Static, and Flood Management Issues, Sacramento, El Dorado and Placer Counties, CA.

*Summary:* EPA expressed environmental concerns about potential adverse effects on air quality and recommended implementation of mitigation measures to reduce impacts. EPA requested the General Conformity Determination be included in the FEIS and requested notification and receipt of future project-level environmental documentation. Rating EC2.

*EIS No. 20060500, ERP No. D–AFS–K65322–CA,* Little Doe and Low Gulch Timber Sale Project, Proposes to Harvest Commercial Timber, Six Rivers National Forest, Mad River Ranger District, Trinity County, CA.

*Summary:* EPA expressed environmental concerns about impacts to wildlife habitat, including habitat for the federally threatened northern spotted owl, and the potential for the proposed action to spread noxious weeds into the project area. Rating EC1.

*EIS No. 20060505, ERP No. D–NOA–E86004–00,* South Atlantic Snapper Grouper Fishery , Amendment 14 to Establish Eight Marine Protected Areas in Federal Waters, Implementation, South AtlanticRegion.

*Summary:* EPA supports Amendment 14 and the concept of MPAs as protected fish havens to restore given species and their habitat. Rating LO.

*EIS No. 20060460, ERP No. DB–FHW–B40029–VT,* Southern Connector/ Champlain Parkway Project (MEGC–

M5000(1)), Updated Information, Construction from Interchange of I–189 to Shelburne Street (US Route &) and Extending westerly and northerly to the City of Center District within the City of Burlington, Chittenden County, VT.

*Summary:* EPA does not object to the proposed project. Rating LO.

*EIS No. 20060508, ERP No. DS–STB–G53010–TX,* Southwest Gulf Railroad Project, Additional Information to Proposed Rail Line Construction and Operation Exemption, To Transport Limestone from Vulcan Construction Materials (VCM) Quarry to Del Rio Subdivision, Medina County, TX.

*Summary:* EPA does not object to the proposed project. Rating LO.

**Final EISs**

*EIS No. 20040226, ERP No. F–FHW–B40092–NH, I–93,* Highway Improvements, Salem to Manchester, Funding, NPDES and U.S. Army COE Section 404, Permits Issuance, Hillsborough and Rockingham, Counties, NH.

*Summary:* EPA continues to have environmental concerns about impacts to wetlands, water quality, and air quality as well as indirect and cumulative impacts.

*EIS No. 20060441, ERP No. F–CGD–B03013–MA,* Northeast Gateway Deepwater Port License, Application to Import Liquefied Natural Gas (LNG),(USCG–2005–22219), Massachusetts Bay, City of Gloucester, MA.

*Summary:* EPA does not object to the proposed project, but offered comments that can be addressed in the Record of Decision and the remainder of the licensing process.

*EIS No. 20060503, ERP No. F–FHW–E40801–00,* Interstate 69 Section of Independent Utility #9, Construction from the Interstate 55/MS StateRoute 304 Interchange in Hernando, MS to the Intersection of U.S. 51 and State Route 385 in Millington, TN, Desoto and Marshall Counties, MS and Shelby and Fayette Counties, TN.

*Summary:* EPA expressed environmental concerns about the proposed project related to impacts to wetlands, streams and flood plains as well as potential land use changes resulting in loss of habitat.

*EIS No. 20060506, ERP No. F–COE–E11058–SC,* Charleston Naval Complex (CNC), Proposed Construction of a Marine Container Terminal, Cooper River in Charleston Harbor, City of North Charleston, Charleston County, SC.

*Summary:* EPA expressed environmental concerns about the magnitude and long-term nature of the impacts associated with the proposal, including impacts to 65 acres of estuarine/tidal wetlands and open water habitat. EPA also expressed concerns over the estimated emissions from container ships and other mobile emissions sources.

*EIS No. 20060517, ERP No. F–UAF–K11115–HI,* Hickam, Air Force Base and Bellows Air Force Station, 15th Airlift Wing, Housing Privatization Phase II, To Transfer the Remaining Housing Units, and Associated Infrastructure to Selected Offeror, O'ahu, HI.

*Summary:* EPA's previous concerns were resolved; therefore, EPA does not object to the proposed action.

*EIS No. 20060525, ERP No. F–COE–F67004–MN,* East Reserve Project, Construct and Operate an Open Pit Taconite Mine between the Towns of Biwabik and McKinley, St. Louis County, MN.

*Summary:* EPA continues to have environmental concerns about this project that should be addressed in the Record of Decision and Section 404 permit.

*EIS No. 20060530, ERP No. F–USA–D11039–MD,* U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), Construction and Operation of New USAMRIID Facilities and Decommissioning and Demolition and/or Re-use of Existing USAMRIID Facilities, Fort Detrick, MD.

*Summary:* EPA does not object to the proposed project.

*EIS No. 20060532, ERP No. F–BIA–L03012–AK,* Cordova Oil Spill Response Facility, Construct an Oil Spill Response Facility at Shepard Point,NPDES Permit and U.S. Army COE Section 10 and 404 Permits, Cordova, AK.

*Summary:* EPA expressed continued concerns about impacts to aquatic resources. EPA believes that the EIS does not contain sufficient information to support the Preferred Alternative as the least environmentally damaging practicable alternative for purposes of complying with Clean Water Act 404(b)(1) Guidelines.

*EIS No. 20060536, ERP No. F–FTA–G40190–TX,* North Corridor Fixed Guideway Project, Propose Transit Improvements from University of Houston(UH)—Downtown Station to Northline Mall, Harris County, TX.

*Summary:* EPA does not object to the proposed project.

Dated: February 6, 2007.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E7–2181 Filed 2–8–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6683–8]**

### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 01/29/2007 through 02/02/2007

Pursuant to 40 CFR 1506.9.

*EIS No. 20070027, final EIS, FRC, CA,* Lake Elsinore Advanced Pumped Storage (LEAPS) Project, Construction and Operation, Application for Hydroelectric License, Special-Use-Permit, FERC No. 11858, City of Lake Elsinore, Riverside County, CA, Wait Period Ends: 03/12/2007, Contact: Andy Black 1–866–208–3372

*EIS No. 20070028, draft EIS, COE, CA,* PROGRAMMATIC—Los Angeles River Revitalization Master Plan (LARRMP) Project, Implementation, Improving Natural Habitat, Water Quality, Recreation, Economic Values and Open Space, Owensmoth Avenue in Canoga Park (at the Confluence of Bell Creek and Arroyo Calabasas) and continues down stream to Washington Boulevard near the northern boundary of the City of Vernon, City of Los Angeles, Los Angeles County, CA, Comment Period Ends: 03/26/2007, Contact: Catherine Shuman 213–452–3797

*EIS No. 20070029, final EIS, GSA, ME,* Madawaska Border Station Project, Replacement of Existing Border Station in Madawaska, Selected the Build Alternative, International Border between United States and Canada, Aroostook County, ME, Wait Period Ends: 03/12/2007, Contact: David M. Drevinsky 617–565–6596

*EIS No. 20070030, draft EIS, IBR, ND,* Red River Valley Water Supply Project, Development and Delivery of a Bulk Water Supply to meet Long-Term Water Needs of the RedRiver Valley, Implementation, ND and MN, Comment Period Ends: 03/26/2007, Contact: Signe Snortland 701–250–4242 Ext 3619

*EIS No. 20070031, final EIS, AFS, CA,* Lake Davis Pike Eradication Project,

To Eradicate Pike and Re-Establish Trout Fishery in the Tributaries, Special-Use-Permit, Plumas National Forest, Plumas County, CA, Wait Period Ends: 03/12/2007, Contact: Angela Dillingham 530–283–7761

*EIS No. 20070032, final EIS, AFS, CA,* Commercial Pack Station and Pack Stock Outfitter/ Guide Permit Issuance, Implementation, Special-Use-Permit to Twelve PackStation and Two Outfitter/Guides, Inyo National Forest, CA, Wait Period Ends: 03/12/2007 Contact: Erin Lutrick 760–873–2545

*EIS No. 20070033, draft EIS, FTA, 00,* Access to the Region's Core Project, To Increase Trans-Hudson Commuter Rail Capacity, Improve System Safety and Reliability between Secaucus Junction Station in NJ and midtown Manhattan, Funding, Hudson County, NJ and New York County, NY, Comment Period Ends: 04/10/2007, Contact: James Goveia 212–668–2170

*EIS No. 20070034, final EIS, SFW, WY,* Bison and Elk Management Plan, Implementation, National Elk Refuge/ Grand Teton National Park/John D. Rockefeller, Jr. Memorial Parkway, Teton County, WY, Wait Period Ends: 03/12/2007, Contact: Laurie Shannon 303–236–4317

*EIS No. 20070035, final EIS, RUS, MT,* Highwood Generating Station, 250-megawatt Coal Fired Power Plant and 6MW of Wind Generation at a Site near Great Falls,Construction and Operation, Licenses Permit, U.S. Army COE Section 10 Permit, Cascade County, MT, Wait Period Ends: 03/12/2007, Contact: Richard Fristik 202–720–5093

*EIS No. 20070036, final EIS, AFS, NV,* Heavenly Mountain Resort Master Plan Amendment 2005 (MPA 05), Improve and Enhance the Resorts Over Winter and SummerRecreation Opportunities, Special-Use-Permit, Lake Tahoe Basin, El Dorado County, CA and Douglas County, NV, Wait Period Ends: 03/12/2007, Contact: Matt Dickerson 530–543–2769

*EIS No. 20070037, final EIS, FHW, MT,* U.S. Highway 89, Improvements, from Browning to Hudson Bay Divide, Endangered Species Act, NPDES Permit and U.S. Army COESection 404 Permit, Glacier County, MT, Wait Period Ends: 03/12/2007, Contact: Bob Seliskar 406–449–5302 Ext 244

Dated: February 6, 2007.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E7–2184 Filed 2–8–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRN–8277–7]**

### Workshop on Assessment of Health Science for the Review of the NAAQS for Nitrogen ($NO_x$) and Sulfur Oxides ($SO_x$)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of workshop.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing that a workshop on Assessment of Health Science for the Review of the National Ambient Air Quality Standards (NAAQS) for Nitrogen ($NO_X$) and Sulfur Oxides ($SO_X$) is being organized by EPA's National Center for Environmental Assessment (NCEA), in conjunction with the Office of Air Quality Standards (OAQPS), and will be held on February 26–28, 2007. The workshop will be open to attendance by interested public observers. Space is limited, and reservations will be accepted on a first-come, first-served basis.

**DATES:** The workshop will be held on February 26–28, 2007.

**FOR FURTHER INFORMATION CONTACT:** For information regarding registration and logistics for the workshop please contact Kristin Wheeler, SAIC Conference Coordinator at 703–318–4535, facsimile: 703–318–4755, e-mail: *wheelerkr@saic.com,* or 11251 Roger Bacon Drive, Reston, VA 20190. For information regarding the scientific and technical aspects of the workshop please contact Dr. Anu Mudipalli at 919–541–0413, facsimile: 919–541–1818, e-mail: Mudipalli.anu@epa.gov or Dr. Paul Reinhart at 919–541–1456, facsimile: 919–541–1818, e-mail: *reinhart.paul@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Summary of Information About the Workshop/Document

The U.S. Clean Air Act requires EPA to carry out periodic reviews of the NAAQS for major "criteria" air pollutants and to retain or revise the NAAQS for a given pollutant, as appropriate. EPA recently instituted a number of changes to the NAAQS review process to help improve the EPA the efficiency of the process while ensuring that EPA's decisions on the NAAQS are informed by the best science available. As part of the NAAQS reviews NCEA, within EPA's Office of Research and Development (ORD), will assess newly available scientific information in Integrated Science Assessment (ISA) documents (formerly known as Criteria Documents). The ISA will be supported by a more detailed and comprehensive Science Assessment Support Document (SASD). The assessments in these documents will provide the scientific basis for the reviews of the NAAQS. EPA's OAQPS will prepare risk and exposure assessment analyses, as appropriate, drawing upon the scientific evidence summarized in the ISA. Subsequently, the EPA will prepare a policy assessment that discusses, in part, the findings of the science and risk/exposure assessments related to the adequacy of the standards and describes a range of options for revising or retaining the NAAQS.

NCEA is holding this workshop to inform the Agency's assessment process of the existing scientific evidence for the review of the NAAQS for the criteria pollutants $NO_X$ and $SO_X$. The workshop will address various issues involved in the preparation of the draft material for the ISA and SASD and issues involved in the integration of health evidence from both animal and human toxicology and epidemiology studies, along with key information from atmospheric science and exposure studies. This workshop is planned to help ensure that the SASD provides an up-to-date, state of the art scientific basis for the review of the NAAQS for these criteria pollutants. Workshop discussions will be focused on identifying and integrating policy relevant health findings in the ISA and for future risk and exposure analyses.

A second workshop will be announced in the next several months to discuss environmental effects related to the review of the NAAQS for $NO_X$ and $SO_X$ and the preparation of the draft ISA.

Dated: February 5, 2007.

**George Alapas,**

*Director, National Center for Environmental Assessment.*

[FR Doc. E7–2183 Filed 2–8–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8277–4]**

### Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a

public face-to-face meeting of the chartered SAB to: (1) Discuss EPA's strategic research priorities for the years 2008 to 2012; (2) conduct a quality review of the *Draft SAB Report on the Office of Research and Development's (ORD) Sustainability Research Strategy and the Science and Technology for Sustainability Multiyear Plan*; and (3) continue planning for upcoming SAB meetings.

**DATES:** The meeting dates are Thursday, February 22, 2007, from 8:30 a.m. to 5:30 p.m. through Friday, February 23, 2007, from 8:30 a.m. to 3 p.m. (Eastern Time).

**ADDRESSES:** The meeting will be held in Suite 3700 of the U.S. Environmental Protection Agency Science Advisory Board Conference Center; 1025 F Street, NW., Washington, DC 20004, phone (202) 343–9999.

**FOR FURTHER INFORMATION CONTACT:** Members of the public who wish to obtain further information about this meeting may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO) by mail at: Science Advisory Board Staff Office, (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone at (202) 343–9982; fax at (202) 233–0643; or e-mail at: *miller.tom@epa.gov*. The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab*.

**SUPPLEMENTARY INFORMATION:** The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

*Background:* The purpose of this meeting is to allow the SAB to discuss future research priorities for achieving EPA's mission to protect human health and the environment with Agency representatives. This will include discussions of the FY 2008 research budget. The SAB will also conduct a quality review of one draft SAB Committee report, *Draft SAB Report on the Office of Research and Development's (ORD) Sustainability Research Strategy and the Science and Technology for Sustainability Multiyear Plan* and discuss its plans for future SAB meetings during Fiscal Year 2007.

*Availability of Meeting Materials:* Materials in support of this meeting will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of this meeting.

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than one hour for all speakers. Interested parties should contact Mr. Miller, DFO, at the contact information provided above, by February 14, 2007, to be placed on the public speaker list for the February 22–23, 2007 meeting.

*Written Statements:* Written statements should be received in the SAB Staff Office by February 14, 2007, so that the information may be made available to the SAB for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail to *miller.tom@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

*Meeting Accommodations:* For information on access or services for individuals with disabilities, please contact Mr. Thomas Miller at (202) 343–9982, or via e-mail at *miller.tom@epa.gov*. To request accommodation of a disability, please contact Mr. Miller, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 5, 2007.

**Anthony F. Maciorowski,**

*Deputy Director, Science Advisory Board Staff Office.*

[FR Doc. E7–2178 Filed 2–8–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–8277–5]

## Stakeholder Comment on Proposed National Enforcement and Compliance Assurance; Priorities for Fiscal Years 2008, 2009 and 2010

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Solicitation of recommendations and comments.

**SUMMARY:** This Notice is a Federal Agency request for the public to comment and provide recommendations on triennial national enforcement and compliance assurance priorities to be addressed for fiscal years 2008, 2009 and 2010. EPA intends to consider information submitted by commentors during the priority identification process. Final priority selections are generally incorporated into the EPA's Office of Enforcement and Compliance Assurance Workplanning Guidance (which provides national program direction for all EPA Regional offices). These priorities also affect implementation of the enforcement and compliance goals and objectives outlined in the EPA Strategic Plan, as mandated under the Government Performance and Results Act.

**DATES:** The Agency must receive comments and recommendations in writing on or before March 12, 2007.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–OECA–2007–0066, electronically using *http://www.regulations.gov* (our preferred method) or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code (2201T), 1200 Penn. Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Franco, Director, National Planning Measures and Analysis Staff; telephone: (202) 564–0113 or facsimile: (202) 564–0027.

**SUPPLEMENTARY INFORMATION:**

### Contents

A. Background
B. Projected Time Frames

### A. Background

EPA's Office of Enforcement and Compliance Assurance (OECA) selects multi-year national priorities focusing on specific environmental problems, risks, or patterns of noncompliance. A performance-based strategy is developed for each national priority to characterize

the problem and set goals for addressing it. The intent of this Notice is to invite comments from the public on EPA's enforcement and compliance assurance priorities for the years 2008–2010 and provide a summary of the process EPA used to identify this proposed list of National Priorities.

This past summer, EPA Regions were asked to review the national priority selection criteria to help inform their recommendations on which priorities, in part or in whole, EPA should continue through FY 2010. In addition, the EPA Regions discussed the priorities with the states and tribes, to get their opinion on whether the existing priorities should be continued, in part or in whole, for the next three fiscal years.

States and tribes were also encouraged to put forward any new suggestions for priorities that they would like to see considered at a national level. Feedback to date from EPA Regions, states and tribes has been generally supportive of continuing with the existing set of national priorities. OECA uses the following criteria to select national priorities:

(a) *Significant Environmental Benefit.* Can significant environmental benefits be gained, or risks to human health or the environment be reduced through focused EPA action directed at specific regulated entities, geographic areas, industrial or governmental sectors, or environmental program areas?

(b) *Pattern of Noncompliance.* Are there identifiable and important patterns of noncompliance among specific regulated entities, industrial or governmental sectors, in geographic areas, or within environmental statutes or programs?

(c) *Appropriate EPA Responsibility.* Are the environmental risks, human health risks or the patterns of noncompliance sufficient in scope and scale such that EPA is best suited to take action or pursue a collaborative approach in which EPA leverages other resources?

The proposed set of FY 2008–2010 national priorities are shown below.

- Clean Water Act—Stormwater.
- Clean Water Act—Combined Sewer Overflow.
- Clean Water Act—Sanitary Sewer Overflow.
- Clean Water Act—Concentrated Animal Feeding Operations.
- Clean Air Act—New Source Review/Prevention of Significant Deterioration.
- Clean Air Act—Air Toxics.
- RCRA & CERCLA—Financial Assurance.
- RCRA—Mining & Mineral Processing.
- Tribal.

The FY 2005–2007 Petroleum Refining priority will not continue into FY 2008–2010 as a national priority. The priority has met its primary goal of addressing 80% of the national refining capacity. It is important to note that discontinuation as a national priority does not mean that the Agency will no longer focus on these areas, but rather the work will continue as part of the Agency's core program activities.

The table below includes a brief description of the environmental problem in each priority area. Greater detail and background information on each priority area can be found at *http://www.epa.gov/compliance/data/planning/priorities/index.html.* Information on end of year results for the Office of Enforcement and Compliance Assurance, including national priorities, can be found at *http://epa.gov/compliance/data/results/annual/fy2006.html.*

NATIONAL PRIORITIES

| Priority | Nature of concern |
|---|---|
| Clean Water Act—Stormwater | Stormwater runoff from urban areas can include a variety of pollutants, such as sediment, bacteria, organic nutrients, hydrocarbons, metals, oil and grease. |
| Clean Water Act—Combined Sewer Overflow | Combined sewer systems are designed to collect rainwater runoff, domestic sewage and industrial wastewater in the same pipe. During periods of rainfall or snow melt, the wastewater volume in a combined sewer system can exceed the capacity of the system or treatment plant, leading to an overflow. |
| Clean Water Act—Sanitary Sewer Overflow | The main pollutants in raw sewage from SSOs are bacteria, pathogens, nutrients, untreated industrial wastes, toxic pollutants, such as oil and pesticides, and wastewater solids and debris. |
| Clean Water Act—Concentrated Animal Feeding Operations. | The major environmental problem associated with CAFOs is the large volume of animal waste generated in concentrated areas. Pollutants associated with animal waste primarily include nutrients, mainly nitrogen and phosphorus, but animal waste may also include organic matter, solids, pathogens, pesticides, antibiotics, hormones, salts and various trace elements (including metals). If manure and wastewater are not properly managed, pollutants can be released into the environment through discharges from manure storage areas or land application. |
| Clean Air Act—New Source Review/Prevention of Significant Deterioration. | Ensuring that New Source Review (NSR) and Prevention of Significant Deterioration (PSD) requirements of the Clean Air Act (CAA) are implemented. Failure to comply with NSR/PSD requirements results in inadequate control of emissions, thereby contributing thousands of unaccounted tons of pollution each year, particularly of Nitrogen Oxides, Volatile Organic Compounds, and Particulate Matter. |
| Clean Air Act—Air Toxics | Reduce the public exposure to toxic air emissions by ensuring compliance with the Maximum Achievable Control Technology (MACT) standards. |
| RCRA & CERCLA—Financial Assurance | Strengthen compliance with RCRA & CERCLA financial assurance requirements to ensure that persons handling hazardous waste have adequate funds to close facilities, cleanup any releases, and compensate any affected parties. |
| RCRA—Mining and Mineral Processing | Reducing risk to health and the environment by achieving increased compliance rates throughout the mineral processing and mining sectors and by ensuring that harm is being appropriately addressed through compliance assistance and enforcement. |

NATIONAL PRIORITIES—Continued

| Priority | Nature of concern |
|---|---|
| Tribal | Tribal members face significant threats to human health and the environment posed by pollution of the air, water, and land in Indian country and other tribal areas, including in Alaska, where federally-recognized tribes and tribal members have recognized rights and interests protected by treaty, statute, judicial decisions, and other authorities. A diverse spectrum of regulated facilities exists in Indian country, including drinking water and wastewater treatment systems, manufacturing facilities, facilities discharging pollutants into the air or water, facilities storing, treating or disposing of solid or hazardous waste, abandoned waste sites, and other pollution sources. |
| National Priority returned to Core Program—Petroleum Refining. | Using compliance and enforcement tools to reduce air emissions and eliminate unpermitted releases from operable domestic petroleum refineries. This priority has met its goal of addressing 80% of refinery capacity, and therefore, is returning to the core program. |

At this time we are inviting comments on this list of national priorities and welcome recommendations on other areas that you think should be considered as national priority candidates. EPA intends to consider public comments as we develop a limited number of recommended FY 2008–2010 priorities. When submitting responses to this Notice, commentors should rank which of the areas listed above should be a top concern for national focus, as well as suggest others not included on the current list. If additional problem areas are identified, the commentor should provide supporting information relating to the previously listed criteria. Suggested priority areas that are not chosen may be candidates for individual Regional or State attention and/or continued investigation. Direct your comments to Docket ID No. EPA–HQ–OECA–2007–0066. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

**B. Projected Time Frames**

After receiving comments in response to this Notice, we expect to complete an analysis of proposed priorities and provide a list of final recommendations to OECA's Assistant Administrator for approval. EPA will share the final recommendations with the Regions, states and tribes in a subsequent **Federal Register** Notice this spring. OECA expects to issue its final FY2008 Work Planning Guidance, which will include the final list of 2008–2010 national priorities, in April 2007.

Dated: February 6, 2007.

**Michael M. Stahl,**

*Director, Office of Compliance, Office of Enforcement and Compliance Assurance.*

[FR Doc. E7–2179 Filed 2–8–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8276–5]**

## Proposed CERCLA Administrative Cost Recovery Settlement; Theta Properties, Inc.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Plantation Heat Treatment Superfund Site in North Providence, Rhode Island, with the following settling party: Theta Properties, Inc. The settlement requires the settling party to pay $175,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA Records Center, 1 Congress Street, Suite 1100, Boston, Massachusetts.

**DATES:** Comments must be submitted on or before March 12, 2007.

**ADDRESSES:** The proposed settlement is available for public inspection at EPA Records Center, 1 Congress Street, Suite 1100, Boston, Massachusetts. A copy of the proposed settlement may be obtained from Sharon C. Fennelly, EPA Region 1, 1 Congress Street, Suite 1100 (HBR), Boston, Massachusetts 02114, 617 918–1263. Comments should refer to the Plantation Heat Treatment Superfund Site, North Providence, Rhode Island, and U.S. EPA Region 1 CERCLA Docket No. 01–2007–0040 and should be addressed to Sharon C. Fennelly.

**FOR FURTHER INFORMATION CONTACT:** Sharon C. Fennelly, EPA Region 1, 1 Congress Street, Suite 1100 (HBR), Boston, Massachusetts 02114, 617 918–1263.

Dated: January 18, 2007.

**Rich Cavagnero,**

*Acting Director, Office of Site Remediation and Restoration, EPA Region 1.*

[FR Doc. E7–2182 Filed 2–8–07; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 2007.

**A. Federal Reserve Bank of Cleveland** (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566.

*1. Huntington Bancshares Incorporated*, Columbus, Ohio, and its wholly owned subsidiary Penguin Acquisitions, LLC, Columbus, Ohio; to acquire 100 percent of Sky Financial Group, Inc., Bowling Green, Ohio, and thereby indirectly acquire voting shares of Sky Bank, Salineville, Ohio, and Sky Trust, NA, Pepper Pike, Ohio.

**B. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

*1. Trinity Investments, Inc.*, Glen Ullin, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Glen Ullin, Glen Ullin, North Dakota.

Board of Governors of the Federal Reserve System, February 5, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7–2119 Filed 2–8–07; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 2007.

**A. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

*1. Castle Creek Capital Partners III LP, Castle Creek Capital III LLC, Eggemeyer Capital LLC, Ruh Capital LLC, Legions IV Advisory Corp., all of Rancho Santa Fe, California, and the BANKshares, Inc., Melbourne, Florida,* to aquire 100 percent of BankFIRST Bancorp, and thereby indirectly acquire its subsidiary, BankFIRST, both of Winter Park, Florida.

Board of Governors of the Federal Reserve System, February 6, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E7–2175 Filed 7–8–07; 8:45 am]

BILLING CODE 6210–01–S

## GENERAL SERVICES ADMINISTRATION

**[PBS-N01; Docket 2007–0007, Sequence 7]**

### Notice of Availability to Distribute a Final Environmental Impact Statement for the Construction of a New Border Station Facility in Madawaska, Maine

**AGENCY:** Public Buildings Service, GSA.

**ACTION:** Notice of Availability.

**SUMMARY:** The General Services Administration (GSA) announces its intent to distribute a Final Environmental Impact Statement (Final EIS) under the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321—4347 (NEPA) to assess the potential impacts of the construction of a New Border Station Facility in Madawaska, Maine (the "Proposed Action"). At the request of Customs and BorderProtection (CBP), the GSA is proposing to construct a new border station facility which meets their needs, and the design requirements of the GSA.

The existing facilities are undersized and obsolete, and consequently incapable of providing the level of security now required. The Proposed Action has been defined and includes: (a) Identification of land requirements, including acquisition of adjoining land; (b) demolition of existing government structures at the border station; (c) construction of a main administration building and ancillary support buildings; and (d) consequent potential alterations to secondary roads.

Studied alternatives have identified alternative locations for the components of the border station including the main administration and ancillary support buildings, the associated roadway

network and parking. A No Action alternative has also been studied and evaluates the consequences of not constructing the new border station facility. This alternative has been included to provide a basis for comparison to the action alternatives described above as required by NEPA regulations (40 CFR 1002.14(d)).

Following this thirty (30) day notice in the **Federal Register**, GSA will issue a Record of Decision (ROD) at which time its availability will be announced in the **Federal Register** and local media.

**Contact:** David M. Drevinsky P.E., PMP, Regional Environmental Quality Advocate (REQA), U.S. General Services Administration, 10 Causeway Street, Room 975, Boston, MA 02222. Fax: (617) 565–5967. Phone: (617) 565–6596. E-mail: *david.drevinsky@gsa.gov.*

**Distribution**

GSA will distribute ten reading copies of the Final EIS at both the Middle / High School Library located on 135 Seventh Avenue in Madawaska and the Madawaska Library located on 393 Main Street.

Dated: February 2, 2007.

**Glenn Rotondo,**

*Assistant Regional Administrator, New England Region.*

[FR Doc. E7–2190 Filed 2–8–07; 8:45 am]

BILLING CODE 6820–A8–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–0990–New]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; 60-day notice

**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.

*Type of Information Collection Request:* New Collection.

*Title of Information Collection:* The National Evaluation of the Rural/ Frontier Women's Health Coordinator Center Program.

*Form/OMB No.:* 0990—New.

*Use:* The Department of Health and Human Services Office on Women's Health (OWH) is seeking clearance to conduct data collection efforts as part of the National Evaluation of the Rural/ Frontier Coordinating Center (RFCC) program. The Office on Women's Health funded the creation of three RFCCs in September 2004, and awarded eight additional RFCC contracts in fiscal year 2005. The impetus for creating the RFCCs was to, "identify, coordinate, and leverage the network of existing resources to provide a full range of culturally and linguistically appropriate health services to women and their families. To effectively meet the numerous health care needs of this diverse population, rural health providers must not only offer comprehensive health care services but also integrate these services to maximize awareness, access, and quality. RFCCs were created to accomplish this task. Evaluating the effectiveness of RFCCs is essential for determining whether these centers are the best vehicles for "coordinating and leveraging new and existing resources for women's health in rural and frontier communities." The OWH is seeking to evaluate all eleven RFCCs. This evaluation will also enable the OWH to determine how well RFCCs are facilitating access to integrated and comprehensive primary care services to women and their families residing in rural and frontier regions of the U.S.

*Frequency:* Report on Occasion.

*Affected Public:* Not-for-profit institutions.

*Annual Number of Respondents:* 833.

*Total Annual Responses:* 833.

*Average Burden per Response:* 34 minutes.

*Total Annual Hours:* 472.

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 60 days, and directed to the OS Paperwork Clearance Officer at the following address:Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Resources and Technology,Office of Resources Management,Attention: Sherrette Funn-Coleman (0990–NEW),Room 537–H,200 Independence Avenue, SW.,Washington DC 20201.

Dated: January 29, 2007.

**Alice Bettencourt,**

*Office of the Secretary,Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. E7–2185 Filed 2–8–07; 8:45 am]

BILLING CODE 4150–33–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–0990-New]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; 60-day notice

**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.

*Type of Information Collection Request:* New collection.

*Title of Information Collection:* "A National Survey to Measure the Adoption of Electronic Health Records (EHR) among Physicians and Group Practices."

*Frequency:* One year.

*Form/OMB No.:* 0990—New.

*Use:* The Office of the Secretary will evaluate barriers and facilitators to acquisition of electronic recordkeeping in medical practices. This will allow the Secretary to identify policy choices to encourage use of EHR thereby improving the flow of medical information.

*Frequency:* One time reporting.

*Affected Public:* Business or other for-profit, Not-for-profit institutions.

*Annual Number of Respondents:* 6,000.

*Total Annual Responses:* 1.

*Average Burden per Response:* 15 minutes.

*Total Annual Hours:* 1500.

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 60 days, and directed to the OS Paperwork Clearance Officer at the following address:Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Resources and Technology,Office of Resources Management,Attention: Sherrette Funn-Coleman (0990–NEW),Room 537–H,200 Independence Avenue, SW.,Washington DC 20201.

Dated: February 2, 2007.

**Mary Oliver-Anderson,**

*Office of the Secretary,Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. E7–2191 Filed 2–8–07; 8:45 am]

BILLING CODE 4150–45–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute for Occupational Safety and Health

### Decision To Evaluate a Petition To Designate a Class of Employees at Nuclear Materials and Equipment Corp. (NUMEC) in Apollo, PA, To Be Included in the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Nuclear Materials and Equipment Corp. (NUMEC)—Apollo, Apollo, Pennsylvania, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

*Facility:* Nuclear Materials and Equipment Corp. (NUMEC)—Apollo.

*Location:* Apollo, Pennsylvania.

*Job Titles and/or Job Duties:* All office employees who worked at the Apollo site.

*Period of Employment:* January 1, 1957 through December 31, 1983.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: February 6, 2007.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 07–594 Filed 2–8–07; 8:45 am]

BILLING CODE 4163–19–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute for Occupational Safety and Health

### Decision to Evaluate a Petition To Designate a Class of Employees at the Y–12 Plant in Oak Ridge, Tennessee, To Be Included in the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Y–12 Plant in Oak Ridge, Tennessee, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

*Facility:* Y–12 Plant.

*Location:* Oak Ridge, Tennessee.

*Job Titles and/or Job Duties:* All statisticians in all locations.

*Period of Employment:* January 1, 1951 through June 30, 1959.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: February 6, 2007.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 07–595 Filed 2–8–07; 8:45 am]

BILLING CODE 4163–19–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "Pilot Study of Proposed Medical Office Surveys on Patient Safety." In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on December 6, 2006 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by March 12, 2007.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036, Rockville, MD 20850, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkiwitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

"Pilot Study of Proposed Medical Office Surveys on Patient Safety"

This activity is an expansion and refinement of AHRQ's Hospital Survey on Patient Safety Culture (HSOPSC) which was developed and released to the public for use in November 2004. Two new surveys are proposed to assess patient safety culture in outpatient medical office settings: one for clinicians (physicians, physician assistants, and nurse practitioners who diagnose, prescribe for, and treat patients) and one for medical office staff (all other non-clinician staff). The proposed new surveys will be based on the HSOPSC but also contain new and revised items as well as dimensions that are more applicable to the outpatient medical office setting. The two proposed surveys will contain some items that are the same and some items that are unique to each survey.

The instruments will be pilot tested with clinicians and staff working in 97 outpatient medical offices. The data collected will be analyzed to determine the psychometric properties of each survey's items and dimensions and provide information for the revision and shortening of the final surveys based on an assessment of their reliability and construct validity. The final surveys will be made publicly available to enable outpatient medical offices to assess patient safety culture from the perspectives of their clinicians and staff. The surveys can be used by outpatient medical offices to identify areas for patient safety culture improvement.

**Methods of Collection**

A purposive sample of 97 outpatient medical offices will be recruited and selected. These medical offices will represent a distribution of single-specialty offices (of various types) and multi-specialty offices, and will vary by office size (based on number of physicians in the office), as well as geographic region of the United States. Recruited medical offices will be allocated to each category in numbers roughly proportionate to the national distribution of offices in each category.

All clinicians in each medical office will be asked to respond to the clinician survey and all other non-clinician staff will be asked to complete the medical office staff survey. Since not all medical office staff have access to e-mail or the internet, paper surveys will be administered. Standard non-response follow-up techniques such as reminder postcards and distribution of a second survey will be used. Individuals and organizations contacted will be assured of the confidentiality of their replies under Section 924(c) of the Healthcare Research and Quality Act of 1999.

**Estimated Annual Respondent Burden**

Paper surveys will be distributed to a total of approximately 2,340 individuals from 97 medical offices (about 592 clinicians and 1,748 medical office staff), with a target response rate of 70%, or 1,638 completed surveys (414 completed clinician surveys and 1,224 medical office staff surveys). Respondents should take approximately 15 minutes to complete either survey. Therefore, we estimate that the total respondent burden for completing the survey will be 410 hours (414 completed clinician surveys multiplied by 0.25 hours per survey or 104 hours; and 1,224 completed medical office staff surveys multiplied by 0.25 hours per survey or 306 hours).

| Type of respondent | Number of respondents | Number of responses per respondent | Estimated time per respondent | Estimated total respondent burden hours |
|---|---|---|---|---|
| Clinicians | 414 | 1 | 0.25 hours | 104 |
| Medical office staff | 1,224 | 1 | 0.25 hours | 306 |
| Total | 1,638 | | | 410 |

**Estimated Annual Costs to the Federal Government**

The total cost to the Government for developing the clinician survey is approximately $257,000, and for the medical office staff survey is approximately $268,000. These estimates include the costs of background literature reviews, survey development, cognitive testing, pilot data collection, data analysis, and preparation of final deliverables and reports.

**Request for Comments**

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 22, 2007.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 07–571 Filed 2–8–07; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–07–0457]**

### 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**

Aggregate Reports for Tuberculosis Program Evaluation (OMB No. 0920–0457)—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

CDC, National Center for HIV, STD, and TB Prevention, Division of Tuberculosis Elimination (DTBE) proposes to continue the Aggregate Reports for Tuberculosis Program Evaluation, previously approved under OMB No. 0920–0457. This request is for a 3-year clearance. There are no revisions to the report forms, data definitions, or reporting instructions. DTBE is the lead agency for tuberculosis elimination in the United States.

To ensure the elimination of tuberculosis in the United States, CDC monitors indicators for key program activities, such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected and providing therapy for latent tuberculosis infection. In 2000, CDC implemented two program evaluation reports for annual submission: Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection (OMB No. 0920–0457). The respondents for these reports are the 68 State and local tuberculosis control programs receiving Federal cooperative agreement funding through DTBE. These reports emphasize treatment outcomes, high-priority target populations vulnerable to tuberculosis, and programmed electronic report entry and submission through the Tuberculosis Information Management System (TIMS). No other federal agency collects this type of national tuberculosis data, and the Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection are the only data source about latent tuberculosis infection for monitoring national progress toward tuberculosis elimination with these activities. CDC provides ongoing assistance in the preparation and utilization of these reports at the local and State levels of public health jurisdiction. CDC also provides respondents with technical support for the TIMS software (Electronic—100%, Use of Electronic Signatures—No). The annual burden to respondents is estimated to be 226 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Report name | Respondents (state and local tuberculosis control programs) | Response format | Number response per respondent | Hrs per response |
|---|---|---|---|---|
| Follow-up and Treatment of Contacts to Tuberculosis Cases. | 68 data clerks | 50 Electronic | 1 | 30/60 |
| | | 18 Manual | 1 | 3 |
| | 68 program managers | 50 Electronic | 1 | 30/60 |
| | | 18 Manual | 1 | 30/60 |
| Targeted Testing and Treatment for Latent Tuberculosis Infection. | 68 data clerks | 50 Electronic | 1 | 30/60 |
| | | 18 Manual | 1 | 3 |
| | 68 program managers | 50 Electronic | 1 | 30/60 |
| | | 18 Manual | 1 | 30/60 |

Dated: February 5, 2007.

**Joan F. Karr,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7–2176 Filed 2–8–07; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–07–05CI]**

### 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**

CDC Oral Health Management Information System—New—Division of Oral Health (DOH), National Center for Chronic Disease Prevention and Public Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The CDC seeks to improve the oral health of the nation by targeting efforts to improve the infrastructure of state and territorial oral health departments, strengthen and enhance program capacity related to monitoring the population's oral health status and behaviors, develop effective programs to improve the oral health of children and adults, evaluate program accomplishments, and inform key stakeholders, including policy makers, of program results. Through a cooperative agreement program (Program Announcement 03022), CDC provides approximately $3 million per year over 5 years to 12 states and one territory to strengthen the state's core oral health infrastructure and capacity and reduce health disparities among high-risk groups. The CDC is authorized to do this under sections 301 and 317(k) of the Public Health Service Act [42 U.S.C. 241 and 247b(k)].

NCCDPHP is currently pursuing a key initiative to improve the efficiency and effectiveness of CDC project officers who oversee the State and territorial oral health programs by developing an information system to support program management, consulting and evaluation. Information systems provide a central repository of information, such as the plans of the State or territorial oral health programs (their goals, objectives, performance milestones and indicators), as well as state and territorial oral health performance activities including programmatic and financial information.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 234.

| Type of responses or kinds of respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|
| Semi-Annual Report | 13 | 2 | 9 |

Dated: February 5, 2007.

**Joan F. Karr,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7–2177 Filed 2–8–07; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–R–262 and CMS–10142]**

### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget

**AGENCY:** Center for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's 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.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. This is necessary to ensure compliance with an initiative of the Administration. CMS does not have sufficient time to complete the normal PRA clearance process while making corrections and enhancements to the software and ensuring that organizations have ample time to complete and submit their tools by the statutory deadline in June 2007. The normal PRA clearance process would result in violating this statutory deadline which would prevent Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations from providing benefits to millions of Medicare beneficiaries.

CMS is requesting to continue its use of the Plan Benefit Package software, formulary and Bid Pricing Tool for the collection of benefits, pricing and related information for CY 2008 as part of the annual bidding process.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Plan Benefit Package (PBP) and Formulary Submission for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDPs); *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. CMS requires that MA and PDP organizations submit a completed formulary and PBP as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval. The changes to the PBP include enhancements to the software for describing the out-of-network benefits, Medicare Savings Account (MSA) benefits, Point of Service (POS) benefits, Visitor/Travel benefits, and collecting Medicare Rx information on gap coverage. The changes to the formulary include enhancements to the submission process by developing a drug reference table and by collecting excluded drug indicators, specialty drug indicators, and drug types. The software is more clarifying for the plans to describe its benefits and for the beneficiaries to understand their coverage; *Form Number:* CMS–R–262 (OMB#: 0938–0763); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 450; *Total Annual Responses:* 4,725; *Total Annual Hours:* 10,800.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDPs); *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization (MMA), Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing "bid" for each plan offered to Medicare beneficiaries. CMS requires that MAOs and PDPs complete the BPT as part of the annual bidding process. During this process, organizations prepare their proposed actuarial bid pricing for the upcoming contract year and submit them to CMS for review and approval. The purpose of the BPT is to collect the actuarial pricing information for each plan. The BPT calculates the plan's bid, enrollee premiums, and payment rates. The BPT revisions include structural changes to the MA worksheets and changes to streamline reporting requirements. *Form Number:* CMS–10142 (OMB#: 0938–0944); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 550; *Total Annual Responses:* 6,050; *Total Annual Hours:* 42,350.

CMS is requesting OMB review and approval of these collections by *March 21, 2007*, with a 180-day approval period. Written comments and recommendation will be considered from the public if received by the individuals designated below by *March 3, 2007.*

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995* or E-

mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by *March 3, 2007:*

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C4–26–05, 7500 Security Boulevard,Baltimore, MD 21244–1850, Attn: Bonnie L Harkless; and,

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 2, 2007.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 07–577 Filed 2–8–07; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; 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 meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Center Review Committee.

*Date:* February 19, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1388, *rliu@nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, NIDA/L Conflicts.

*Date:* March 5, 2007.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Metro Center, 775 12th Street NW., Washington, DC 20005.

*Contact Person:* Mark R. Green PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1431, *mgreen1@nida.nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, NIDA–F Conflicts.

*Date:* March 6, 2007.

*Time:* 2 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 402–6626, *gm145a@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, NIDA–E Conflicts.

*Date:* March 6–7, 2007.

*Time:* 2 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, (301) 402–6626, *gm145a@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel NIDA/K Conflicts.

*Date:* March 13, 2007.

*Time:* 5 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–7491, (301) 435–1389, *ms80x@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addition Research Programs, National Institutes of Health, HHS)

Dated: February 5, 2007.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–592 Filed 2–8–07; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–3270–EM]**

### Colorado; Amendment No. 2 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Colorado (FEMA–3270-EM), dated January 7, 2007, and related determinations.

**DATES:** *Effective Date:* January 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency declaration for the State of Colorado is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 7, 2007:

Teller County for emergency protective measures (Category B), including snow removal, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Under Secretary for Federal Emergency Management and Director of FEMA.*

[FR Doc. E7–2145 Filed 2–8–07; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1674–DR]**

### Nebraska; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1674–DR), dated January 7, 2007, and related determinations.

**DATES:** *Effective Date:* January 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 7, 2007:

Butler County for Public Assistance.

Deuel County for Public Assistance Categories A and B (debris removal and emergency protective measures.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Under Secretary for Federal Emergency Management and Director of FEMA.*

[FR Doc. E7–2144 Filed 2–8–07; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1678–DR]**

### Oklahoma; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1678–DR), dated February 1, 2007, and related determinations.

**DATES:** *Effective Date:* February 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated February 1, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe winter storms during the period of January 12–26, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Kenneth Clark, of FEMA, is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Delaware, McIntosh, Muskogee, and Pittsburg Counties for Public Assistance, including direct Federal assistance, if warranted.

The counties of Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Cotton, Craig, Delaware, Haskell, Hughes, Johnston, Latimer, Mayes, McIntosh, Muskogee, Okfuskee, Okmulgee, Ottawa, Pittsburg, Seminole, Sequoyah, and Wagoner within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Under Secretary for Federal Emergency Management and Director of FEMA.*

[FR Doc. E7–2140 Filed 2–8–07; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1677–DR]**

### Oklahoma; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1677–DR), dated February 1, 2007, and related determinations.

**DATES:** *Effective Date:* February 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated February 1, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from a severe winter storm during the period of December 28–30, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such

a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance limited to debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Kenneth Clark, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Beaver, Cimarron, and Texas Counties for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F), under the Public Assistance program, including direct Federal assistance, if warranted.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.

**R. David Paulison,**

*Under Secretary for Federal Emergency Management and Director of FEMA.*

[FR Doc. E7–2142 Filed 2–8–07; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5117–N–14]**

### Notice of Submission of Proposed Information Collection to OMB; Federal Labor Standards Remote Monitoring

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is used by HUD to determine whether State, local and tribal agencies administering HUD programs are properly performing labor standards responsibilities delegated to the respective agency by HUD.

**DATES:** *Comments Due Date:* March 12, 2007.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2501–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Federal Labor Standards Remote Monitoring.

*OMB Approval Number:* 2501–NEW.

*Form Numbers:* HUD–4742 (A through E); HUD–4743 (A and B).

*Description of the Need for the Information and Its Proposed Use:* The information is used by HUD to determine whether State, local and tribal agencies administering HUD programs are properly performing labor standards responsibilities delegated to the respective agency by HUD.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 50 | 1 | | 50 | | 250 |

*Total Estimated Burden Hours:* 250.

*Status:* New collection.

*Authority:* Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 5, 2007.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E7–2212 Filed 2–8–07; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5117–N–15]**

### Notice of Submission of Proposed Information Collection to OMB; Federal Labor Standards Payee Verification and Payment Processing

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information collected by HUD is used to issue refunds to depositors where labor standards discrepancies have been resolved, and to issue wage restitution payments on behalf of construction and maintenance workers who have been underpaid for work performed on HUD-assisted projects subject to prevailing wage requirements.

**DATES:** *Comments Due Date:* March 12, 2007.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2501–0021) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Federal labor standards payee verification and payment processing.

*OMB Approval Number:* 2501–0021.

*Form Numbers:* HUD–4743, Labor Standards Deposit Voucher.

*Description of the Need for the Information and Its Proposed Use:* The information collected by HUD is used to issue refunds to depositors where labor standards discrepancies have been resolved, and to issue wage restitution payments on behalf of construction and maintenance workers who have been underpaid for work performed on HUD-assisted projects subject to prevailing wage requirements.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 50 | 1 | | 0.1 | | 5 |

*Total Estimated Burden Hours:* 5.

*Status:* Extension of a currently approved collection.

*Authority:* Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 5, 2007.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer,Office of the Chief Information Officer.*

[FR Doc. E7–2213 Filed 2–8–07; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5117–N–16]**

### Notice of Submission of Proposed Information Collection to OMB; Monthly Report of Excess Income and Annual Report of Uses of Excess Income

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Project owners are permitted to retain Excess Income for projects under terms and conditions established by HUD. Owners must submit a written request to retain some or all of their Excess Income. The request must be submitted at least 90 days before the beginning of each fiscal year, or 90 days before any other time during a fiscal year that the owner plans to begin retaining excess income for that fiscal year. HUD uses the information to ensure that required excess rents are remitted to the Department and/or retained by the owner.

**DATES:** *Comments Due Date:* March 12, 2007.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

approval Number (2502–0086) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Monthly Report of Excess Income and Annual Report of Uses of Excess Income.

*OMB Approval Number:* 2502–0086.

*Form Numbers:* HUD–93104.

*Description of the Need for the Information and Its Proposed Use:* Project owners are permitted to retain Excess Income for projects under terms and conditions established by HUD. Owners must submit a written request to retain some or all of their Excess Income. The request must be submitted at least 90 days before the beginning of each fiscal year, or 90 days before any other time during a fiscal year that the owner plans to begin retaining excess income for that fiscal year. HUD uses the information to ensure that required excess rents are remitted to the Department and/or retained by the owner.

*Frequency of Submission:* Monthly, Annually.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 3,000 | 13.35 | | 0.099 | | 3,983 |

*Total Estimated Burden Hours:* 3,983.

*Status:* Extension of a currently approved collection.

*Authority:* Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 5, 2007.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E7–2214 Filed 2–8–07; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5117–N–17]**

## Notice of Submission of Proposed Information Collection to OMB; Request for Withdrawals From Replacements Reserves/Residual Receipts Funds

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Project owners are required to submit this information and required supporting documentation when requesting a withdrawal for funds from the Reserves for Replacement and/or Residual Receipt Funds. HUD reviews this information to ensure that funds are withdrawn and used in accordance with regulatory and administrative policy.

**DATES:** *Comments Due Date:* March 12, 2007.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–0555) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal: Request for Withdrawals From Replacements Reserves/Residual Receipts Funds.*

*OMB Approval Number:* 2502–0555.

*Form Numbers:* HUD–9250.

*Description of the Need for the Information and Its Proposed Use:* Project owners are required to submit this information and required supporting documentation when

requesting a withdrawal for funds from the Reserves for Replacement and/or Residual Receipt Funds. HUD reviews this information to ensure that funds are withdrawn and used in accordance with regulatory and administrative policy.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 8,250 | 1 | | 2.5 | | 20,625 |

*Total Estimated Burden Hours:* 20,625.

*Status:* Extension of a currently approved collection.

*Authority:* Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 5, 2007.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E7–2215 Filed 2–8–07; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4912–N–20]**

## Notice of Availability of a Draft Environmental Impact Statement for the East River Waterfront Esplanade and Piers Project in the Borough of Manhattan, City of New York, New York; Notice of Intent to Prepare Draft Environmental Impact Statement; Notice of Public Hearing; and Notice of Availability of National Historic Preservation Act Draft Programmatic Agreement

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notices.

**SUMMARY:** HUD gives notice to the public, agencies, and Indian tribes of the availability of the Draft Environmental Impact Statement (DEIS) for review and comment for the East River Waterfront Esplanade and Piers Project in the Borough of Manhattan, City of New York, New York (Proposed Action). Included also are the Notice of Public Hearing and the Notice of Availability of National Historic Preservation Act Draft Programmatic Agreement. This notice also serves as a Notice of Intent to prepare a DEIS for the Proposed Action. The DEIS and related notices were prepared by the Lower Manhattan Development Corporation, acting under its authority as the Responsible Entity for compliance with the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR 58.4. The Draft EIS has been prepared to satisfy the requirements of NEPA. The EIS and NEPA process also address historic preservation and cultural resource issues under section 106 of the National Historic Preservation Act (16 U.S.C. 470f). This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508. The Lower Manhattan Development Corporation (LMDC), a subsidiary of the Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York), is the lead agency. The City of New York is a cooperating agency.

**DATES:** Written comments on the DEIS and draft Programmatic Agreement may be submitted to LMDC but must be received by LMDC by 5 p.m. on March 19, 2007, or they will not be considered. Comments should be directed to Lower Manhattan Development Corporation, Attention: East River Waterfront Esplanade and Piers Project; One Liberty Plaza; New York, NY 10006; Telephone: (212) 962–2300; Fax: (212) 962–2431.

A public hearing on the DEIS, where comments on the DEIS may be submitted, has been scheduled for March 5, 2007. The hearing will take place from 4:30 p.m. to 8 p.m. at Pace University, Multipurpose Room, One Pace Plaza, B Level, Spruce Street Entrance, New York, NY 10037. The public hearing location is accessible to the mobility impaired; interpreter services will be available upon request. The public hearing will also serve as an opportunity for the public and interested persons to comment on the draft Programmatic Agreement for the Proposed Action that has been prepared pursuant to Section 106 of the National Historic Preservation Act and is included in the DEIS.

**FOR FURTHER INFORMATION CONTACT:** Requests for information about the Proposed Action or copies of the DEIS can also be directed to the LMDC: Victor J. Gallo (212) 962–2300; e-mail: *Vgallo@renewnyc.com*. Information about the Proposed Action will be available during regular business hours at the offices of LMDC and will be available on LMDC's Web site: *www.RenewNYC.com* in "Planning, Design & Development."

**SUPPLEMENTARY INFORMATION:** The Proposed Action would improve a two mile portion of the East River waterfront in Manhattan and create a City-owned public open space. The area of the Proposed Action would generally encompass the waterfront, the upland area adjacent to and under the elevated Franklin Delano Roosevelt Drive and South Street extending from the Whitehall Ferry Terminal and Peter Minuit Plaza on the South to East River Park on the North, as well as Pier 15, the New Market Building pier, Pier 35, Pier 36, and Pier 42. Approximately $139,500,000 of HUD funds will be allocated for the Proposed Action.

The DEIS analyzes the Proposed Action's potential impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources and Floodplain Impacts; Hazardous Materials; Waterfront Revitalization; Infrastructure, Solid Waste and Energy; Traffic and Transportation; Air Quality; Noise; Construction Impacts; and Environmental Justice. The DEIS considers a reasonable range of alternatives including a no action alternative, esplanade development alternatives, Battery Maritime Building plaza alternatives, an alternative without the BMB plaza and the Pier 42 beach, alternative in-water configurations south of Pier 15, and an alternative retaining a portion of the automobile parking beneath the FDR Drive.

A Notice of Intent, Notice of Public Scoping Meeting and Public Comment Period, and other related notices were previously published in the New York Environmental Notice Bulletin, AM New York, the New York Post, Hoy and Sing Tao on March 22, 2006. Although the Notice of Intent was not published in the **Federal Register** at that time, LMDC distributed the notice to relevant federal, state and local agencies as well as potentially interested persons. The public scoping meeting, where comments on the draft scope of work were accepted, was held on April 11,

2006. Comments on the draft scope of work were accepted through April 27, 2006. A final scope of work was adopted by LMDC on June 7, 2006, and is available to the public as set forth above under the heading **FOR FURTHER INFORMATION CONTACT.** Notice of LMDC's intent to prepare the DEIS and the availability of the DEIS have been combined in this notice to meet both local land use review timeframes and the procedural requirements of 40 CFR parts 1500–1508.

This notice has been prepared by LMDC. The certifying officer is LMDC's chairman, Kevin M. Rampe. Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT** above.

Dated: February 6, 2007.

**Pamela H. Patenaude,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. E7–2202 Filed 2–8–07; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5125–N–06]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD reviewed in 2006 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

In accordance with 24 CFR part 581.3(b) landholding agencies are required to notify HUD by December 31, 2006, of the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Pursuant to 24 CFR part 581.8(d) and (e) HUD is required to publish a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S.Army*: Veronica Rines, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601–2545; *Corps of Engineers*: Tracy Beck, Army Corps of Engineers, Office of Counsel, CECC–R, 441 G Street, Washington, DC 20314–1000; (202) 761–0019; *U.S.Navy*: Warren Meekins, Dept. of Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; *U.S.Air Force*: Kathryn M. Halvorson, Air Force Real Property Agency, 1700 North Moore St., Suite 2300, Arlington, VA 22209–2802; (703) 696–5501; *GSA*: Gordon S. Creed, Office of Property Disposal, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0084; *Dept. of Veterans Affairs:* George Szwarcman, Real Property Service, Dept. of Veterans Affairs, Room 555, 811 Vermont Ave., NW., Washington, DC 20420; (202) 565–5398; *Dept. of Energy*: John Watson, Office of Engineering & Construction Management, ME–90, Washington, DC 20585; (202) 586–4548; *Dept. of Agriculture*: Marsha Pruitt, Reporters Building, 300 7th St., SW, Rm 310B, Washington, DC 20250; (202) 720–4335; *Dept. of Interior*: Linda Tribby, Acquisition & Property Management, Dept. of Interior, 1849 C St., NW., MS 5512, Washington, DC 20240; (202) 219–0728; (These are not toll-free numbers).

Dated: February 1, 2007.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**TITLE V PROPERTIES REPORTED IN YEAR 2006WHICH ARE SUITABLE AND AVAILABLE**

**Agriculture**

*Colorado*

Building

Bldg. 128
Property Number: 15200630001
Aspen Ranger District
Pitkin CO 81601
Status: Unutilized
Comments: 600 sq. ft. cabin, needs extensive repairs, off-site use only.

*Montana*

Building

Bldg. 2002
Property Number: 15200620001
200 Ranger Station Rd.
Bigfork Co: Flathead MT 59911
Status: Excess
Comments: 1503 sq. ft., needs rehab, most recent use—office, presence of asbestos/lead paint, offsite use only.

**Air Force**

*Hawaii*

Building

Bldg. 849
Property Number: 18200330008
Bellows AFS
Bellows AFS HI
Status: Unutilized
Comments: 462 sq. ft., concrete storage facility, off-site use only.

*Missouri*

Building

Bldgs. 90A/B, 91A/B, 92A/B
Property Number: 18200220002
Jefferson Barracks Housing

St. Louis MO 63125
Status: Excess
Comments: 6450 sq. ft., needs repair, includes 2 acres.

*New York*

Building

Bldg. 240
Property Number: 18200340023
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab.

Bldg. 247
Property Number: 18200340024
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab.

**Air Force**

*New York*

Building

Bldg. 248
Property Number: 18200340025
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab.

Bldg. 302
Property Number: 18200340026
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 10288 sq. ft., presence of asbestos, most recent use—communications facility.

*South Carolina*

4 Bldgs.
Property Number: 18200430025
Charleston AFB
N. Charleston SC 29404
Location:2314A/B, 2327A/B, 2339A/B, 2397A/B
Status: Excess
Comments: 2722 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

4 Bldgs.
Property Number: 18200430027
Charleston AFB
N. Charleston SC 29404
Location:2315A/B, 2323A/B, 2330A/B, 2387A/B
Status: Excess
Comments: 2756 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

**Air Force**

*South Carolina*

Building

3 Bldgs.
Property Number: 18200430028
Charleston AFB
N. Charleston SC 29404
Location:2321A/B, 2326A/B, 2336A/B
Status: Excess
Comments: 2766 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

Bldg. 2331A /B
Property Number: 18200430029
Charleston AFB
N. Charleston SC 29494
Status: Excess
Comments: 2803 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

Bldg. 2341A/B
Property Number: 18200430030
Charleston AFB
N. Charleston SC 29404
Status: Excess
Comments: 2715 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

4 Bldgs.
Property Number: 18200430048
Charleston AFB
N. Charleston SC 29404
Location:1846A/B, 1853A/B, 1862A/B, 2203A/B
Status: Excess
Comments: 2363 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

**Air Force**

*South Carolina*

Building

Bldg. 1828A/B
Property Number: 18200430052
Charleston AFB
N. Charleston SC 29404
Status: Excess
Comments: 2330 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

**Army**

*Alaska*

Building

Bldg. 00001
Property Number: 21200340075
Kiana Natl Guard Armory
Kiana AK 99749
Status: Excess
Comments: 1200 sq. ft., Butler Bldg., needs repair, off-site use only.

*Arizona*

Building

Bldg. 30012, Fort Huachuca
Property Number: 21199310298
Sierra Vista Co: Cochise AZ 85635
Status: Excess
Comments: 237 sq. ft., 1-story block, most recent use—storage

Bldg. S–306
Property Number: 21199420346
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Status: Unutilized
Comments: 4103 sq. ft., 2-story, needs major rehab, off-site use only.

Bldg. 503, Yuma Proving Ground
Property Number: 21199520073
Yuma Co: Yuma AZ 85365–9104
Status: Underutilized
Comments: 3789 sq. ft., 2-story, major structural changes required to meet floor loading code requirements, presence of asbestos, off-site use only.

**Army**

*Arizona*

Building

Bldg. 43002
Property Number: 21200440066
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Comments: 23,152 sq. ft., presence of asbestos/lead paint, most recent use—dining, off-site use only.

Bldg. 66150
Property Number: 21200540079
Fort Huachuca
Cochise AZ 85613
Status: Excess
Comments: 4027 sq. ft., most recent use—storage, off-site use only.

Bldg. 90335
Property Number: 21200540080
Fort Huachuca
Cochise AZ 85613
Status: Excess
Comments: 456 sq. ft., most recent use—storage, off-site use only.

Bldg. 90336
Property Number: 21200540081
Fort Huachuca
Cochise AZ 85613
Status: Excess
Comments: 8339 sq. ft., most recent use—storage, off-site use only.

**Army**

*California*

Building

Bldgs. 18026, 18028
Property Number: 21200130081
Camp Roberts
Monterey CA 93451–5000
Status: Excess
Comments: 2024 sq. ft., concrete, poor condition, off-site use only.

*Colorado*

Building

Bldgs. 25, 26, 27
Property Number: 21200420178
Pueblo Chemical Depot
Pueblo CO 81006
Status: Unutilized
Comments: 1311 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only.

Bldg. 00127
Property Number: 21200420179
Pueblo Chemical Depot
Pueblo CO 81006
Status: Unutilized
Comments: 8067 sq. ft., presence of asbestos, most recent use—barracks, off-site use only.

**Army**

*Georgia*

Building

Bldg. 4963, Fort Benning
Property Number: 21199220710
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized

Comments: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg. 2396, Fort Benning
Property Number: 21199220712
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 4967, Fort Benning
Property Number: 21199220728
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 4944, Fort Benning
Property Number: 21199220747
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4964, Fort Benning
Property Number: 21199220763
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

**Army**

*Georgia*

Building

Bldg. 4945, Fort Benning
Property Number: 21199220779
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4023, Fort Benning
Property Number: 21199310461
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning
Property Number: 21199310462
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg 4051, Fort Benning
Property Number: 21199520175
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 322
Property Number: 21199720156
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only.

**Army**

*Georgia*

Building

Bldg. 2593
Property Number: 21199720167
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only.

Bldg. 2595
Property Number: 21199720168
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only.

Bldg. 4476
Property Number: 21199720184
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only.

Bldg. 92
Property Number: 21199830278
Fort Benning Null Co: Muscogee GA 31905
Status: Unutilized
Comments: 637 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. 4232
Property Number: 21199830291
Fort Benning Null Co: Muscogee GA 31905
Status: Unutilized
Comments: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only.

**Army**

*Georgia*

Building

Bldg. 2288
Property Number: 21199930123
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 2481 sq. ft., most recent use—admin., off-site use only.

Bldg. 2293
Property Number: 21199930125
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only.

Bldg. 2297
Property Number: 21199930126
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 5156 sq. ft., most recent use—admin.

Bldg. 2508
Property Number: 21199930128
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 2434 sq. ft., most recent use—storage, off-site use only.

Bldg. 2815
Property Number: 21199930129
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only.

**Army**

*Georgia*

Building

Bldg. 3815
Property Number: 21199930130
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 7575 sq. ft., most recent use—storage, off-site use only.

Bldg. 3816
Property Number: 21199930131
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 7514 sq. ft., most recent use—storage, off-site use only.

Bldgs. 5974–5978
Property Number: 21199930135
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 400 sq. ft., most recent use—storage, off-site use only.

Bldg. 5993
Property Number: 21199930136
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 960 sq. ft., most recent use—storage, off-site use only.

Bldg. 5994
Property Number: 21199930137
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 2016 sq. ft., most recent use—storage, off-site use only.

**Army**

*Georgia*

Building

Bldg. T–1003
Property Number: 21200030085
Fort Stewart
Hinesville Co: Liberty GA 31514
Status: Excess
Comments: 9267 sq. ft., poor condition, most recent use—admin., off-site use only.

Bldg. T0130
Property Number: 21200230041
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Status: Excess
Comments: 10,813 sq. ft., off-site use only.

Bldg. T0157
Property Number: 21200230042
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Status: Excess
Comments: 1440 sq. ft., off-site use only.

Bldgs. T291, T292
Property Number: 21200230044
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Status: Excess
Comments: 5220 sq. ft. each, off-site use only.

Bldg. T0295
Property Number: 21200230045
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Status: Excess

Comments: 5220 sq. ft., off-site use only.

**Army**

*Georgia*

Building

Bldgs. 00064, 00065
Property Number: 21200330108
Camp Frank D. Merrill
Dahlonega Co: Lumpkin GA 30597
Status: Unutilized
Comments: 648 sq. ft. each, concrete block, most recent use—water support treatment bldg., offsite use only.

Bldg. 4151
Property Number: 21200420032
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Comments: 3169 sq. ft., most recent use—battle lab, off-site use only.

Bldg. 4152
Property Number: 21200420033
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Comments: 721 sq. ft., most recent use—battle lab, off-site use only.

Bldg. 4476
Property Number: 21200420034
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Comments: 3148 sq. ft., most recent use—veh. maint. shop, off-site use only.

Bldg. 8771
Property Number: 21200420044
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Comments: 972 sq. ft., most recent use—RH/TGT house, off-site use only.

**Army**

*Georgia*

Building

Bldg. 9029
Property Number: 21200420050
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Comments: 7356 sq. ft., most recent use—heat plant bldg., off-site use only.

Bldg. 11370
Property Number: 21200420051
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Comments: 9602 sq. ft., most recent use—nco/enl bldg., off-site use only.

Bldg. T924
Property Number: 21200420194
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Comments: 9360 sq. ft., most recent use—warehouse, off-site use only.

Bldg. 00924
Property Number: 21200510065
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Comments: 9360 sq. ft., most recent use—warehouse, off-site use only.

Bldg. 05955
Property Number: 21200520097
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Comments: 95 sq. ft., poor condition, most recent use—dispatch, off-site use only.

**Army**

*Georgia*

Building

Bldg. 9012
Property Number: 21200520098
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Comments: 40,442 sq. ft., poor condition, most recent use—enlisted housing, off-site use only.

Bldg. 9016
Property Number: 21200520101
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Comments: 6138 sq. ft., poor condition, most recent use—BN HQ Bldg., off-site use only.

Bldg. 9019
Property Number: 21200520102
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Comments: 7243 sq. ft., poor condition, most recent use—BN HQ Bldg., off-site use only.

Bldgs. 9027, 9036, 9044
Property Number: 21200520103
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Comments: various sq. ft., poor condition, most recent use—CO HQ Bldg., off-site use only.

Bldg. 9100
Property Number: 21200520107
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Comments: 4875 sq. ft., poor condition, most recent use—BDE HQ Bldg., off-site use only.

**Army**

*Georgia*

Building

Bldgs. 9198, 9199
Property Number: 21200520108
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Comments: 1008 sq. ft., poor condition, most recent use—admin., off-site use only.

Bldg. 10642
Property Number: 21200520111
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Comments: 176 sq. ft., poor condition, most recent use—storage shed, off-site use only.

Bldg. 08585
Property Number: 21200530078
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Comments: 165 sq. ft., most recent use—plant, off-site use only.

Bldg. 01150
Property Number: 21200610037
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Comments: 137 sq. ft., most recent use—flam mat storage, off-site use only.

Bldg. 01151
Property Number: 21200610038
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Comments: 78 sq. ft., most recent use—flam mat storage, off-site use only.

**Army**

*Georgia*

Building

Bldg. 01153
Property Number: 21200610039
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Comments: 211 sq. ft., most recent use—flam mat storage, off-site use only.

Bldg. 01530
Property Number: 21200610048
Fort Stewart
Liberty GA 31314
Status: Excess
Comments: 80 sq. ft., most recent use—scale house, off-site use only.

Bldg. 08032
Property Number: 21200610051
Fort Stewart
Liberty GA 31314
Status: Excess
Comments: 2592 sq. ft., needs rehab, most recent use—storage/stable, off-site use only.

*Hawaii*

Building

P–88
Property Number: 21199030324
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Status: Unutilized
Comments: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering Property, use limitations

**Army**

*Illinois*

Building

Bldg. 54
Property Number: 21199620666
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299
Status: Unutilized
Comments: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only.

Bldg. AR112
Property Number: 21200110081
Sheridan Reserve
Arlington Heights IL 60052–2475
Status: Unutilized
Comments: 1000 sq. ft., off-site use only.

*Iowa*

Building

Bldg. 00691
Property Number: 21200510073
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638
Status: Unutilized
Comments: 2581 sq. ft. residence, presence of lead paint, possible asbestos.

Bldg. 00691
Property Number: 21200520113
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638
Status: Unutilized
Comments: 2581 sq. ft., presence of asbestos/lead paint, most recent use—residential.

**Army**

*Louisiana*

Building

Bldg. 8423
Fort Polk
Property Number: 21199640528
Ft. Polk Co: Vernon Parish LA 71459
Status: Underutilized
Comments: 4172 sq. ft., most recent use—barracks.

Bldg. T7125
Property Number: 21200540088
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Comments: 1875 sq. ft., off-site use only.

Bldgs. T7163, T8043
Property Number: 21200540089
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Comments: 4073/1923 sq. ft., off-site use only.

*Maryland*

Building

Bldg. 0459B
Property Number: 21200120106
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only.

**Army**

*Maryland*

Building

Bldg. 00785
Property Number: 21200120107
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 160 sq. ft., poor condition, most recent use—shelter, off-site use only.

Bldg. E5239
Property Number: 21200120113
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 230 sq. ft., most recent use—storage, off-site use only.

Bldg. E5317
Property Number: 21200120114
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only.

Bldg. E5637
Property Number: 21200120115
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only.

Bldg. 219
Property Number: 21200140078
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

**Army**

*Maryland*

Building

Bldg. 294
Property Number: 21200140081
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, offsite use only.

Bldg. 949
Property Number: 21200140083
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 2441 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 979
Property Number: 21200140084
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 2331 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1007
Property Number: 21200140085
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

**Army**

*Maryland*

Building

Bldg. 2214
Property Number: 21200230054
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, offsite use only.

Bldg. 00375
Property Number: 21200320107
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only.

Bldg. 0385A
Property Number: 21200320110
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 944 sq. ft., off-site use only.

Bldg. 00523
Property Number: 21200320113
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 3897 sq. ft., most recent use—paint shop, off-site use only.

Bldg. 0700B
Property Number: 21200320121
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 505 sq. ft., off-site use only.

**Army**

*Maryland*

Building

Bldg. 01113
Property Number: 21200320128
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1012 sq. ft., off-site use only.

Bldgs. 01124, 01132
Property Number: 21200320129
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 740/2448 sq. ft., most recent use—lab, off-site use only.

Bldg. 03558
Property Number: 21200320133
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 18,000 sq. ft., most recent use—storage, off-site use only.

Bldg. 05262
Property Number: 21200320136
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 864 sq. ft., most recent use—storage, off-site use only.

Bldg. 05608
Property Number: 21200320137
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1100 sq. ft., most recent use—maint bldg., off-site use only.

**Army**

*Maryland*

Building

Bldg. E5645
Property Number: 21200320150
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 548 sq. ft., most recent use—storage, off-site use only.

Bldg. 00435
Property Number: 21200330111
Aberdeen Proving Grounds

Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 0449A
Property Number: 21200330112
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only.

Bldg. 0460
Property Number: 21200330114
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only.

Bldg. 00914
Property Number: 21200330118
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: needs rehab, most recent use—safety shelter, off-site use only.

**Army**

*Maryland*

Building

Bldg. 00915
Property Number: 21200330119
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 247 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 01189
Property Number: 21200330126
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only.

Bldg. E1413
Property Number: 21200330127
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: needs rehab, most recent use—observation tower, off-site use only.

Bldg. E3175
Property Number: 21200330134
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only.

**Army**

*Maryland*

Building

4 Bldgs.
Property Number: 21200330135
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Location: E3224, E3228, E3230, E3232, E3234
Status: Unutilized
Comments: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only.

Bldg. E3241
Property Number: 21200330136
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only.

Bldg. E3300
Property Number: 21200330139
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only.

Bldg. E3335
Property Number: 21200330144
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 400 sq. ft., needs rehab, most recent use—storage, off-site use only.

**Army**

*Maryland*

Building

Bldgs. E3360, E3362, E3464
Property Number: 21200330145
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. E3542
Property Number: 21200330148
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only.

Bldg. E4420
Property Number: 21200330151
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only.

4 Bldgs.
Property Number: 21200330154
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Location: E5005, E5049, E5050, E5051
Status: Unutilized
Comments: sq. ft. varies, needs rehab, most recent use—storage, off-site use only.

**Army**

*Maryland*

Building

Bldg. E5068
Property Number: 21200330155
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only.

Bldgs. 05448, 05449
Property Number: 21200330161
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only.

Bldg. 05450
Property Number: 21200330162
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldgs. 05451, 05455
Property Number: 21200330163
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 05453
Property Number: 21200330164
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only.

**Army**

*Maryland*

Building

Bldg. E5609
Property Number: 21200330167
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. E5611
Property Number: 21200330168
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only.

Bldg. E5634
Property Number: 21200330169
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only.

Bldg. E5654
Property Number: 21200330171
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. E5942
Property Number: 21200330176
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only.

**Army**

*Maryland*

Building

Bldgs. E5952, E5953
Property Number: 21200330177
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only.

Bldgs. E7401, E7402
Property Number: 21200330178
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldgs. E7407, E7408
Property Number: 21200330179
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only.

Bldg. 3070A
Property Number: 21200420055
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 2299 sq. ft., most recent use—heat plant, off-site use only.

Bldg. E5026
Property Number: 21200420056
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 20,536 sq. ft., most recent use—storage, off-site use only.

**Army**

*Maryland*

Building

Bldg. 05261
Property Number: 21200420057
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maintenance, off-site use only.

Bldg. E5876
Property Number: 21200440073
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1192 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 00688
Property Number: 21200530080
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 24,192 sq. ft., most recent use—ammo, off-site use only.

Bldg. 04925
Property Number: 21200540091
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1326 sq. ft., off-site use only.

**Army**

*Missouri*

Building

Bldg. T1497
Property Number: 21199420441
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comments: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2139
Property Number: 21199420446
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comments: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2385
Property Number: 21199510115
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Status: Excess
Comments: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. 2167
Property Number: 21199820179
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comments: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

**Army**

*Missouri*

Building

Bldgs. 2192, 2196, 2198
Property Number: 21199820183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comments: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

12 Bldgs.
Property Number: 21200410110
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 07036, 07050, 07054, 07102, 07400, 07401, 08245, 0824908251, 08255, 08257, 08261.
Status: Unutilized
Comments: 7152 sq. ft. 6 plex housing quarters, potential contaminants, off-site use only.

6 Bldgs.
Property Number: 21200410111
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 07044, 07106, 07107, 08260, 08281, 08300
Status: Unutilized
Comments: 9520 sq ft., 8 plex housing quarters, potential contaminants, off-site use only.

15 Bldgs.
Property Number: 21200410112
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 08242, 08243, 08246–08248, 08250, 08252–08254, 08256, 08258–08259, 08262–08263, 08265
Status: Unutilized
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only.

**Army**

*Missouri*

Building

Bldgs. 08283, 08285
Property Number: 21200410113
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 2240 sq. ft., 2 plex housing quarters, potential contaminants, off-site use only.

15 Bldgs.
Property Number: 21200410114
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–0827
Location: 08267, 08269, 08271, 08273, 08275, 08277, 08279, 08290 08296, 08301
Status: Unutilized
Comments: 4784 sq. ft., 4 plex housing quarters, potential contaminants, off-site use only.

Bldg. 09432
Property Number: 21200410115
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 8724 sq. ft., 6-plex housing quarters, potential contaminants, off-site use only.

Bldgs. 5006 and 5013
Property Number: 21200430064
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 192 sq. ft., needs repair, most recent use—generator bldg., off-site use only.

**Army**

*Missouri*

Building

Bldgs. 13210, 13710
Property Number: 21200430065
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 144 sq. ft. each, needs repair, most recent use—communication, off-site use only.

*Montana*

Building

Bldg. 00405
Property Number: 21200130099
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Status: Unutilized
Comments: 3467 sq. ft., most recent use—storage, security limitations.

Bldg. T0066
Property Number: 21200130100
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Status: Unutilized
Comments: 528 sq. ft., needs rehab, presence of asbestos, security limitations.

Bldg. 00001
Property Number: 21200540093

Sheridan Hall USARC
Helena MT 59601
Status: Unutilized
Comments: 19,321 sq. ft., most recent use—Reserve Center.

**Army**

*Montana*

Building

Bldg. 00003
Property Number: 21200540094
Sheridan Hall USARC
Helena MT 59601
Status: Unutilized
Comments: 1950 sq. ft., most recent use—maintenance/storage.

*New Jersey*

Building

Bldg. 732
Property Number: 21199740315
Armament R Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comments: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 816C
Property Number: 21200130103
Armament R, D, Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comments: 144 sq. ft., most recent use—storage, off-site use only.

*New Mexico*

Building

Bldg. 34198
Property Number: 21200230062
White Sands Missile Range
Dona Ana NM 88002
Status: Excess
Comments: 107 sq. ft., most recent use—security, off-site use only.

**Army**

*New York*

Building

Bldg. 1227
Property Number: 21200440074
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Status: Unutilized
Comments: 3800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—maintenance, off-site use only.

Bldg. 2218
Property Number: 21200510067
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Status: Unutilized
Comments: 32,000 sq. ft., poor condition, requires major repairs, most recent use—storage/services.

7 Bldgs.
Property Number: 21200510068
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Location: 2122, 2124, 2126, 2128, 2106, 2108, 2104
Status: Unutilized
Comments: sq. ft. varies, poor condition, needs major repairs, most recent use—storage/services.

Tappan USARC
Property Number: 21200510069
335 Western Hwy
Tappan Co: Rockland NY 10983
Status: Excess
Comments: 33,537 sq. ft., army reserve center.

**Army**

*Ohio*

Land

Land Property Number: 21200340094
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Status: Excess
Comments: 11 acres, railroad access.

*Oklahoma*

Building

Bldg. T–838, Fort Sill
Property Number: 21199220609
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
Property Number: 21199240659
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–3325, Fort Sill
Property Number: 21199240681
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

**Army**

*Oklahoma*

Building

Bldg. T–4226
Property Number: 21199440384
Fort Sill
Lawton Co: Comanche OK 73503
Status: Unutilized
Comments: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. P–1015, Fort Sill
Property Number: 21199520197
Lawton Co: Comanche OK 73501–5100
Status: Unutilized
Comments: 15402 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–366, Fort Sill
Property Number: 21199610740
Lawton Co: Comanche OK 73503
Status: Unutilized
Comments: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Building T–2952
Property Number: 21199710047
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, offsite use only.

Building P–5042
Property Number: 21199710066
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only.

**Army**

*Oklahoma*

Building

4 Buildings
Property Number: 21199710086
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Status: Unutilized
Comments: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off site use only.

Bldg. T–810
Property Number: 21199730350
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only.

Bldgs. T–837, T–839
Property Number: 21199730351
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, offsite use only.

Bldg. P–934
Property Number: 21199730353
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

**Army**

*Oklahoma*

Building

Bldgs. T–1468, T–1469
Property Number: 21199730357
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1470
Property Number: 21199730358
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–1954, T–2022
Property Number: 21199730362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, offsite use only.

Bldg. T–2184

Property Number: 21199730364
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

**Army**

*Oklahoma*

Building

Bldgs. T–2186, T–2188, T–2189
Property Number: 21199730366
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only.

Bldg. T–2187
Property Number: 21199730367
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2291 thru T–2296
Property Number: 21199730372
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–3001, T–3006
Property Number: 21199730383
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

**Army**

*Oklahoma*

Building

Bldg. T–3314
Property Number: 21199730385
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–5041
Property Number: 21199730409
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–5420
Property Number: 21199730414
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only.

Bldg. T–7775
Property Number: 21199730419
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only.

**Army**

*Oklahoma*

Building

4 Bldgs.
Property Number: 21199910133
Fort SillP–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only.

Bldg. P–746
Property Number: 21199910135
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldgs. P–2581, P–2773
Property Number: 21199910140
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. P–2582
Property Number: 21199910141
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

**Army**

*Oklahoma*

Building

Bldgs. P–2912, P–2921, P–2944
Property Number: 21199910144
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. P–2914
Property Number: 21199910146
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–5101
Property Number: 21199910153
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only.

Bldg. S–6430
Property Number: 21199910156
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only.

**Army**

*Oklahoma*

Building

Bldg. T–6461
Property Number: 21199910157
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only.

Bldg. T–6462
Property Number: 21199910158
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. P–7230
Property Number: 21199910159
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only.

Bldg. S–4023
Property Number: 21200010128
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

**Army**

*Oklahoma*

Building

Bldg. P–747
Property Number: 21200120120
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only.

Bldg. P–842
Property Number: 21200120123
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–911
Property Number: 21200120124
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. P–1672
Property Number: 21200120126
Fort Sill
Lawton Co: Comanche OK 73503–5100

Status: Unutilized
Comments: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. S–2362
Property Number: 21200120127
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only.

**Army**

*Oklahoma*

Building

Bldg. P–2589
Property Number: 21200120129
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. 01276, 01278
Property Number: 21200520119
Fort Sill
Lawton Co: Comanche OK 73501–5100
Status: Unutilized
Comments: 1533 sq. ft., most recent use—maintenance, off-site use only.

*South Carolina*

Building

Bldg. 3499
Property Number: 21199730310
Fort Jackson
Ft. Jackson Co: Richland SC 29207
Status: Unutilized
Comments: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. 2441
Property Number: 21199820187
Fort Jackson
Ft. Jackson Co: Richland SC 29207
Status: Unutilized
Comments: 2160 sq. ft., needs repair, most recent use—admin.

**Army**

*South Carolina*

Building

Bldg. 3605
Property Number: 21199820188
Fort Jackson
Ft. Jackson Co: Richland SC 29207
Status: Unutilized
Comments: 711 sq. ft., needs repair, most recent use—storage.

Bldg. 1765
Property Number: 21200030109
Fort Jackson
Ft. Jackson Co: Richland SC 29207
Status: Unutilized
Comments: 1700 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—training bldg., off-site use only.

Land

One Acre
Property Number: 21200110089
Fort Jackson
Columbia Co: Richland SC 29207
Status: Underutilized
Comments: approx. 1 acre

*Texas*

Building

Bldg. 7137, Fort Bliss
Property Number: 21199640564
El Paso Co: El Paso TX 79916
Status: Unutilized
Comments: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only.

**Army**

*Texas*

Building

Bldg. 92043
Property Number: 21200020206
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 450 sq. ft., most recent use—storage, off-site use only.

Bldg. 92044
Property Number: 21200020207
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1920 sq. ft., most recent use—admin., off-site use only.

Bldg. 92045
Property Number: 21200020208
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 2108 sq. ft., most recent use—maint., off-site use only.

Bldg. 120
Property Number: 21200220137
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1450 sq. ft., most recent use—dental clinic, off-site use only.

Bldg. 56305
Property Number: 21200220143
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 2160 sq. ft., most recent use—admin., off-site use only.

**Army**

*Texas*

Building

Bldgs. 56620, 56621
Property Number: 21200220146
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only.

Bldgs. 56626, 56627
Property Number: 21200220147
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only.

Bldg. 56628
Property Number: 21200220148
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only.

Bldgs. 56636, 56637
Property Number: 21200220150
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only.

Bldg. 56638
Property Number: 21200220151
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only.

**Army**

*Texas*

Building

Bldgs. 56703, 56708
Property Number: 21200220152
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1306 sq. ft., most recent use—shower, off-site use only.

Bldg. 56758
Property Number: 21200220154
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only.

Bldgs. P6220, P6222
Property Number: 21200330197
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only.

Bldgs. P6224, P6226
Property Number: 21200330198
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only.

**Army**

*Texas*

Building

Bldg. 04200
Property Number: 21200420065
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 2100 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Land
1 acre
Property Number: 21200440075
Fort Sam Houston
San Antonio Co: Bexar TX 78234
Status: Excess
Comments: 1 acre, grassy area.

*Virginia*

Building

Bldgs. 1516, 1517, 1552, 1567
Property Number: 21200130154
Fort Eustis
Ft. Eustis VA 23604

Status: Unutilized
Comments: 2892 sq. ft., most recent use—dining/barracks/admin, off-site use only.

Bldg. 1559
Property Number: 21200130156
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 2892 sq. ft., most recent use—storage, off-site use only.

**Army**

*Virginia*

Building

Bldg. T–707
Property Number: 21200330199
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 3763 sq. ft., most recent use—chapel, off-site use only.

*Washington*

Building

Bldg. CO909, Fort Lewis
Property Number: 21199630205
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1164, Fort Lewis
Property Number: 21199630213
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 1307, Fort Lewis
Property Number: 21199630216
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1309, Fort Lewis
Property Number: 21199630217
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

**Army**

*Washington*

Building

Bldg. 2167, Fort Lewis
Property Number: 21199630218
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 4078, Fort Lewis
Property Number: 21199630219
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 9599, Fort Lewis
Property Number: 21199630220
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. A1404, Fort Lewis
Property Number: 21199640570
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 557 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. EO347
Property Number: 21199710156
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

**Army**

*Washington*

Building

Bldg. B1008, Fort Lewis
Property Number: 21199720216
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only.

Bldgs. CO509, CO709, CO720
Property Number: 21199810372
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only.

Bldg. 5162
Property Number: 21199830419
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 5224
Property Number: 21199830433
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only.

**Army**

*Washington*

Building

Bldg. U001B
Property Number: 21199920237
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. U001C
Property Number: 21199920238
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only.

10 Bldgs.
Property Number: 21199920239
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location:
U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

6 Bldgs.
Property Number: 21199920240
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location:
U003A, U004B, U006C, U015B, U016B, U019B
Status: Unutilized
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

**Army**

*Washington*

Building

Bldg. U004D
Property Number: 21199920241
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only.

Bldg. U005A
Property Number: 21199920242
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.

7 Bldgs.
Property Number: 21199920245
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location:
U014A, U022B, U023A, U043B, U059B, U060A, U101A
Status: Excess
Comments: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only.

Bldg. U015J
Property Number: 21199920246
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only.

**Army**

*Washington*

Building

Bldg. U018B
Property Number: 21199920247
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

Bldg. U018C

Property Number: 21199920248
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.
Bldg. U024D
Property Number: 21199920250
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only.
Bldg. U027A
Property Number: 21199920251
Fort Lewis
Ft. Lewis Co: Pierce WA
Status: Excess
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only.

**Army**

*Washington*

Building

Bldg. U031A
Property Number: 21199920253
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only.
Bldg. U031C
Property Number: 21199920254
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.
Bldg. U040D
Property Number: 21199920255
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.
Bldgs. U052C, U052H
Property Number: 21199920256
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

**Army**

*Washington*

Building

Bldgs. U035A, U035B
Property Number: 21199920257
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, offsite use only.
Bldg. U035C
Property Number: 21199920258
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.
Bldg. U039A
Property Number: 21199920259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.
Bldg. U039B
Property Number: 21199920260
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only.

**Army**

*Washington*

Building

Bldg. U039C
Property Number: 21199920261
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only.
Bldg. U043A
Property Number: 21199920262
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.
Bldg. U052A
Property Number: 21199920263
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only.
Bldg. U052E
Property Number: 21199920264
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

**Army**

*Washington*

Building

Bldg. U052G
Property Number: 21199920265
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.
3 Bldgs.
Property Number: 21199920266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location:
U058A, U103A, U018A
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only.
Bldg. U059A
Property Number: 21199920267
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only.
Bldg. U093B
Property Number: 21199920268
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only.

**Army**

*Washington*

Building

4 Bldgs.
Property Number: 21199920269
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location:
U101B, U101C, U507B, U557A
Status: Excess
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.
Bldg. U110B
Property Number: 21199920272
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only.
6 Bldgs.
Property Number: 21199920273
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location:
U111A, U015A, U024E, U052F, U109A, U110A
Status: Excess
Comments: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only.
Bldg. U112A
Property Number: 21199920274
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only.

**Army**

*Washington*

Building

Bldg. U115A
Property Number: 21199920275
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess

Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only.

Bldg. U507A
Property Number: 21199920276
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only.

Bldg. C0120
Property Number: 21199920281
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only.

Bldg. 01205
Property Number: 21199920290
Fort Lewis Co: Pierce WA 98433
Status: Excess
Comments: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only.

**Army**

*Washington*

Building

Bldg. 01259
Property Number: 21199920291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, offsite use only.

Bldg. 01266
Property Number: 21199920292
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, offsite use only.

Bldg. 1445
Property Number: 21199920294
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only.

Bldgs. 03091, 03099
Property Number: 21199920296
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

**Army**

*Washington*

Building

Bldg. 4040
Property Number: 21199920298
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, offsite use only.

Bldgs. 4072, 5104
Property Number: 21199920299
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. 4295
Property Number: 21199920300
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, offsite use only.

Bldg. 6191
Property Number: 21199920303
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only.

**Army**

*Washington*

Building

Bldgs. 08076, 08080
Property Number: 21199920304
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3660/412 sq .ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. 08093
Property Number: 21199920305
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only.

Bldg. 8279
Property Number: 21199920306
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only.

Bldgs. 8280, 8291
Property Number: 21199920307
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

**Army**

*Washington*

Building

Bldg. 8956
Property Number: 21199920308
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 9530
Property Number: 21199920309
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only.

Bldg. 9574
Property Number: 21199920310
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only.

Bldg. 9596
Property Number: 21199920311
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only.

**Coe**

*Kentucky*

Building

Green River Lock #3
Property Number: 31199010022
Rochester Co: Butler KY 42273
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Status: Unutilized
Comments: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Land

Tract 2625
Property Number: 31199010025
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211
Location: Adjoining the village of Rockcastle.
Status: Excess
Comments: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Property Number: 31199010026
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comments: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Property Number: 31199010027
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comments: 3.59 acres; rolling and wooded; no utilities.

**Coe**

*Kentucky*

Land

Tract 2800
Property Number: 31199010028
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211

Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Status: Excess
Comments: 5.44 acres; steep and wooded.

Tract 2915
Property Number: 31199010029
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 6½ miles west of Cadiz.
Status: Excess
Comments: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Property Number: 31199010031
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 1 mile in a southerly direction from the village of Rockcastle.
Status: Excess
Comments: 4.90 acres; wooded; no utilities.

Tract 4318
Property Number: 31199010032
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Status: Excess
Comments: 8.24 acres; steep and wooded.

**Coe**

*Kentucky*

Land

Tract 4502
Property Number: 31199010033
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 3½ miles in a southerly direction from Canton, KY.
Status: Excess
Comments: 4.26 acres; steep and wooded.

Tract 4611
Property Number: 31199010034
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 5 miles south of Canton, KY.
Status: Excess
Comments: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Property Number: 31199010035
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 4½ miles south from Canton, KY.
Status: Excess
Comments: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Property Number: 31199010036
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 6 ½ miles south of Canton, KY.
Status: Excess
Comments: 1.75 acres; wooded.

**Coe**

*Kentucky*

Land

Tract 1217
Property Number: 31199010042
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: On the north side of the Illinois Central Railroad.
Status: Excess
Comments: 5.80 acres; steep and wooded.

Tract 1906
Property Number: 31199010044
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: Approximately 4 miles east of Eddyville, KY.
Status: Excess
Comments: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Property Number: 31199010045
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.
Status: Excess
Comments: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Property Number: 31199010046
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comments: 47.42 acres; steep and wooded; no utilities.

**Coe**

*Kentucky*

Land

Tract 2001 #2
Property Number: 31199010047
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comments: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Property Number: 31199010048
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: Approximately 5½ miles east of Eddyville, KY.
Status: Excess
Comments: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Property Number: 31199010049
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Status: Excess
Comments: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Property Number: 31199010050
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: 7 miles southeasterly of Eddyville, KY.
Status: Excess
Comments: 1.56 acres; steep and wooded; no utilities.

**Coe**

*Kentucky*

Land

Tract 2504
Property Number: 31199010051
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: 9 miles southeasterly of Eddyville, KY.
Status: Excess
Comments: 24.46 acres; steep and wooded; no utilities.

Tract 214
Property Number: 31199010052
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Status: Excess
Comments: 5.5 acres; wooded; no utilities.

Tract 215
Property Number: 31199010053
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: 5 miles southwest of Kuttawa, KY.
Status: Excess
Comments: 1.40 acres; wooded; no utilities.

Tract 241
Property Number: 31199010054
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comments: 1.26 acres; steep and wooded; no utilities.

**Coe**

*Kentucky*

Land

Tracts 306, 311, 315 and 325
Property Number: 31199010055
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: 2.5 miles southwest of Kuttawa, KY on the waters of Cypress Creek.
Status: Excess
Comments: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Property Number: 31199010056
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: 6½ miles southeasterly of Eddyville, KY.
Status: Excess
Comments: 97.66 acres; steep rolling and wooded; no utilities.

Tracts 5203 and 5204
Property Number: 31199010058
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212
Location: Village of Linton, KY state highway 1254.
Status: Excess
Comments: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Property Number: 31199010059
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212
Location: 1 mile northwest of Linton, KY.
Status: Excess
Comments: 2.26 acres; steep and wooded; no utilities.

Coe

*Kentucky*

Land

Tract 4628
Property Number: 31199011621
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 4½ miles south from Canton, KY.
Status: Excess
Comments: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Property Number: 31199011622
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 4½ miles south from Canton, KY.
Status: Excess
Comments: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Property Number: 31199011623
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038
Location: 7 miles southeasterly from Eddyville, KY.
Status: Unutilized
Comments: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
Property Number: 31199011624
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comments: 11.16 acres; steep and wooded; subject to utility easements.

Coe

*Kentucky*

Land

Tracts 212 and 237
Property Number: 31199011625
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comments: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Property Number: 31199011626
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: 5 miles southwest of Kuttawa
Status: Excess
Comments: 1.00 acres; wooded; subject to utility easements.

Tract 233
Property Number: 31199011627
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: 5 miles southwest of Kuttawa
Status: Excess
Comments: 1.00 acres; wooded; subject to utility easements.

Tract N–819
Property Number: 31199140009
Dale Hollow Lake Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601
Status: Underutilized
Comments: 91 acres, most recent use—hunting, subject to existing easements

Coe

*Missouri*

Land

Harry S Truman Dam
Property Number: 31199030014
Warsaw Co: Benton MO 65355
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park
Tract 150
Status: Underutilized
Comments: 1.7 acres; potential utilities.

*Montana*

Building

Bldg. 1
Property Number: 31200040010
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only.
Bldg. 2
Property Number: 31200040011
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 3292 sq. ft., most recent use—cold storage, off-site use only.
Bldg. 3
Property Number: 31200040012
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 964 sq. ft., most recent use—cold storage, off-site use only.

Coe

*Montana*

Building

Bldg. 4
Property Number: 31200040013
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 72 sq. ft., most recent use—cold storage, off-site use only.
Bldg. 5
Property Number: 31200040014
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 1286 sq. ft., most recent use—cold storage, off-site use only.

*Ohio*

Building

Barker Historic House
Property Number: 31199120018
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Status: Unutilized
Comments: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.
Structure
Property Number: 31200540009
21897 Deer Creek Road
Mt. Sterling Co: Pickaway OH 43143
Status: Unutilized
Comments: 1321 sq. ft., brick, off-site use only.

Coe

*Oklahoma*

Land

Pine Creek Lake
Property Number: 31199010923
Section 27
(See County) Co: McCurtain OK
Status: Unutilized
Comments: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

*Pennsylvania*

Building

Mahoning Creek Reservoir
Property Number: 31199210008
New Bethlehem Co: Armstrong PA 16242
Status: Unutilized
Comments: 1015 sq. ft., 2 story brick residence, off-site use only.
Dwelling
Property Number: 31199620008
Lock 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Status: Unutilized
Comments: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes
Govt. Dwelling
Property Number: 31199640002
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Status: Unutilized
Comments: 1421 sq. ft., 2-story brick w/ basement, most recent use—residential

Coe

*Pennsylvania*

Building

Dwelling
Property Number: 31199710009
Lock 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Status: Unutilized
Comments: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only.
Dwelling #1
Property Number: 31199740002
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comments: 2030 sq. ft., most recent use—residential, good condition, off-site use only.
Dwelling #2
Property Number: 31199740003
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comments: 3045 sq. ft., most recent use—residential, good condition, off-site use only.
Govt Dwelling
Property Number: 31199740005
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Status: Underutilized
Comments: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only.
Dwelling #1

Property Number: 31199740006
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comments: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

**Coe**

*Pennsylvania*

Building

Dwelling #2
Property Number: 31199740007
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comments: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #1
Property Number: 31199740008
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Status: Excess
Comments: 2106 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property Number: 31199740009
Lock 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Status: Excess
Comments: 2652 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Property Number: 31199830003
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Status: Excess
Comments: 1421 sq. ft., 2-story + basement, most recent use—residential.

Residence A
Property Number: 31200410007
2045 Pohopoco Drive
Lehighton Co: Carbon PA 18235
Status: Unutilized
Comments: 1200 sq. ft., presence of asbestos, off-site use only.

**Coe**

*Pennsylvania*

Land

Mahoning Creek Lake
Property Number: 31199010018
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Status: Excess
Comments: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Property Number: 31199011001
Shenango River Lake
Sharpsville Co: Mercer PA 16150
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Status: Excess
Comments: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Property Number: 31199011011
Crooked Creek Lake Null Co: Armstrong PA 03051
Location: Left bank—55 miles downstream of dam.
Status: Unutilized
Comments: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Property Number: 31199430012
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226
Status: Unutilized
Comments: Approximately 1.72 acres of undeveloped land, subject to gas rights.

**Coe**

*Tennessee*

Land

Tract 6827
Property Number: 31199010927
Barkley Lake
Dover Co: Stewart TN 37058
Location:
2 ½ miles west of Dover, TN.
Status: Excess
Comments: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Property Number: 31199010928
Barkley Lake
Dover Co: Stewart TN 37058
Location: 3 ½ miles south of village of Tabaccoport.
Status: Excess
Comments: 100.86 acres; subject to existing easements.

Tract 11516
Property Number: 31199010929
Barkley Lake
Ashland City Co: Dickson TN 37015
Location: ½ mile downstream from Cheatham Dam
Status: Excess
Comments: 26.25 acres; subject to existing easements.

Tract 2319
Property Number: 31199010930
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130
Location: West of Buckeye Bottom Road
Status: Excess
Comments: 14.48 acres; subject to existing easements.

**Coe**

*Tennessee*

Land

Tract 2227
Property Number: 31199010931
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130
Location: Old Jefferson Pike
Status: Excess
Comments: 2.27 acres; subject to existing easements.

Tract 2107
Property Number: 31199010932
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Location: Across Fall Creek near Fall Creek camping area.
Status: Excess
Comments: 14.85 acres; subject to existing easements.

Tracts 2601,2602,2603,2604
Property Number: 31199010933
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562
Location: TN Highway 56
Status: Unutilized
Comments: 11 acres; subject to existing easements.

Tract 1911
Property Number: 31199010934
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Location: East of Lamar Road
Status: Excess
Comments: 6.92 acres; subject to existing easements.

**Coe**

*Tennessee*

Land

Tract 7206
Property Number: 31199010936
Barkley Lake
Dover Co: Stewart TN 37058
Location: 2 ½ miles SE of Dover, TN.
Status: Excess
Comments: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Property Number: 31199010937
Barkley Lake
Cumberland Co: Stewart TN 37050
Location: 1 ½ miles East of Cumberland City.
Status: Excess
Comments: 96 acres; subject to existing easements.

Tract 8911
Property Number: 31199010938
Barkley Lake
Cumberland City Co: Montgomery TN 37050
Location: 4 miles east of Cumberland City.
Status: Excess
Comments: 7.7 acres; subject to existing easements.

Tract 11503
Property Number: 31199010939
Barkley Lake
Ashland City Co: Cheatham TN 37015
Location: 2 miles downstream from Cheatham Dam.
Status: Excess
Comments: 1.1 acres; subject to existing easements.

**Coe**

*Tennessee*

Land

Tracts 11523, 11524
Property Number: 31199010940
Barkley Lake
Ashland City Co: Cheatham TN 37015
Location: 2½ miles downstream from Cheatham Dam.
Status: Excess
Comments: 19.5 acres; subject to existing easements.

Tract 6410
Property Number: 31199010941
Barkley Lake
Bumpus Mills Co: Stewart TN 37028
Location:
4 ½ miles SW. of Bumpus Mills.
Status: Excess

Comments: 17 acres; subject to existing easements.

Tract 9707
Property Number: 31199010943
Barkley Lake
Palmyer Co: Montgomery TN 37142
Location: 3 miles NE of Palmyer, TN. Highway 149
Status: Excess
Comments: 6.6 acres; subject to existing easements.

Tract 6949
Property Number: 31199010944
Barkley Lake
Dover Co: Stewart TN 37058
Location: 1½ miles SE of Dover, TN.
Status: Excess
Comments: 29.67 acres; subject to existing easements.

**Coe**

*Tennessee*

Land

Tracts 6005 and 6017
Property Number: 31199011173
Barkley Lake
Dover Co: Stewart TN 37058
Location: 3 miles south of Village of Tobaccoport.
Status: Excess
Comments: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Property Number: 31199130007
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074
Status: Underutilized
Comments: 54 acres, (portion in floodway), most recent use—recreation

Tract A–102
Property Number: 31199140006
Dale Hollow Lake Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551
Status: Underutilized
Comments: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Property Number: 31199140007
Dale Hollow Lake Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551
Status: Underutilized
Comments: 883 acres, most recent use—hunting, subject to existing easements.

**COE**

*Tennessee*

Land

Tract D–185
Property Number: 31199140010
Dale Hollow Lake Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570
Status: Underutilized
Comments: 97 acres, most recent use—hunting, subject to existing easements.

**Energy**

*California*

Building

Trailers 288, 289, 290, 293
Property Number: 41200630006
Stanford Linear Accelerator Center
Menlo Park Co: San Mateo CA 94025
Status: Excess
Comments: Various sq. ft., presence of asbestos, most recent use—office, need significant repair, off-site use only.

**GSA**

*New York*

Land

Youngstown Test Annex
Property Number: 54200620004
Porter Center Road
Porter NY 14174–0189
Status: Surplus
Comments: 98.62 overgrown acres with 6 deteriorated buildings, abuts an industrial waste treatment facility.
GSA Number: 1–D–NY–0879–1A.

**Interior**

*Alaska*

Building

Tract 02–112
Property Number: 61200620001
Legends of the Mountain
NW Fifth Ave.
Seward AK 99664
Status: Unutilized
Comments: 6982 sq. ft., most recent use—restaurant/bar, off-site use only.

Tract 02–114
Property Number: 61200620002
Harbor Dinner Club
220 Fifth Ave.
Seward AK 99664
Status: Unutilized
Comments: 5604 sq. ft., presence of asbestos/lead paint, most recent use—restaurant/bar, off-site use only.

Tract 02–115
Property Number: 61200620003
Old Solly's
Washington St.
Seward AK 99664
Status: Unutilized
Comments: 7392 sq. ft., presence of asbestos/lead paint, most recent use—gift shop/offices/bar/apts., off-site use only.

**Interior**

*Arizona*

Land

2.0 acres
Property Number: 61200630006
Tract No. DB–2–77
I–19 off ramp
Tucson AZ
Status: Excess
Comments: 2.0 acres, Del Bac Substation Site.

*Oklahoma*

Building

Bldg.
Property Number: 61200640002
Foss Reservoir Master Conservancy
Clinton Co: Custer OK 73601
Location: 625 North 6th Site
Status: Excess
Comments: 1200 sq. ft., most recent use—storage/office, not ADA accessible.

*Texas*

Building

Water Tower
Property Number: 61200510002
Lake Meredith Natl Rec Area
Fritch Co: Hutchinson TX 79036
Status: Unutilized
Comments: Off-site use only.

**Interior**

*Washington*

Building

Bldg. 87
Property Number: 61200630013
Yakima Project
1917 Marsh Road
Yakima WA 98901
Status: Excess
Comments: 1032 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 88
Property Number: 61200630014
Yakima Project
1917 Marsh Project
Yakima WA 98901
Status: Excess
Comments: 1032 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 127
Property Number: 61200630015
Yakima Project 1917 Marsh Road
Yakima WA 98901
Status: Excess
Comments: 1152 sq. ft., most recent use—office, off-site use only.

Bldg. 133
Property Number: 61200630016
Yakima Project 1917 Marsh Road
Yakima WA 98901
Status: Excess
Comments: 1680 sq. ft., most recent use—office, off-site use only.

**Navy**

*Illinois*

Building

Bldg. 912
Property Number: 77200640030
Naval Station
Great Lakes IL 60088
Status: Excess
Comments: 12,000 sq. ft., tailor shop, needs major repairs, presence of asbestos/lead paint, off-site use only.

**VA**

*Alabama*

Land

VA Medical Center
Property Number: 97199010053
VAMC
Tuskegee Co: Macon AL 36083
Status: Underutilized
Comments: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

*California*

Land

Land
Property Number: 97199240001

4150 Clement Street
San Francisco Co: San Francisco CA 94121
Status: Underutilized
Comments: 4 acres; landslide area.

*Colorado*

Building

Bldg. 2
Property Number: 97200430001
VAMC
2121 North Avenue
Grand Junction Co: Mesa CO 81501
Status: Unutilized
Comments: 3298 sq. ft., needs major rehab, presence of asbestos/lead paint.
Bldg. 3
Property Number: 97200430002
VAMC
2121 North Avenue
Grand Junction Co: Mesa CO 81501
Status: Unutilized
Comments: 7275 sq. ft., needs major rehab, presence of asbestos/lead paint.

**VA**

*Indiana*

Building

Bldg. 105 VAMC
Property Number: 97199230006
East 38th Street
Marion Co: Grant IN 46952
Status: Excess
Comments: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places.
Bldg. 140 VAMC
Property Number: 97199230007
East 38th Street
Marion Co: Grant IN 46952
Status: Excess
Comments: 60 sq. ft., concrete block bldg., most recent use—trash house.
Bldg. 7
Property Number: 97199810001
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Underutilized
Comments: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.
Bldg. 10
Property Number: 97199810002
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Underutilized
Comments: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

**VA**

*Indiana*

Building

Bldg. 11
Property Number: 97199810003
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Underutilized
Comments: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.
Bldg. 18
Property Number: 97199810004
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Underutilized
Comments: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.
Bldg. 25
Property Number: 97199810005
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Unutilized
Comments: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.
Bldg. 1
Property Number: 97200310001
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 20,287 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

**VA**

*Indiana*

Building

Bldg. 3
Property Number: 97200310002
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward
Bldg. 4
Property Number: 97200310003
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 20,550 sq .ft., needs extensive repairs, presence of asbestos, most recent use—patient ward
Bldg. 13
Property Number: 97200310004
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 8971 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office
Bldg. 19
Property Number: 97200310005
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 12,237 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

**VA**

*Indiana*

Building

Bldg. 20
Property Number: 97200310006
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 14,039 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office/storage
Bldg. 42
Property Number: 97200310007
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 5025 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office
Bldg. 60
Property Number: 97200310008
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 18,126 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office
Bldg. 122
Property Number: 97200310009
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 37,135 sq. ft., needs extensive repairs, presence of asbestos, most recent use—dining hall/kitchen

**VA**

*Iowa*

Land

40.66 acres
Property Number: 97199740002
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138
Status: Unutilized
Comments: golf course, easement requirements

*New York*

Building

Bldg. 3
Property Number: 97200520001
VA Medical Center
Batavia Co: Genesee NY 14020
Status: Unutilized
Comments: 5840 sq. ft., needs rehab, presence of asbestos, most recent use—offices, eligible for Natl Register of Historic Places

*Ohio*

Building

Bldg. 402
Property Number: 97199920004
VA Medical Center
Dayton Co: Montgomery OH 45428
Status: Unutilized
Comments: 4 floors, potential utilities, needs major rehab, presence of asbestos/lead paint, historic property

**VA**

*Texas*

Land

Property Number: 97199010079
Olin E. Teague Veterans Center, 1901 South 1st Street
Temple Co: Bell TX 76504
Status: Underutilized
Comments: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

*Wisconsin*

Building

Bldg. 8
Property Number: 97199010056
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660
Status: Underutilized
Comments: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land

VA Medical Center
Property Number: 97199010054
County Highway E
Tomah Co: Monroe WI 54660
Status: Underutilized
Comments: 12.4 acres, serves as buffer between center and private property, no utilities.

**Title V Properties Reported In Year 2006 Which Are Suitable And Unavailable**

**Air Force**

*New York*

Building

Bldg. 1225
Property Number: 18200220014
Verona Text Annex
Verona Co: Oneida NY 13478
Status: Unutilized
Reason: Held in trust
Bldg. 1226
Property Number: 18200220015
Verona Test Annex
Verona Co: Oneida NY 13478
Status: Unutilized
Reason: Held in trust
Bldg. 1227
Property Number: 18200220016
Verona Text Annex
Verona Co: Oneida NY 13478
Status: Unutilized
Reason: Held in trust
Bldg. 1231
Property Number: 18200220017
Verona Test Annex
Verona Co: Oneida NY 13478
Status: Unutilized
Reason: Held in trust

**Air Force**

*South Dakota*

Land

Tract 133
Property Number: 18200310004
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Status: Unutilized
Reason: Special Legislation

Tract 67
Property Number: 18200310005
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Status: Unutilized
Reason: mission purpose

*Washington*

Building

22 Bldgs./Geiger Heights
Property Number: 18200420001
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Bldg. 404/Geiger Heights
Property Number: 18200420002
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

11 Bldgs./Geiger Heights
Property Number: 18200420003
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

**Air Force**

*Washington*

Building

Bldg. 297/Geiger Heights
Property Number: 18200420004
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

9 Bldgs./Geiger Heights
Property Number: 18200420005
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

22 Bldgs./Geiger Heights
Property Number: 18200420006
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

51 Bldgs./Geiger Heights
Property Number: 18200420007
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Bldg. 402/Geiger Heights
Property Number: 18200420008
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

**Air Force**

*Washington*

Building

5 Bldgs./Geiger Heights
Property Number: 18200420009
Fairchild AFB 222, 224, 271, 295, 260
Spokane WA 99224
Status: Unutilized
Reason: mission effort

5 Bldgs./Geiger Heights
Property Number: 18200420010
Fairchild AFB
102, 183, 118, 136, 113
Spokane WA 99224
Status: Unutilized
Reason: mission effort

**Army**

*Alabama*

Building

Bldg. 01433
Property Number: 21200220098
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Status: Excess
Reason: being utilized

Bldg. 30105
Property Number: 21200510052
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Status: Excess
Reason: occupied

Bldg. 40115
Property Number: 21200510053
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Status: Excess
Reason: occupied

Bldg. 25303
Property Number: 21200520074
Fort Rucker
Dale AL 36362
Status: Excess
Reason: occupied

Bldg. 25304
Property Number: 21200520075
Fort Rucker
Dale AL 36362
Status: Excess
Reason: occupied

**Army**

*Arizona*

Building

Bldg. 13570
Property Number: 21200520076
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 22529
Property Number: 21200520077
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 22541
Property Number: 21200520078
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 30020
Property Number: 21200520079
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 30021
Property Number: 21200520080
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

**Army**

*Arizona*

Building

Bldg. 90311
Property Number: 21200520083
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 22040

Property Number: 21200540076
Fort Huachuca
Cochise AZ 85613
Status: Excess
Reason: occupied

Bldg. 22404
Property Number: 21200540077
Fort Huachuca
Cochise AZ 85613
Status: Excess
Reason: occupied

Bldg. 22540
Property Number: 21200540078
Fort Huachuca
Cochise AZ 85613
Status: Excess
Reason: occupied

Bldg. 22040
Property Number: 21200620065
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

**Army**

*Arizona*

Building

Bldg. 22404
Property Number: 21200620066
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 22540
Property Number: 21200620067
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 66150
Property Number: 21200620068
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 76910
Property Number: 21200620069
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 90335
Property Number: 21200620070
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

**Army**

*Arizona*

Building

Bldg. 90336
Property Number: 21200620071
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

*Colorado*

Building

Bldg. S6222
Property Number: 21200340082
Fort Carson
Ft. Carson Co: El Paso CO 80913
Status: Unutilized
Reason: occupied

Bldg. S6264
Property Number: 21200340084
Fort Carson
Ft. Carson Co: El Paso CO 80913
Status: Unutilized
Reason: occupied

Bldg. S6220
Property Number: 21200420175
Fort Carson
Ft. Carson Co: El Paso CO 80913
Status: Unutilized
Reason: in use

Bldg. S6285
Property Number: 21200420176
Fort Carson
Ft. Carson Co: El Paso CO 80913
Status: Unutilized
Reason: in use

**Army**

*Colorado*

Building

Bldg. S6287
Property Number: 21200420177
Fort Carson
Ft. Carson Co: El Paso CO 80913
Status: Unutilized
Reason: in use

Bldg. 06225
Property Number: 21200520084
Fort Carson
El Paso CO 80913–4001
Status: Unutilized
Reason: occupied

Bldg. 06280
Property Number: 21200520085
Fort Carson
El Paso CO 80913–4001
Status: Unutilized
Reason: occupied

Bldgs. 06281, 06282, 06283
Property Number: 21200520086
Fort Carson
El Paso CO 80913–4001
Status: Unutilized
Reason: occupied

**Army**

*Georgia*

Building

Bldgs. 00960, 00961, 00963
Property Number: 21200330107
Fort Benning
Ft. Benning Co: Chattahoochee GA
Status: Unutilized
Reason: occupied

Bldg. T201
Property Number: 21200420002
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T234
Property Number: 21200420008
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T702
Property Number: 21200420010
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T703
Property Number: 21200420011
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. T704
Property Number: 21200420012
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. P813
Property Number: 21200420013
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldgs. S843, S844, S845
Property Number: 21200420014
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. P925
Property Number: 21200420015
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. P1277
Property Number: 21200420024
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. T1412
Property Number: 21200420025
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. 8658
Property Number: 21200420029
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. 8659
Property Number: 21200420030
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldgs. 8675, 8676
Property Number: 21200420031
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldgs. 5962–5966

Property Number: 21200420035
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldgs. 5967–5971
Property Number: 21200420036
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldgs. 5974–5977
Property Number: 21200420037
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5978
Property Number: 21200420038
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5981
Property Number: 21200420039
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldgs. 5984–5988
Property Number: 21200420040
Fort Benning
Ft. Benning Co: Chatachoochee GA 31905
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. 5993
Property Number: 21200420041
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5994
Property Number: 21200420042
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5995
Property Number: 21200420043
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 9000
Property Number: 21200420045
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldgs. 9002, 9005
Property Number: 21200420046
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. 9025
Property Number: 21200420047
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 9026
Property Number: 21200420048
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. T01
Property Number: 21200420181
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T04
Property Number: 21200420182
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T05
Property Number: 21200420183
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. T06
Property Number: 21200420184
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T55
Property Number: 21200420187
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T85
Property Number: 21200420188
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T131
Property Number: 21200420189
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status. Excess
Reason: in use

Bldg. T132
Property Number: 21200420190
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. T157
Property Number: 21200420191
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 01002
Property Number: 21200420197
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 01003
Property Number: 21200420198
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19101
Property Number: 21200420215
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19102
Property Number: 21200420216
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. T19111
Property Number: 21200420217
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19112
Property Number: 21200420218
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19113
Property Number: 21200420219
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T19201
Property Number: 21200420220
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19202
Property Number: 21200420221
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. 19204 thru 19207
Property Number: 21200420222
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldgs. 19208 thru 19211
Property Number: 21200420223
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19212
Property Number: 21200420224
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19213
Property Number: 21200420225
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19214
Property Number: 21200420226
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. 19215
Property Number: 21200420227
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19216
Property Number: 21200420228
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19217
Property Number: 21200420229
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19218
Property Number: 21200420230
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldgs. 19219, 19220
Property Number: 21200420231
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. 19223
Property Number: 21200420232
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19225
Property Number: 21200420233
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19226
Property Number: 21200420234
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T19228
Property Number: 21200420235
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19229
Property Number: 21200420236
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

**Army**

*Georgia*

Building

Bldg. 19232
Property Number: 21200420237
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19233
Property Number: 21200420238
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19236
Property Number: 21200420239
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19238
Property Number: 21200420240
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 01674
Property Number: 21200510056
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

**Army**

*Georgia*

Building

Bldg. 01675
Property Number: 21200510057
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01676
Property Number: 21200510058
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01677
Property Number: 21200510059
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01678
Property Number: 21200510060
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 05887
Property Number: 21200510061
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

**Army**

*Georgia*

Building

Bldg. 00051
Property Number: 21200520087
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00052
Property Number: 21200520088
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00053
Property Number: 21200520089
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00054
Property Number: 21200520090
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00106
Property Number: 21200520092
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

**Army**

*Georgia*

Building

Bldg. 02023
Property Number: 21200520093
Fort Benning
Chattahoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 2750
Property Number: 21200520094
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 2819
Property Number: 21200520095
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 2843
Property Number: 21200520096

Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 9013
Property Number: 21200520099
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

**Army**

*Georgia*

Building

5 Bldgs.
Property Number: 21200520100
Fort Benning 9014, 9015, 9018, 9022, 9053
Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 9050
Property Number: 21200520104
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 9051
Property Number: 21200520105
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 09075
Property Number: 21200520106
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 9234
Property Number: 21200520109
Fort Benning
Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

*Georgia*

Building

Bldgs. 10039, 10041
Property Number: 21200520110
Fort Benning
Muscogee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 11326
Property Number: 21200520112
Fort Benning
Muscogee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01243
Property Number: 21200610040
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Reason: occupied

Bldg. 01244
Property Number: 21200610041
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Reason: occupied

Bldg. 01318
Property Number: 21200610042
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Reason: occupied

**Army**

*Georgia*

Building

Bldg. 00612
Property Number: 21200610043
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00614
Property Number: 21200610044
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00618
Property Number: 21200610045
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00628
Property Number: 21200610046
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 01079
Property Number: 21200610047
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

**Army**

*Georgia*

Building

Bldg. 07901
Property Number: 21200610049
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 08031
Property Number: 21200610050
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 08081
Property Number: 21200610052
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 08252
Property Number: 21200610053
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

**Army**

*Indiana*

Building

Bldg. 301
Property Number: 21200320098
Fort Benjamin Harrison
Indianapolis Co: Marion IN 45216
Status: Unutilized
Reason: occupied

Bldg. 302
Property Number: 21200320099
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216
Status: Unutilized
Reason: occupied

Bldg. 303
Property Number: 21200320100
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216
Status: Unutilized
Reason: occupied

Bldg. 304
Property Number: 21200320101
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216
Status: Unutilized
Reason: occupied

Bldg. 334
Property Number: 21200320102
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216
Status: Unutilized
Reason: occupied

**Army**

*Indiana*

Building

Bldg. 337
Property Number: 21200320103
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216
Status: Unutilized
Reason: occupied

*Kentucky*

Building

Bldg. 06894
Property Number: 21200630070
Fort Campbell
Christian KY 42223
Status: Unutilized
Reason: mission use

Bldg. 06895
Property Number: 21200630071
Fort Campbell
Christian KY 42223
Status: Unutilized
Reason: mission use

*Louisiana*

Building

Bldg. T401
Property Number: 21200540084
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

**Army**

*Louisiana*

Building

Bldgs. T406, T407, T411
Property Number: 21200540085
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

Bldg. T412

Property Number: 21200540086
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied
Bldgs. T414, T421
Property Number: 21200540087
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

*Maryland*

Building

Bldg. 2282C
Property Number: 21200230059
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755
Status: Unutilized
Reason: secured
Bldg. 8608
Property Number: 21200410099
Fort George G. Meade
Ft. Meade MD 20755–5115
Status: Unutilized
Reason: occupied

**Army**

*Maryland*

Building

Bldg. 8612
Property Number: 21200410101
Fort George G. Meade
Ft. Meade MD 20755–5115
Status: Unutilized
Reason: occupied
Bldg. 0001A
Property Number: 21200520114
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied
Bldg. 0001C
Property Number: 21200520115
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied
Bldgs. 00032, 00H14, 00H24
Property Number: 21200520116
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied
Bldgs. 00034, 00H016
Property Number: 21200520117
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

**Army**

*Maryland*

Building

Bldgs. 00H10, 00H12
Property Number: 21200520118
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

*Michigan*

Building

Bldg. 00001
Property Number: 21200510066
Sheridan Hall USARC. 501 Euclid Avenue
Helena Co: Lewis MI 59601–2865
Status: Unutilized
Reason: Federal interest

*Missouri*

Building

Bldg. 1230
Property Number: 21200340087
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied
Bldg. 1621
Property Number: 21200340088
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

**Army**

*Missouri*

Building

Bldg. 5760
Property Number: 21200410102
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied
Bldg. 5762
Property Number: 21200410103
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied
Bldg. 5763
Property Number: 21200410104
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied
Bldg. 5765
Property Number: 21200410105
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied
Bldg. 5760
Property Number: 21200420059
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

**Army**

*Missouri*

Building

Bldg. 5762
Property Number: 21200420060
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use
Bldg. 5763
Property Number: 21200420061
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use
Bldg. 5765
Property Number: 21200420062
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use
Bldg. 00467
Property Number: 21200530085
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743
Status: Unutilized
Reason: occupied

**Army**

*New York*

Building

Bldgs. 1511–1518
Property Number: 21200320160
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied
Bldgs. 1523–1526
Property Number: 21200320161
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied
Bldgs. 1704–1705, 1721–1722
Property Number: 21200320162
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied
Bldg. 1723
Property Number: 21200320163
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied
Bldgs. 1706–1709
Property Number: 21200320164
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

**Army**

*New York*

Building

Bldgs. 1731–1735
Property Number: 21200320165
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

*North Carolina*

Building

Bldgs. A2245, A2345
Property Number: 21200240084
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310
Status: Excess
Reason: mission use

Bldg. N4116
Property Number: 21200240087
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310
Status: Excess
Reason: mission use

*Texas*

Building

Bldgs. 4219, 4227
Property Number: 21200220139
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

**Army**

*Texas*

Building

Bldgs. 4229, 4230, 4231
Property Number: 21200220140
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 4244, 4246
Property Number: 21200220141
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 4260, 4261, 4262
Property Number: 21200220142
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 04223–04226
Property Number: 21200440088
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04335
Property Number: 21200440090
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

**Army**

*Texas*

Building

Bldg. 04465
Property Number: 21200440094
Fort Hood
Bell TX 76544
Status: Excess
Reason: Occupied

Bldg. 04468
Property Number: 21200440096
Fort Hood
Bell TX 76544
Status: Excess
Reason: Occupied

Bldg. 04473
Property Number: 21200440097
Fort Hood
Bell TX 76544
Status: Excess
Reason: Occupied

Bldgs. 04475–04476
Property Number: 21200440098
Fort Hood
Bell TX 76544
Status: Excess
Reason: Occupied

Bldg. 04477
Property Number: 21200440099
Fort Hood
Bell TX 76544
Status: Excess
Reason: Occupied

**Army**

*Texas*

Building

Bldg. 07002
Property Number: 21200440100
Fort Hood
Bell TX 76544
Status: Excess
Reason: Occupied

Bldg. 7002A
Property Number: 21200440101
Fort Hood
Bell TX 76544
Status: Excess
Reason: Occupied

Bldg. 57001
Property Number: 21200440105
Fort Hood
Bell TX 76544
Status: Excess
Reason: Occupied

Bldgs. 90053–90054
Property Number: 21200440107
Fort Hood
Bell TX 76544
Status: Excess
Reason: Occupied

Bldgs. 125, 126
Property Number: 21200620075
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

**Army**

*Texas*

Building

Bldg. 190
Property Number: 21200620076
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 00738
Property Number: 21200620077
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 02240
Property Number: 21200620078
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04164
Property Number: 21200620079
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 04218, 04228
Property Number: 21200620080
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

**Army**

*Texas*

Building

Bldg. 04272
Property Number: 21200620081
Fort Hood
Bell TX 76544
Status: Excess
Reason: not occupied

Bldgs. 04289, 04331
Property Number: 21200620082
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04415
Property Number: 21200620083
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

4 Bldgs
Property Number: 21200620084
Fort Hood 04419, 04420, 04421, 04424
Bell TX 76544
Status: Excess
Reason: occupied

4 Bldgs.
Property Number: 21200620085
Fort Hood 04425, 04426, 04427, 04429
Bell TX 76544
Status: Excess
Reason: occupied

**Army**

*Texas*

Building

4 Bldgs.
Property Number: 21200620086
Fort Hood 04428, 04437, 04438, 04443
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04430
Property Number: 21200620087
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04434
Property Number: 21200620088
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04439
Property Number: 21200620089

Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 04470, 04471
Property Number: 21200620090
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

**Army**

*Texas*

Building

Bldg. 04493
Property Number: 21200620091
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04494
Property Number: 21200620092
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04632
Property Number: 21200620093
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04640
Property Number: 21200620094
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04645
Property Number: 21200620095
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

**Army**

*Texas*

Building

Bldg. 04906
Property Number: 21200620096
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 20121
Property Number: 21200620097
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 21002
Property Number: 21200620098
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied.

Bldg. 21003
Property Number: 21200620099
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied.

Bldg. 70004
Property Number: 21200620100
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied.

**Army**

*Texas*

Building

Bldg. 91052
Property Number: 21200620101
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied.

Bldg. 00738
Property Number: 21200630073
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied.

*Virginia*

Building

Bldg. T2827
Property Number: 21200320172
Fort Pickett
Blackstone Co: Nottoway VA 23824
Status: Unutilized
Reason: occupied.

Bldg. T2841
Property Number: 21200320173
Fort Pickett
Blackstone Co: Nottoway VA 23824
Status: Unutilized
Reason: occupied.

**Army**

*Washington*

Building

Bldg. 05904
Property Number: 21200240092
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Status: Excess
Reason: mission use

*Wisconsin*

Building

Bldgs. 02128, 02129
Property Number: 21200630074
Fort McCoy
Monroe WI 54656
Status: Underutilized
Reason: occupied.

Bldg. 02130
Property Number: 21200630075
Fort McCoy
Monroe WI 54656
Status: Underutilized
Reason: occupied.

Bldgs. 02131, 02133
Property Number: 21200630076
Fort McCoy
Monroe WI 54656
Status: Underutilized
Reason: occupied.

Bldgs. 02134, 02135
Property Number: 21200630077
Fort McCoy
Monroe WI 54656
Status: Underutilized
Reason: occupied.

**Army**

*Wisconsin*

Building

Bldg. 02139
Property Number: 21200630078
Fort McCoy
Monroe WI 54656
Status: Underutilized
Reason: occupied.

Bldg. 02150
Property Number: 21200630079
Fort McCoy
Monroe WI 54656
Status: Underutilized
Reason: occupied.

Bldg. 02153
Property Number: 21200630080
Fort McCoy
Monroe WI 54656
Status: Underutilized
Reason: occupied.

**Coe**

*Illinois*

Building

Bldg. 7
Property Number: 31199010001
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 6
Property Number: 31199010002
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 5
Property Number: 31199010003
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 4
Property Number: 31199010004
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 3
Property Number: 31199010005
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

**Coe**

*Illinois*

Building

Bldg. 2
Property Number: 31199010006
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 1

Property Number: 31199010007
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Land

Lake Shelbyville
Property Number: 31199240004
Shelbyville Co: Shelby IL 62565–9804
Status: Unutilized
Reason: Disposal action initiated.

*Ohio*

Building

Bldg.—Berlin Lake
Property Number: 31199640001
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Status: Unutilized
Reason: utilized as construction office.

**Coe**

*Pennsylvania*

Building

Tract 403A
Property Number: 31199430021
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403B
Property Number: 31199430022
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403C
Property Number: 31199430023
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Status: Unutilized
Reason: To be transferred to Borough.

Land

East Branch Clarion River Lake
Property Number: 31199011012
Wilcox Co: Elk PA
Status: Underutilized
Reason: Location near damsite.

Dashields Locks and Dam
Property Number: 31199210009
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Status: Unutilized
Reason: Leased to Township.

**Energy**

*Idaho*

Building

Bldg. CFA–613
Property Number: 41199630001
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415
Status: Unutilized
Reason: Historical issues.

**GSA**

*California*

Building

Social Security Building
Property Number: 54200610010
505 North Court Street
Visalia Co: Tulare CA 93291
Status: Surplus
GSA Number: 9–G–CA–1643
Reason: written interest.

Land

Former Outer Marker Facility
Property Number: 54200630014
215 W. 118th Street
Los Angeles CA 90061
Status: Unutilized
GSA Number: 9–U–CA–1614
Reason: advertised for sale.

*Colorado*

Building

Federal Building
Property Number: 54200640004
1520 E. Willamette St.
Colorado Springs Co: El Paso CO 80909
Status: Excess
GSA Number: 7–G–CO–0660
Reason: Federal interest.

**GSA**

*Indiana*

Building

Former SSA
Property Number: 54200630015
327 W. Marion Street
Elkhart IN 46516
Status: Surplus
GSA Number: 1–GR–IN–05962A
Reason: application in progress.

*Iowa*

Building

Federal Bldg./P.O./Courthouse
Property Number: 54200640001
8 South 6th Street
Council Bluffs Co: Pottawattamie IA 51501
Status: Excess
GSA Number: 7–G–IA–0468–1
Reason: written expression of interest.

*Kentucky*

Land

Tract S–2
Property Number: 54200630016
3301 Leestown Road
Lexington Co: Fayette KY 40511
Status: Excess.
GSA Number: 47–J–KY–0622
Reason: written expression of interest.

**GSA**

*Louisiana*

Land

Vacant Land
Property Number: 54200640003
Former Barksdale AFB Radio Beacon
Bossier City LA
Status: Excess
GSA Number: 7–GR–LA–04382
Reason: written expression of interest.

*Michigan*

Land

IOM Site
Property Number: 54200340008
Chesterfield Road
Chesterfield Co: Macomb MI
Status: Excess
GSA Number: 1–D–MI–0603F
Reason: public body interest.

Lots 2–6
Property Number: 54200540007
Lawndale Park Addition
Ludington Co: Mason MI 49431
Status: Excess
GSA Number: 1–G–MI–537–2
Reason: public benefit conveyance.

*Minnesota*

Building

Lakes Project Office
Property Number: 54200410015
307 Main Street East
Remer Co: Cass MN
Status: Surplus
GSA Number: 5–D–MN–548–A
Reason: Public sale in progress.

**GSA**

*Minnesota*

Building

Memorial Army Rsv Ctr
Property Number: 54200620002
1804 3rd Avenue
International Falls Co: Koochiching MN 56649
Status: Excess
GSA Number: 1–D–MN–586
Reason: written expression of interest.

*Montana*

Building

Border Patrol Station
Property Number: 54200620010
906 Oilfield Avenue
Shelby Co: Toole MT 59474
Status: Excess
GSA Number: 7–Z–MT–0617
Reason: written expression of interest.

*Nevada*

Building

Young Fed Bldg/Courthouse
Property Number: 54200620014
300 Booth Street
Reno NV 89502
Status: Surplus
GSA Number: 9–G–NV–529–2
Reason: Homeless interest.

**GSA**

*New Mexico*

Building

Federal Building
Property Number: 54200540005
517 Gold Avenue, SW
Albuquerque Co: Bernalillo NM 87102
Status: Excess
GSA Number: 7–G–NM–0588
Reason: advertised.

Federal Building
Property Number: 54200630001
1100 New York Ave.
Alamogordo Co: Otero NM 88310
Status: Surplus
GSA Number: 7–G–NM–0569
Reason: written expression of interest.

Dwelling #25
Property Number: 54200630018
Ranger Lane
Cuba Co: Sandoval NM 87013

Status: Surplus
GSA Number: 7–A–NM–0590
Reason: advertised for sale.

Infra #30203
Property Number: 54200630019
Fenton Hill Site
Mora NM 87535
Status: Surplus
GSA Number: 7–A–NM–0591
Reason: advertised for sale.

**GSA**

*New Mexico*

Land

Portion/Medical Center
Property Number: 54200620003
2820 Ridgecrest
Albuquerque Co: Bernalillo NM 87103
Status: Unutilized
GSA Number: 7–GR–NM–04212A
Reason: Homeless interest.

*New York*

Building

Social Sec. Admin. Bldg.
Property Number: 54200230009
517 N. Barry St.
Olean NY 10278–0004
Status: Excess
GSA Number: 1–G–NY–0895
Reason: environmental questions.

Fleet Mgmt. Center
Property Number: 54200620015
5 32nd Street
Brooklyn NY 11232
Status: Surplus
GSA Number: 1–G–NY–0872B
Reason: written expression of interest.

8 Family Apt. Bldgs.
Property Number: 54200630011
Watervliet Arsenal Housing.
325 Duanesburg Road
Rotterdam Co: Schenectady NY
Status: Excess
GSA Number: 1–D–NY–0877
Reason: expression of interest

**GSA**

*New York*

Building

2 Residential Bldgs.
Property Number: 54200630012
Watervliet Arsenal Housing
1138, 1134, 1132 North Westcott Rd.
Rotterdam Co: Schenectady NY
Status: Excess
GSA Number: 1–D–NY–877
Reason: advertised.

*North Dakota*

Building

Residence #1
Property Number: 54200620005
Hwy 30/Canadian Border
St. John Co: Rolette ND 58369
Status: Excess
GSA Number: 7–G–ND–0504
Reason: written expression of interest.

Residence #2
Property Number: 54200620006
Hwy 30/Canadian Border
St. John Co: Rolette ND 58369
Status: Excess
GSA Number: 7–G–ND–0505
Reason: written expression of interest.

Residence #1
Property Number: 54200620007
Hwy 281/Canadian Border
Dunseith Co: Rolette ND 58329
Status: Excess
GSA Number: 7–G–ND–0508
Reason: written expression of interest.

**GSA**

*North Dakota*

Building

Residence #2
Property Number: 54200620008
Hwy 281/Canadian Border
Dunseith Co: Rolette ND 58329
Status: Excess
GSA Number: 7–G–ND–0507
Reason: written expression of interest.

Residence #3
Property Number: 54200620009
Hwy 281/Canadian Border
Dunseith Co: Rolette ND 58329
Status: Excess
GSA Number: 7–G–ND–0506
Reason: written expression of interest.

Residence #1
Property Number: 54200620012
Hwy 42/Canadian Border
Ambrose Co: Divide ND 58833
Status: Excess
GSA Number: 7–G–ND–0510
Reason: written expression of interest.

Residence #2
Property Number: 54200620013
Hwy 42/Canadian Border
Ambrose Co: Divide ND 58833
Status: Excess
GSA Number: 7–G–ND–0509
Reason: written expression of interest.

Sherwood Garage
Property Number: 54200630002
Hwy 28
Sherwood Co: Renville ND 58782
Status: Surplus
GSA Number: 7–G–ND–0512
Reason: written expression of interest.

**GSA**

*North Dakota*

Building

Noonan Garage
Property Number: 54200630003
Hwy 40
Noonan Co: Divide ND 58765
Status: Surplus
GSA Number: 7–G–ND–0511
Reason: written expression of interest.

Westhope Garage
Property Number: 54200630004
Hwy 83
Westhope Co: Bottineau ND 58793
Status: Surplus
GSA Number: 77–G–ND–0513
Reason: written expression of interest.

*Oklahoma*

Building

Warehouse 2E
Property Number: 54200630005
2800 S. Eastern Ave.
Oklahoma City OK 73129
Status: Surplus
GSA Number: 7–G–OK–0572
Reason: written expression of interest.

*Pennsylvania*

Land

18.8 acres
Property Number: 54200630007
Tract 19
Curwensville Lake Project
Clearfield PA
Status: Excess
GSA Number: 47–D–PA–0801
Reason: written expression of interest.

**GSA**

*Tennessee*

Land

Army Rsv Training Area
Property Number: 54200630006
6510 Bonny Oaks Dr.
Chattanooga Co: Hamilton TN 37416
Status: Surplus
GSA Number: 4–D–TN–05946A
Reason: written expression of interest.

*Texas*

Building

Bldgs. 5, 6, 7
Property Number: 54200640002
Federal Center
501 West Felix Street
Ft. Worth Co: Tarrant TX 76115
Status: Excess
GSA Number: 7–G–TX–0767–3
Reason: advertised for sale.

*Vermont*

Land

Former FAA Middle Marker
Property Number: 54200630021
Richardson Road
Berlin Corners VT 50053
Status: Excess
GSA Number: 1–U–VT–0477
Reason: negotiated sale pending.

**GSA**

*Virginia*

Building

142.67 acres/7 Bldgs.
Property Number: 54200630020
Pepermeir Hill Road
U.S. Geological Survey
Corbin VA 22446
Status: Excess
GSA Number: 4–I–VA–0748
Reason: Federal need.

**VA**

*Iowa*

Land

38 acres
Property Number: 97199740001
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138
Status: Unutilized
Reason: Enhanced-Use Legislation potential.

*Michigan*

Land

VA Medical Center

Property Number: 97199010015
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016
Status: Underutilized
Reason: Being used for patient and program activities.

*Montana*

Building

VA MT Healthcare
Property Number: 97200030001
210 S. Winchester
Miles City Co: Custer MT 59301
Status: Underutilized
Reason: transfer to Custer County.

VA

*New York*

Land

VA Medical Center
Property Number: 97199010017
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424
Status: Underutilized
Reason: Portion leased; portion landlocked.

*Ohio*

Building

Bldg. 116
Property Number: 97199920002
VA Medical Center
Dayton Co: Montgomery OH 45428
Status: Unutilized
Reason: preexisting agreement.

*Pennsylvania*

Land

VA Medical Center
Property Number: 97199010016
New Castle Road
Butler Co: Butler PA 16001
Status: Underutilized
Reason: Used as natural drainage for facility property.

Land No. 645
Property Number: 97199010080
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206
Status: Unutilized
Reason: Property is essential to security and safety of patients.

VA

*Pennsylvania*

Land

Land—34.16 acres
Property Number: 97199340001
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320
Status: Underutilized
Reason: needed for mission related functions.

*Wisconsin*

Building

Bldg. 2
Property Number: 97199830002
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295
Status: Underutilized
Reason: Subject of leasing negotiations.

[FR Doc. E7–1926 Filed 2–8–07; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4917–N–10]**

### Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 2007, is 4⅞ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2007, is 4¾ percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

**FOR FURTHER INFORMATION CONTACT:** Darryl E. Getter, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2232, Washington, DC 20410–8000; telephone (202) 402–7541 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 2007, is 4¾ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 4¾ percent for the 6-month period beginning January 1, 2007. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2007.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

| Effective interest rate | On or after | Prior to |
|---|---|---|
| 9½ | Jan. 1, 1980 | July 1, 1980. |
| 9⅞ | July 1, 1980 | Jan. 1, 1981. |
| 11¾ | Jan. 1, 1981 | July 1, 1981. |

| Effective interest rate | On or after | Prior to |
|---|---|---|
| 12⅞ | July 1, 1981 | Jan. 1, 1982. |
| 12¾ | Jan. 1, 1982 | Jan. 1, 1983. |
| 10¼ | Jan. 1, 1983 | July 1, 1983. |
| 10⅜ | July 1, 1983 | Jan. 1, 1984. |
| 11½ | Jan. 1, 1984 | July 1, 1984. |
| 13⅜ | July 1, 1984 | Jan. 1, 1985. |
| 11⅝ | Jan. 1, 1985 | July 1, 1985. |
| 11⅛ | July 1, 1985 | Jan. 1, 1986. |
| 10¼ | Jan. 1, 1986 | July 1, 1986. |
| 8¼ | July 1, 1986 | Jan. 1. 1987. |
| 8 | Jan. 1, 1987 | July 1, 1987. |
| 9 | July 1, 1987 | Jan. 1, 1988. |
| 9⅛ | Jan. 1, 1988 | July 1, 1988. |
| 9⅜ | July 1, 1988 | Jan. 1, 1989. |
| 9¼ | Jan. 1, 1989 | July 1, 1989. |
| 9 | July 1, 1989 | Jan. 1, 1990. |
| 8⅛ | Jan. 1, 1990 | July 1, 1990. |
| 9 | July 1, 1990 | Jan. 1, 1991. |
| 8¾ | Jan. 1, 1991 | July 1, 1991. |
| 8½ | July 1, 1991 | Jan. 1, 1992. |
| 8 | Jan. 1, 1992 | July 1, 1992. |
| 8 | July 1, 1992 | Jan. 1, 1993. |
| 7¾ | Jan. 1, 1993 | July 1, 1993. |
| 7 | July 1, 1993 | Jan. 1, 1994. |
| 6⅝ | Jan. 1, 1994 | July 1, 1994. |
| 7¾ | July 1, 1994 | Jan. 1, 1995. |
| 8⅜ | Jan. 1, 1995 | July 1, 1995. |
| 7¼ | July 1, 1995 | Jan. 1, 1996. |
| 6½ | Jan. 1, 1996 | July 1, 1996. |
| 7¼ | July 1, 1996 | Jan. 1, 1997. |
| 6¾ | Jan. 1, 1997 | July 1, 1997. |
| 7⅛ | July 1, 1997 | Jan. 1, 1998. |
| 6⅜ | Jan. 1, 1998 | July 1, 1998. |
| 6⅛ | July 1, 1998 | Jan. 1, 1999. |
| 5½ | Jan. 1, 1999 | July 1, 1999. |
| 6⅛ | July 1, 1999 | Jan. 1, 2000. |
| 6½ | Jan. 1, 2000 | July 1, 2000. |
| 6½ | July 1, 2000 | Jan. 1, 2001. |
| 6 | Jan. 1, 2001 | July 1, 2001. |
| 5⅞ | July 1, 2001 | Jan. 1, 2002. |
| 5¼ | Jan. 1, 2002 | July 1, 2002. |
| 5¾ | July 1, 2002 | Jan. 1, 2003. |
| 5 | Jan. 1, 2003 | July 1, 2003. |
| 4½ | July 1, 2003 | Jan. 1, 2004. |
| 5⅛ | Jan. 1, 2004 | July 1, 2004. |
| 5½ | July 1, 2004 | Jan. 1, 2005. |
| 4⅞ | Jan. 1, 2005 | July 1, 2005. |
| 4½ | July 1, 2005 | Jan. 1, 2006. |
| 4⅞ | Jan. 1, 2006 | July 1, 2006. |
| 5⅜ | July 1, 2006 | Jan. 1, 2007. |
| 4¾ | Jan. 1, 2007 | July 1, 2007. |

Section 215 of Division G, Title II of Pub. L. 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, effective immediately, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8-to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2007, is 4⅞ percent.

HUD expects to publish its next notice of change in debenture interest rates in July 2007.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR

50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

**Authority:** Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Dated: February 1, 2007.

**Brian D. Montgomery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. E7–2201 Filed 2–8–07; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Sport Fishing and Boating Partnership Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of teleconference.

**SUMMARY:** We, the Fish and Wildlife Service, announce a public teleconference of the Sport Fishing and Boating Partnership Council (Council).

**DATES:** We will hold the teleconference on Tuesday, February 20, 2007, from 3 p.m. to 5 p.m. (Eastern Time). Members of the public wishing to participate in the teleconference must notify Douglas Hobbs by close of business on Friday, February 16, 2007, per instructions under the **SUPPLEMENTARY INFORMATION** section of this notice. Submit written statements for this teleconference no later than February 13, 2007.

**ADDRESSES:** Council Coordinator, 4401 North Fairfax Drive. Mailstop 3103–AEA, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Doug Hobbs (see **ADDRESSES**), (703) 358–2336 (phone), (703) 358–2548 (fax), or *doug_hobbs@fws.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we give notice that the Sport Fishing and Boating Partnership Council will hold a teleconference on Tuesday, February 20, 2007, from 3 p.m. to 5 p.m.

#### Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, about sport fishing and boating issues. The Council represents the interests of the public and private sectors of the sport fishing and boating communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Director of the Service and the president of the International Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc*.

The Council will convene to: (1) Approve recommendations to the Director of the Fish and Wildlife Service for funding Fiscal Year 2007 Boating Infrastructure Grant proposals; and (2) Be briefed on a Fish and Wildlife Service proposal related to combining some or all functions of the Fisheries and Habitat Conservation program and the Endangered Species program. The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc*.

#### Procedures for Public Input

Interested members of the public may submit relevant written or oral information for the Council to consider during the public teleconference. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements or those who had wished to speak but could not be accommodated on the agenda are invited to submit written statements to the Council.

Individuals or groups requesting an oral presentation at the public Council teleconference will be limited to 3 minutes per speaker, with no more than a total of one-half hour for all speakers. Interested parties should contact Douglas Hobbs, Council Coordinator, in writing (preferably via e-mail), by Friday, February 16, 2007, at the contact information under **FOR FURTHER INFORMATION CONTACT** to be placed on the public speaker list for this teleconference. We must receive your written statements by Tuesday, February 13, 2007, so that the information may be made available to the Council for their consideration prior to this teleconference. Submit your written statements to the Council Coordinator in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS–3101–AEA, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

Dated: January 24, 2007.

**Kevin Adams,**

*Acting Director.*

[FR Doc. E7–2149 Filed 2–8–07; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–100–1610–DP]**

### Notice of Availability of Draft Little Snake Resource Management Plan and Environmental Impact Statement, Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) for the Little Snake Field Office and by this notice is announcing the opening of the comment period.

**DATES:** To assure that they will be considered, BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

**ADDRESSES:** The Draft RMP/EIS will be posted on the Internet at *http://www.co.blm.gov/lsra/rmp*. You may submit comments by any of the following methods:

- *E-mail: colsrmp@blm.gov.*
- *Fax:* (970) 826–5002.
- *Mail:* Jeremy Casterson, BLM—Little Snake Field Office, 455 Emerson St., Craig, CO 81625.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Casterson, Planning and

Environmental Coordinator, BLM—Little Snake Field Office, 455 Emerson St., Craig, CO 81625. Phone: (970) 826–5071. E-mail: *Jeremy_Casterson@blm.gov.*

**SUPPLEMENTARY INFORMATION:** The planning area is located in Northwest Colorado in Moffat, Routt, and Rio Blanco Counties. The plan will provide a framework to guide subsequent management decisions on approximately 1.3 million acres of BLM-administered public lands and 1.1 million acres of subsurface mineral estate administered by the BLM. Little Snake Field Office is currently being managing under its 1989 RMP, which has been amended for Oil and Gas Leasing (1991), Black-Footed Ferret Reintroduction (1996) and Land Health Standards (1997).

The Little Snake Field Office has worked extensively with the community, interested and affected publics, and cooperating agencies in development of the Draft RMP/EIS. An independent local citizen-based stewardship group, the Northwest Colorado Stewardship (NWCOS), has been very engaged in the RMP revision. NWCOS has provided input on issues that will be addressed in the planning process, the range of alternatives and the impact analysis. Cooperating agencies include Moffat County, Colorado Department of Natural Resources, U.S. Fish and Wildlife Service Division of Ecological Services, the City of Steamboat Springs and the Juniper Water Conservancy District.

The Draft RMP/EIS addresses many issues important to the area, including energy development, special designations, transportation and travel management, wildlife habitat and socio-economic values. Four alternatives were analyzed in the Draft RMP/EIS.

Alternative A would maintain present uses by continuing present management direction and activities. Mineral and energy development and unrestricted off-highway vehicle (OHV) travel would be allowed throughout a majority of the planning area.

Alternative B would allow the greatest extent of resource use within the planning area, while maintaining the basic protection needed to sustain resources. Under this alternative, constraints on commodity production for the protection of sensitive resources would be the least restrictive possible within the limits defined by law, regulation and BLM policy.

Alternative C, the Preferred Alternative, would emphasize multiple resource use in the planning area by protecting sensitive resources and applying the most current information that allows BLM to set priorities for flexible, proactive management of public lands (adaptive management). Commodity production would be balanced with providing protection for wildlife and vegetation.

Alternative D would allow the greatest extent of resource protection within the planning area, while still allowing resource uses. Commodity production would be constrained to protect natural resource values or to accelerate improvement in their condition.

In the preferred alternative, Alternative C, Irish Canyon is designated as an Area of Critical Environmental Concern (ACEC). The ACEC objective would be to protect sensitive plants, remnant plant communities, cultural and geologic values, and scenic quality. The area would be closed to oil and gas leasing, limited to designated routes for off-highway vehicles, withdrawn from locatable mineral entry, managed as Visual Resource Management Class II, and Right-of-way exclusion area unless associated with valid existing rights.

ACEC proposals which were determined to meet the relevance and importance criteria but not designated ACECs in the preferred alternative because they were deemed not to warrant special management attention include Lookout Mountain, Limestone Ridge, Cross Mountain Canyon, White-tailed Prairie Dog habitat, and eleven areas proposed to protect sensitive plants and plant communities: Cold Desert Shrublands occurrences, Gibben's Beardtongue occurrences, Bull Canyon, G Gap, Little Juniper Canyon, the Bassett Spring, No Name Spring, Pot Creek, Whiskey Springs, Willow Spring, and Deception Creek.

All submissions will be available for public inspection in their entirety. Copies of the Little Snake Draft RMP/EIS are available in the Little Snake Field Office at the above address during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Dated: May 26, 2006.

**John E. Husband,**

*Field Manager.*

**Editorial Note:** This document was received at the Office of the Federal Register on February 6, 2007.

[FR Doc. E7–2247 Filed 2–8–07; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Red River Valley Water Supply Project, ND

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Availability of Supplemental Draft Environmental Impact Statement (SDEIS) and Announcement of Public Hearings.

**SUMMARY:** The Bureau of Reclamation published a notice in the **Federal Register** on December 30, 2005 (70 FR, 77425) informing the public of the availability of the Draft Environmental Impact Statement (DEIS) for the Red River Valley Water Supply Project. We are now notifying the public that Reclamation and the State of North Dakota have prepared a Supplemental DEIS in response to public comment and new information. It is now available for review and comment. The Supplemental DEIS provides new information and additional analyses related to water supply needs, water quality, Missouri River flow depletions, aquatic resources, social-economics, and the risk of transfer of potentially invasive species from the Missouri River into the Red River and Hudson Bay basins from potential treatment or conveyance failures. Alternatives considered in the 2005 DEIS have been revised, two have been eliminated from consideration, and a federally-preferred alternative has been identified in the Supplemental DEIS.

**DATES:** A 45-day public review period begins with the publication of this notice and ends on March 26, 2007. All comments on the Supplemental DEIS must be received by Reclamation on or before March 26, 2007 at the address provided below.

*Four public hearings will be held:*

- February 27, 2007, 7 p.m., Bismarck, ND
- February 28, 2007, 7 p.m., Fargo, ND
- March 1, 2007, 7 p.m., Fort Yates, ND
- March 2, 2007, 7 p.m., Fort Berthold (New Town), ND

**ADDRESSES:** Send comments on the Supplemental DEIS to: Red River Valley Water Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58502.

**Public Hearing Locations**

- Bismarck, ND, Best Western Doublewood Inn, 1400 Interchange Ave., 58501.

• Fargo, ND, Ramada Plaza Suites and Conference Center, Brahms Room, 1635 42nd Street SW., 58103.
• Fort Yates, ND, Prairie Knights Casino and Resort, 7932 Highway 24, 58538–9736.
• New Town, ND, 4 Bears Casino and Lodge, Hidatsa/Arikara Room, 202 Frontage Road, 58763.

**FOR FURTHER INFORMATION CONTACT:** Ms. Signe Snortland, telephone: (701) 250–4242 extension 3619, or FAX to (701) 250–4326. You may submit e-mail comments to *ssnortland@gp.usbr.gov* or through the Red River Valley Water Supply Project Web site at *http://www.rrvwsp.com.*

**SUPPLEMENTARY INFORMATION:** The Supplemental DEIS is available for public inspection at the following locations:

**Iowa**

• Des Moines Public Library, 100 Locust Street, Des Moines, IA.

**Kansas**

• Topeka and Shawnee County Public Library, 1515 SW 10th Street, Topeka, KS.

**Minnesota**

• Breckenridge Public Library, 205 7th Street North, Breckenridge, MN.
• East Grand Forks Library, 422 4th Street Northwest, East Grand Forks, MN.
• Moorhead Public Library, 118 5th Street South, Moorhead, MN.
• Perham Public Library, 225 2nd Ave. NE, Perham, MN.
• Red Lake Band of Chippewa Indians, PO Box 550, Red Lake, MN.
• St. Paul Public Library, 90 West 4th Street, St. Paul, MN.
• Warroad City Library, 202 Main Ave. NW, Warroad, MN.
• White Earth Reservation, 26246 Crane Road, White Earth, MN.

**Missouri**

• Kansas City Public Library, 14 West 10th Street, Kansas City, MO
• Missouri River Regional Library, 214 Adams Street, Jefferson City, MO

**Montana**

• Bureau of Reclamation, Great Plains Regional Office, 316 N. 26th Street, Billings, MT.

**Nebraska**

• Lincoln City Libraries, 136 South 14th Street, Lincoln, NE.

**North Dakota**

• Alfred Dickey Public Library, 105 3rd Street SE, Jamestown, ND.
• Bureau of Indian Affairs, Turtle Mountain Agency, PO Box 60, Highway 5 West, Belcourt, ND.
• Bureau of Indian Affairs, Fort Berthold Agency, 202 Main Street, New Town, ND.
• Bureau of Indian Affairs, Fort Totten Agency, PO Box 270 / Main Street, Fort Totten, ND.
• Bureau of Reclamation, Dakotas Area Office, 304 E. Broadway Ave., Bismarck, ND.
• Fargo Public Library, 102 3rd Street North, Fargo, ND.
• Garrison Diversion Conservancy District, 401 Highway 281 NE, Carrington, ND.
• Grand Forks Public Library, 2110 Library Circle, Grand Forks, ND.
• Leach Public Library, 417 2nd Ave. North, Wahpeton, ND.
• North Dakota State Library, 603 East Blvd. Ave., Bismarck, ND.
• Standing Rock Administrative Service Center, Bldg. #1, North Standing Rock Avenue, Fort Yates, ND.
• West Fargo Public Library, 109 3rd Street East, West Fargo, ND.

**South Dakota**

• Bureau of Indian Affairs, Sisseton Agency, Veterans Memorial D, Agency Village, SD.
• South Dakota State Library, 800 Governors Drive, Pierre, SD.

**Province of Manitoba**

• Millennium Library, 251, Donald Street, Winnipeg, Manitoba, Canada.

**Province of Ontario**

• Kenora Branch Library, 24 Main Street South, Kenora, Ontario, Canada.

Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition you must present a rationale for withholding this information. The rationale must demonstrate that the disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions for organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: January 8, 2007.

**Michael J. Ryan,**

*Regional Director, Great Plains Region.*

[FR Doc. E7–1774 Filed 2–8–07; 8:45 am]

BILLING CODE 4310–MN–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–474]**

### In the Matter of Certain Recordable Compact Disc And Rewritable Compact Discs; Notice of Issuance of General Exclusion Order and Cease and Desist Orders; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to reverse-in-part the presiding administrative law judge's ("ALJ's") final initial determination of October 24, 2003, in the above-captioned investigation and has determined that the patents in issue are not unenforceable for patent misuse. Having found a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation, the Commission has issued a general exclusion order and cease and desist orders directed to four domestic respondents, and has terminated the investigation. In its discretion, the Commission has also determined to grant Philips' motion for leave to reply and to deny respondents' request to reopen the record for further discovery.

**FOR FURTHER INFORMATION CONTACT:** Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the Commission's orders, the public version of its opinion, the public version of the ALJ's ID, and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on

this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on July 26, 2002, based on a complaint filed by U.S. Philips Corporation of Tarrytown, New York ("Philips" or "complainant"). 67 FR 48,948 (2002). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain recordable compact discs and rewritable compact discs by reason of infringement of certain claims of six U.S. patents: claims 1, 5, and 6 of U.S. Patent No. 4,807,209; claim 11 of U.S. Patent No. 4,962,493; claims 1, 2, and 3 of U.S. Patent No. 4,972,401; claims 1, 3, and 4 of U.S. Patent No. 5,023,856; claims 1–5, and 6 of U.S. Patent No. 4,999,825; and claims 20, 23–33, and 34 of U.S. Patent No. 5,418,764. 67 FR 48,948 (2002).

The notice of investigation named 19 respondents, including Gigastorage Corporation Taiwan of Hsinchu, Taiwan; Gigastorage Corporation USA of Livermore, California (collectively, "Gigastorage"); Linberg Enterprise Inc. ("Linberg") of West Orange, New Jersey; and DiscsDirect.Com of Campbell, California. 67 FR. 48,948 (2002). On August 14, 2002, the ALJ issued an initial determination (ALJ Order No. 2) granting a motion to intervene as respondents by Princo Corporation of Hsinchu, Taiwan, and Princo America Corporation of Fremont, California (collectively, "Princo"). The Commission determined not to review Order No. 2.

On October 24, 2003, the ALJ issued his final initial determination ("ID") of no violation of section 337. When the ID issued, Gigastorage, Linberg, and Princo (collectively, "respondents") were the only remaining active respondents in the investigation. See ALJ Order No. 6 (an unreviewed initial determination terminating eight respondents on the basis of a consent order); ALJ Order No. 17 (an unreviewed initial determination terminating each of three respondents on the basis of a consent order and settlement agreement); ALJ Order No. 18 (an unreviewed initial determination terminating one respondent on the basis of a consent order and settlement agreement); and ALJ Order No. 21 (an unreviewed initial determination finding four respondents, including DiscsDirect.Com, in default). In his final ID, the ALJ found that none of the asserted claims are invalid, that the accused products infringe the asserted patent claims,[1] and that the domestic industry requirement of section 337 had been satisfied. Nonetheless, the ALJ found no violation of section 337 because he concluded that all of the asserted patents were unenforceable by reason of patent misuse by Philips.

On November 5, 2003, complainant Philips petitioned for review of the portion of the final ID that found the asserted patents unenforceable due to patent misuse. On the same day, respondents filed a paper entitled "Statement of Respondents Princo Corp., Princo America Corp., Gigastorage Corp. Taiwan, Gigastorage Corp. USA, and Linberg Enterprises, Inc. Regarding the Initial Determination," in which respondents urged the Commission to adopt the ID in its entirety. Respondents and the Commission investigative attorney ("IA") filed responses to Philips' petition for review.

On December 8, 2003, the ALJ issued his recommended determination on remedy and bonding.

On December 10, 2003, the Commission determined to review all of the ID's findings of fact and conclusions of law concerning patent misuse. The Commission determined not to review the remainder of the ID, thereby adopting the unreviewed portions. The Commission issued a notice dated December 10, 2003, in which it requested briefing on the issues under review, and invited interested persons to file written submissions on the issues of remedy, the public interest, and bonding. 68 FR 70036 (2003). In accordance with that notice, all parties to the investigation filed timely written submissions, and timely reply submissions, regarding the issues under review.

In the final ID, the ALJ found the asserted patents to be unenforceable for patent misuse *per se*, and he also found patent misuse under a "rule of reason" standard. On review, the Commission affirmed the ALJ's conclusion that the asserted patents are unenforceable for patent misuse *per se*, but on the ground that Philips' practice of mandatory package licensing constituted patent misuse *per se* as a tying arrangement between (1) licenses to patents that are essential to manufacture CD–Rs or CD–RWs according to Orange Book standards and (2) licenses to four other patents that are not essential to that activity, viz., U.S. Patent No. 5,001,692 ("the Farla '692 patent"), U.S. Patent No. 5,060,219 ("the Lockhoff '219 patent"), U.S. Patent No. 5,740,149 ("the Iwasaki '149 patent"), and U.S. Patent No. Re. 34,719 ("the Yamamoto '719 patent"). 69 FR 12711, 12712 (March 17, 2004); Commission opinion at 23–25 (issued March 25, 2004).[2] The Commission took no position on the ALJ's conclusion that the asserted patents are unenforceable for patent misuse *per se* based on theories of price fixing and price discrimination. 69 FR at 12712 n.1; Commission opinion at 5 n.3.

The Commission also adopted the ALJ's conclusion that the asserted patents are unenforceable for patent misuse under a rule of reason standard based on the ALJ's analysis of and findings as to the tying arrangement. 69 FR at 12712; Commission opinion at 50–52. The Commission took no position on the ALJ's conclusion that the royalty rate structure of the CD–R/RW patent pools is an unreasonable restraint of trade. 69 FR at 12712 n.2; Commission opinion at 5, 51. The Commission also affirmed the ALJ's conclusion that the patent misuse has not been shown to have been purged. 69 FR at 12712; Commission opinion at 63. Based on these determinations, the Commission found no violation of section 337 in this investigation. Id.

Philips appealed the Commission's final determination to the United States Court of Appeals for the Federal Circuit ("the Federal Circuit"), and respondents intervened. On September 21, 2005, the Federal Circuit reversed the Commission's final determination of no violation of section 337 in this investigation, and remanded the case for further proceedings consistent with the Court's opinion. *U.S. Philips Corp.* v. *Int'l Trade Comm'n*, 424 F.3d 1179 (Fed. Cir. 2005). The Court issued its mandate on December 27, 2005, returning jurisdiction over this investigation to the Commission. The Supreme Court denied respondents' petition for a writ of certiorari on June 19, 2006.

On January 17, 2006, the Commission issued an order seeking comments from the parties as to how to proceed on remand. The Commission specifically

[1] In his final ID, the ALJ identified claims 1, 2, 4, 5, and 6 of U.S. Patent No. 4,999,825 as asserted by Philips. ID at 111–116.

[2] The ALJ identified twelve patents included in the CD–R or CD–RW package licenses as non-essential to manufacture CD–Rs or CD–RWs according to Orange Book standards. ID at 196–213. The Commission took no position on the ALJ's analysis of eight of those patents, viz., U.S. Patent Nos. 4,962,493 ("the Kramer '493 patent"); 4,807,209 ("the Kramer '209 patent"); 4,942,565 ("the Lagadec '565 patent"); 5,126,994 ("the Ogawa '994 patent"); 5,978,351 ("the Spruit '351 patent"); 5,835,462 ("the Mimnagh '462 patent"); 4,990,388 ("the Hamada '388 patent"); and 5,090,009 ("the Hamada '009 patent"). Commission opinion at 43 n.28, 50–51 (March 25, 2005).

requested comments as to how it should proceed with those portions of the October 24, 2003, final ID upon which the Commission did not take a position.

On February 21, 2006, Philips filed comments pursuant to the Commission's January 17, 2006, order. On the same day, respondents jointly filed comments. On February 23, 2006, the IA filed his comments, in which he requested, *inter alia*, that all parties be given the opportunity to respond to the comments filed by the private parties. On March 10, 2006, Philips filed a memorandum in reply to respondents' February 21, 2006, comments.

On March 21, 2006, the Commission issued an order directing the parties to file responses to the comments of the private parties filed on February 21, 2006. The Commission also denied Philips' motion to file its March 10, 2006, reply memorandum without prejudice to its re-submission as part of Philips' response. On April 18, 2006, all parties filed response comments pursuant to the Commission's March 21, 2006, order.

On April 25, 2006, Philips filed a motion for leave to reply, with attached reply, to the response comments filed by the IA on April 18, 2006. On May 2, 2006, respondents filed an opposition to Philips's motion for leave to reply to the IA's response comments. In its discretion, the Commission has determined to grant Philips' motion for leave to reply and to deny respondents' request to reopen the record for further discovery.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission has determined to reverse the ALJ's findings of patent misuse *per se* on theories of price fixing and price discrimination, has determined to reverse the ALJ's findings of patent misuse under the rule of reason standard, and has found a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. The Commission has further determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry for consumption of recordable and rewritable compact discs that infringe the claims in issue of the six patents asserted by Philips in this investigation. The Commission has also determined to issue four cease and desist orders directed to domestic respondents Princo America Corporation; Gigastorage Corporation USA; Linberg; and DiscsDirect.Com.

The Commission has also determined that the public interest factors enumerated in subsections (d), (f), and (g) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(d), (f), and (g)) do not preclude the issuance of the aforementioned general exclusion order and cease and desist orders, and that the recordable and rewritable compact discs in question may be imported into the United States during the period of Presidential review under bond in the amount of US$0.06 per such article. The general exclusion order, cease and desist orders, and Commission opinion supporting its determination were delivered to the United States Trade Representative on the date of issuance.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), the Administrative Procedure Act, 5 U.S.C. 551 et seq., and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.45–210.51).

By order of the Commission.

Issued: February 5, 2007.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7–2196 Filed 2–8–07; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. TR–5003–1]**

### Textiles and Apparel: Effects of Special Rules for Haiti on Trade Markets and Industries

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of hearing.

**SUMMARY:** Pursuant to section 5003 of the Tax Relief and Health Care Act of 2006, signed by the President on December 20, 2006 (Public Law 109–432), the Commission instituted investigation No. TR–5003–1, Textiles and Apparel: Effects of Special Rules for Haiti on Trade Markets and Industries, for the purpose of submitting a report to Congress on the effects of the amendments made by the act on the trade markets and industries, involving textile and apparel articles, of Haiti, the countries described in clauses (ii) and (iii) of section 213A(b)(2)(C) of the Caribbean Basin Economic Recovery Act (as added by section 5002 of this Act), and the United States.

**DATES:**

October 23, 2007: Deadline for filing requests to appear at the public hearing.

October 25, 2007: Deadline for filing pre-hearing briefs and statements.

November 8, 2007, 9:30 am: Public hearing.

February 7, 2008: Deadline for written statements, including any post-hearing briefs.

June 20, 2008: Deadline for transmittal of Commission report to Congress.

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Information specific to this investigation may be obtained from Project Leaders William Deese (202–205–2626; *william.deese@usitc.gov*) and Russell Duncan (202–708–4727; *russell.duncan@usitc.gov*). For information on the legal aspects of these investigations, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin of the Office of External Relations (202–205–1819; *margaret.olaughlin@usitc.gov*). General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. Hearing-impaired individuals may 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.

*Background:* Title V of the Tax Relief and Health Care Act of 2006 (TRHCA), which may also be cited as the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, provides certain trade benefits for Haiti. These benefits are set forth in section 5002 of the TRHCA in the form of an amendment to the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2701 *et seq.*) that adds a new section 213A entitled "Special Rules for Haiti." Section 5003 of TRHCA directs the Commission to submit a report to Congress on the effects of the amendments made by the act on the trade markets and industries, involving textile and apparel articles, of Haiti, the countries described in clauses (ii) and

(iii) of section 213A(b)(2)(C) of CBERA (as added by section 5002 of this Act), and the United States. The Commission must provide its report to Congress by June 20, 2008.

*Public Hearing:* A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC beginning at 9:30 a.m. on November 8, 2007. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., October 23, 2007, in accordance with the requirements in the "Submissions" section below. In the event that, as of the close of business on October 23, 2007, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–2000) after October 24, 2007, to determine whether the hearing will be held.

*Statements and Briefs:* In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning the investigation in accordance with the requirements in the "Submissions" section below. Any pre-hearing briefs or statements should be filed not later than 5:15 p.m., October 25, 2007. The deadline for filing any other written statements, including post-hearing briefs or statements, is the close of business on February 7, 2008.

*Submissions:* All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary to the Commission and must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission does not intend to include any confidential business or national security confidential information in the report it sends to the Congress. Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

Issued: February 6, 2007.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7–2197 Filed 2–8–07; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–0310]**

### National Institute of Justice; Agency Information Collection ActivitiesProposed Collection; Comment Requested

**ACTION:** 60-day notice of information collection under review: Evaluation of Impacts of Federal Casework Programs.

The Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 10, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kathy Browning, Office of Justice Programs, National Institute of Justice, (202) 616–4786.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and,

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Evaluation of Impact of Federal CaseworkPrograms—

Prosecutor Survey;

Law Enforcement Survey;

*Lab Personnel Survey.

*There are three versions of the lab survey, each tailored to the respective type of lab.

(3) Not Applicable.

(4) Affected public who will be asked or required to respond are: Prosecutors, Law Enforcement Officials, and Forensic Laboratory personnel from agencies within the jurisdiction represented by the grantees.

The National Institute of Justice uses this information to assess the impacts and cost-effectiveness of the Forensic Casework DNA Backlog Programs over time and to diagnose performance problems in current casework programs. This evaluation will help decision makers be better informed to not only diagnose program performance problems, but also to better understand

whether the benefits of DNA collection and testing is in fact an effective public safety and crime control practice.

(5) An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is broken down as follows:

Law Enforcement—200 respondents, average burden time 120 minutes—400 hours total.

Prosecutors—200 respondents, average burden time 90 minutes—300 hours total.

Lab personnel—135 respondents average burden 120 minutes—270 hours total.

(6) An estimate of the total public burden (in hours) associated with the collection:

The estimated total public burden associated with this collection is 970 hours.

If additional information is required, contact Lynn, Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, 601 D Street, NW., Suite 1600,Washington, DC 20530.

Dated: February 5, 2007.

**Lynn Bryant,**

*Department Clearance Officer, PRA Department of Justice.*

[FR Doc. E7–2133 Filed 2–8–07; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–0309]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested

**ACTION:** 30-Day notice of information collection under review: International Terrorism Victim Compensation Program Application.

The Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 235, Pages 70990–70991, on December 7, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 12, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged.

Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and,

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of Form/Collection:* International Terrorism Victim Expense Reimbursement Program (ITVERP) Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: The Office of Management and Budget Number for the certification form is 121–0170. The Office for Victims of Crime, Office of Justice Programs, within the United States Department of Justice is sponsoring the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The form is completed by U.S. nationals and U.S. Government employees who become victims of acts of international terrorism that occur outside the United States. Applicants seeking compensation from OVC for expenses associated with their victimization will be required to submit said form. The form will be used to collect necessary information on expenses incurred by the applicant, as well as other pertinent information, and will be used by OVC to make an award determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average to respond:* There will be an estimated 2,000 respondents, who will complete the required certification in approximately 45 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 1,500 hours annual burden associated with this information collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: February 5, 2007.

**Lynn Bryant,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. E7–2134 Filed 2–8–07; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF JUSTICE

### Federal Bureau of Prisons

### Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS)

**AGENCY:** Federal Bureau of Prisons, Department of Justice.

**ACTION:** Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:** Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for development of a Federal correctional complex by the U.S. Department of Justice, Federal Bureau of Prisons. The area under consideration for correctional facility development includes sites in the Aliceville area in Alabama.

**Background**

The Federal Bureau of Prisons (BOP) is responsible for carrying out judgments of the federal courts whenever a period of confinement is ordered. The mission of the BOP is to

protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

As of February 5, 2007 approximately 194,000 inmates are housed within the 114 federal correctional facilities that have levels of security ranging from minimum to maximum. At the present time, the federal inmate population exceeds the combined rated capacities of the 114 federal correctional facilities. An additional 18,746 federal inmates are housed within privately-managed secure facilities and approximately 11,109 inmates are housed in other facilities for a total federal inmate population of approximately 194,000.

The continuing inmate population is due in part to Federal court sentencing guidelines which are resulting in longer terms of confinement for serious crimes. The increase in the number of immigration offenders and the effort to combat organized crime and drug trafficking are also contributing to the increase. Measures being undertaken to manage the growth of the federal inmate population include construction of new institutions, acquisition and adaption of facilities originally intended for other purposes, expansion and improvement of existing correctional facilities, and expanded use of contract beds. Adding capacity through these various means allows the BOP to work towards the long-term goal of managing our inmate population growth.

In the face of the continuing increase in the federal prison population, one way the BOP has extended its capacity is through construction of new facilities. As part of this effort, the BOP has a facilities planning program featuring the identification and evaluation of sites for new facilities. The BOP routinely identifies prospective sites that may be appropriate for development of new federal correctional facilities. Locations of new federal correctional facilities are determined by the need for such facilities in various parts of the country and the resources available to meet that need.

The BOP routinely screens and evaluates private and public properties located throughout the nation for possible use and development. Over the past decade, the BOP has examined prospective sites for new correctional facilities development in Kentucky, New Hampshire, Virginia, Pennsylvania, West Virginia, North Carolina, South Carolina, Indiana among other locations around the country and has undertaken environmental impact studies in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended.

**Proposed Action**

The BOP is facing increased bedspace shortages throughout the federal prison system. Over the past decade, a significant influx of inmates has entered the federal prison system with a large portion of this influx originating from the Southeast region.

In response, the BOP has committed significant resources to identifying and developing sites for new federal correctional facilities throughout this region, including construction of facilities in Coleman, Florida; Yazoo City, Mississippi; Marlboro County, South Carolina; Williamsburg County, South Carolina; and Pollock, Louisiana. Even with the development of these new and expanded facilities, projections show the federal inmate population continuing to increase, placing additional demands for bedspace within the Southeast Region.

In response, the BOP has undertaken preliminary investigations in an effort to identify prospective sites capable of accommodating federal correctional facilities and communities willing to host such facilities. Through this process, officials representing the Aliceville, Alabama, area identified potential locations for development of federal correctional institutions and offered several sites for BOP consideration. These potential sites were subjected to initial studies by the BOP and those considered suitable for correctional facility development will be evaluated further by the BOP in a DEIS that will analyze the potential impacts of facility construction and operation. The BOP is proposing to build and operate in the Southeast region a federal correctional complex which could ultimately consist of four institutions of varying security levels. However, immediate plans look toward construction of one of these institutions, a medium-security federal correctional institution with an adjoining satellite work camp.

**The Process**

In the process of evaluating the potential environmental impacts associated with federal correctional facility development and operation, many factors and features will be analyzed including, but not limited to: topography, geology, soils, hydrology, biological resources, cultural resources, hazardous materials, aesthetics, fiscal considerations, population/employment/housing characteristics, community services and facilities, land uses, utility services, transportation systems, meteorological conditions, air quality, and noise.

**Alternatives**

In developing the DEIS, the No Action alternative, other actions considered and eliminated, and alternatives sites for the proposed medium-security federal correctional institution will be examined.

Three sites are currently identified as alternatives for federal correctional complex development. Site 1 is comprised of approximately 735 acres and is located approximately three miles northwest of Aliceville along Route 14. Site 2 is comprised of approximately 827 acres and is located approximately six miles south-southeast of Aliceville along Route 2. Site 3 is comprised of approximately 838 acres and is located approximately three miles south of Aliceville along Route 13. Additional sites may also be examined as sites become available through the scoping process and preparation of the Environmental Impact Statement.

**Scoping Process**

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A Public Scoping Meeting will be held at 7 p.m., Tuesday, March 6, 2007, at City Hall, Memorial Parkway East, Aliceville, Alabama. The meeting location, date, and time will be well-publicized and have been arranged to allow for the public as well as interested agencies and organizations to attend and formally express their views on the scope and significant issues to be studied as part of the DEIS process. The Scoping Meeting is being held to provide for timely public comments and understanding of federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended, and the National Historic Preservation Act of 1966, as amended.

**Availability of DEIS**

Public notice will be given concerning the availability of the DEIS for public review and comment.

**Contact**

Questions concerning the proposed action and the DEIS may be directed to: Pamela J. Chandler, Chief, or Issac J. Gaston, Site Selection Specialist, Site Selection and Environmental Review Branch, U.S. Department of Justice—Federal Bureau of Prisons, 320 First

Street, NW., Washington, DC 20534 *Telephone:* 202–514–6470 / *Facsimile:* 202–616–6024 / *siteselection@bop.gov.*

February 5, 2007.

**Issac J. Gaston,**

*Site Selection and Environmental Review Branch, Federal Bureau of Prisons.*

[FR Doc. E7–2143 Filed 2–8–07; 8:45 am]

BILLING CODE 4410–5–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–58,246]

### Fibrex, LLC; Formerly Known as Wellington Cordage, LLC; Currently Known as the Lehigh Group; Madison, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 28, 2005, applicable to workers of Fibrex, LLC, formerly known as Wellington Cordage, LLC, Madison, Georgia. The notice was published in the **Federal Register** on December 21, 2005 (70 FR 75842).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of rope (i.e. cordage).

The subject firm originally named Fibrex, LLC, formerly known as Wellington Cordage, Madison, Georgia, became known as The Lehigh Group in January 2006 due to a change in ownership. The State agency reports that workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for The Lehigh Group, Madison, Georgia.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Fibrex, LLC, formerly known as Wellington Cordage, LLC, Madison, Georgia, who were adversely affected by increased company imports.

The amended notice applicable to TA–W–58,246 is hereby issued as follows:

All workers of Fibrex, LLC, formerly known as Wellington Cordage, LLC, currently known as The Lehigh Group, Madison, Georgia, who became totally or partially separated from employment on or after November 27, 2005, through November 28, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of February 2007.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E7–2163 Filed 2–8–07; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–60,059]

### Hoover Precision Products, Inc.; Washington, IN; Notice of Revised Determination on Remand

On December 13, 2006, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand in *Former Employees of Hoover Precision Products, Inc.* v. *United States* (Court No. 06–00381).

In the September 11, 2006 Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) petition, a company official indicated that Hoover Precision Products, Inc., Washington, Indiana (subject facility) was a distribution and warehouse center of carbon steel balls, that the facility was scheduled to close on September 15, 2006, and that three workers would be separated as a result of the closure. In support of the petition, the company official cited NAFTA–4916 (certified on June 18, 2001; shift of production to Mexico).

During the initial investigation, it was revealed that the subject facility was engaged in warehousing and distributing articles produced at an affiliated facility in Mexico, and that the warehousing and distributing functions were shifting to an affiliated facility in Georgia.

Based on information obtained during the initial investigation, the Department determined that the subject workers were ineligible to apply for TAA because they did not produce an article within the meaning of Section 222(a)(2) of the Trade Act of 1974.

On September 15, 2006, the Department issued a negative determination regarding workers' eligibility to apply for workers adjustment assistance for the subject workers. The Department's Notice of determination was published in the **Federal Register** on September 26, 2006 (71 FR 56172).

By application dated September 29, 2006, three workers requested administrative reconsideration of the Department's negative determination. In the request for reconsideration, the workers stated that "Washington, IN is a distribution facility. We distributed components to companies who manufactured them into their finished products. Hoover Precision in Indiana has lost a substantial amount of business from at least 3 companies who are TAA certified. This qualifies our company in Washington, IN as secondary workers affected by foreign trade."

For purposes of the Trade Act, a secondarily-affected company is a company that either supplies components parts for articles produced by a firm with a currently TAA-certified worker group or is an assembler or finisher for a firm with a currently TAA-certified worker group.

In order to be certified as eligible to apply for TAA as workers of a secondarily-affect company, the following eligibility requirements must be met:

(1) The workers' firm or appropriate subdivision produced an article during the one year period prior to the petition date; and

(2) A required minimum of the workforce has been laid off in the 12 months preceding the date of the petition or is threatened with layoffs (3 workers in groups of fewer than 50, or 5% of the workforce in groups of 50 or more); and

(3) Loss of business (during the relevant period) as a supplier of component parts, a final assembler, or a finisher for a firm that is currently TAA-certified contributed importantly to an actual decline in sales or production, and to a layoff or threat of a layoff.

By letter dated October 3, 2006, the Department dismissed the workers' request for reconsideration because the subject facility did not produce an article, the workers were service workers who processed imported articles, and the workers were not eligible for TAA as workers of a secondarily-affected company. The Department's Notice of Dismissal of Application for Reconsideration for the subject facility was published in the **Federal Register** on October 16, 2006 (71 FR 60766).

By letter dated October 9, 2006, the workers appealed to the USCIT for judicial review. The Plaintiffs alleged that they were production workers and

provided personal statements in support of the allegation. After careful review of the complaint and the administrative record, the Department filed a motion for voluntary remand.

On December 13, 2006, the USCIT granted the Department's motion for voluntary remand to conduct further investigation and to make a redetermination regarding the Plaintiffs' eligibility to apply for worker adjustment assistance (TAA and ATAA).

To be certified as eligible to apply for TAA, the following criteria must be met:

(1) A significant number or proportion of the workers in such workers' firm (or appropriate subdivision of the firm) have become, or are threatened to become, totally or partially separated;

(2) Sales or production, or both, of such firm or subdivision have decreased absolutely; and

(3) Increases (absolute or relative) of imports of articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production, or

(4) There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States, is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act or there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

During the remand investigation, the Department reviewed previously-submitted information, contacted the Plaintiffs, and requested additional information and clarification from Hoover Precision Products, Inc. (subject firm).

During the remand investigation, the subject firm provided new information which revealed that a majority of the subject workers' activities was related to production and that the remaining activities consisted of warehousing and shipping functions. Based on this new information, the Department determines that, for purposes of the Trade Act, workers of the subject facility were engaged in production.

Information obtained during the remand investigation confirmed previously-submitted information that the subject facility ceased to operate in September 2006 and that the subject firm faced increased foreign competition during the relevant time period.

During the remand investigation, the Department received additional information which revealed that increased imports of articles like or directly competitive with carbon steel balls produced at the subject facility contributed importantly to the subject workers' separations.

Based on new information and confirmations obtained during the remand investigation, the Department determines that TAA criteria (1), (2) and (3) have been met.

In addition, in accordance with Section 246 the Trade Act of 1974, as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA for older workers.

The group eligibility criteria for ATAA that the Department must consider under Section 246 of the Trade Act are:

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

The Department has determined in the case at hand that ATAA criterion (1) has not been met. For purposes of the ATAA program, a significant number means at least three or more workers in a firm with a workforce of fewer than 50 workers.

During the remand investigation, the Department confirmed with the subject firm and the Plaintiffs that one worker at the subject facility is age 50 or over.

### Conclusion

After careful review of the facts generated through the remand investigation, I determine that increased imports of articles like or directly competitive with carbon steel balls produced at the subject facility contributed to the total or partial separation of a significant number or proportion of workers at the subject facility.

In accordance with the provisions of the Act, I make the following certification:

"All workers of Hoover Precision Products, Inc., Washington, Indiana, who became totally or partially separated from employment on or after September 11, 2005, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974."

I further determine that all workers of Hoover Precision Products, Inc., Washington, Indiana, are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of January 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E7–2165 Filed 2–8–07; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–59,956; TA–W–59,956A; TA–W–59,956B; TA–W–59,956C; TA–W–59,956D; TA–W–59,956E]**

### International Textile Group, Incorporated, Corporate Headquarters; Greensboro, NC; Including Employees of International Textile Group, Incorporated, Corporate Headquarters; Greensboro, NC; Located at the Following Locations: Stratford, CT; Plano, TX; Chino, CA; Denver, CO; Winnetka, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 8, 2006, applicable to workers of International Textile Group, Incorporated, Corporate Headquarters, Greensboro, North Carolina. The notice was published in the **Federal Register** on September 21, 2006 (71 FR 55218).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the Corporate Headquarters, Greensboro, North Carolina facility of International Textile Group, Incorporated.

Employees of the Corporate Headquarters working out of Stratford, Connecticut, Plano, Texas, Chino, California, Denver, Colorado, and Winnetka, Illinois provided sales function services for the production of broadwoven synthetic and wool fabric produced by the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Corporate Headquarters, Greensboro,

North Carolina facility of International Textile Group, Incorporated working out of Stratford, Connecticut, Plano, Texas, Chino, California, Denver, Colorado and Winnetka, Illinois.

The intent of the Department's certification is to include all workers of International Textile Group, Incorporated, Corporate Headquarters, Greensboro, North Carolina who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–59,956 is hereby issued as follows:

All workers of International Textile Group, Incorporated, Corporate Headquarters, Greensboro, North Carolina (TA–W–59,956), including employees of International Textile Group, Incorporated, Corporate Headquarters, Greensboro, North Carolina located in Stratford, Connecticut (TA–W–59,956A), Plano, Texas (TA–W–59,956B), Chino, California (TA–W–59,956C), Denver, Colorado (TA–W–59,956D), and Winnetka, Illinois (TA–W–59,956E), who became totally or partially separated from employment on or after August 16, 2005, through September 8, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of February 2007.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E7–2164 Filed 2–8–07; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–60,365]**

### KHS USA, Inc.; Waukesha Division; A Wholly Owned Subsidiary of KHS AG; Waukesha, WI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at KHS USA, Inc., Waukesha Division, a wholly owned subsidiary of KHS AG, Waukesha, Wisconsin. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–60,365; KHS USA, Inc., Waukesha Division,A Wholly Owned Subsidiary of KHS AG, Waukesha, Wisconsin (February 1, 2007).

Signed at Washington, DC, this 2nd day of February 2007.

**Ralph DiBattista,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E7–2161 Filed 2–8–07; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–60,280]**

### Parkdale America, LLC; Parkdale Mills, Inc.; Eden, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 30, 2006, applicable to workers of Parkdale America, LLC, Eden, North Carolina. The notice was published in the **Federal Register** on December 12, 2006 (71 FR 74564).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of open end spun yarn.

New information shows that Parkdale Mills, Inc. is the parent firm of Parkdale America, LLC. Workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax accounts: Parkdale America, LLC and Parkdale Mills, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the Eden, North Carolina location of the subject firm who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–60,280 is hereby issued as follows:

"All workers of Parkdale America, LLC, Parkdale Mills, Inc., Eden, North Carolina, who became totally or partially separated from employment on or after October 1, 2005, through November 30, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC, this 2nd day of February 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E7–2166 Filed 2–8–07; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 20, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 20, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 1st day of February 2007.

**Ralph Dibattista,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[TAA petitions instituted between 1/22/07 and 1/26/07]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 60794 | Peterbilt Motors Company (AFLCIO) | Madison, TN | 01/22/07 | 01/19/07 |
| 60795 | Pride Manufacturing Company (Comp) | Bumham, ME | 01/22/07 | 01/19/07 |
| 60796 | Parkdale-Townsend Plant (Wkrs) | Graniteville, SC | 01/22/07 | 01/17/07 |
| 60797 | VIA Information Tools, Inc. (Wkrs) | Troy, MI | 01/22/07 | 01/16/07 |
| 60798 | Leica Geosystems GRR, LLC (Comp) | Grand Rapids, MI | 01/22/07 | 01/19/07 |
| 60799 | Ecoquest Holding Corporation (Wkrs) | Greeneville, TN | 01/22/07 | 01/19/07 |
| 60800 | Volvo Truck North America (UAW) | Dublin, VA | 01/22/07 | 01/19/07 |
| 60801 | Collins and Aikman—Tooling and Equipment Grp. (Union). | Dover, NH | 01/22/07 | 01/19/07 |
| 60802 | Collin and Aikman (Comp) | Farmington, NH | 01/22/07 | 01/19/07 |
| 60803 | Fluidyne Manufacturing/Lorenz Ind. (Comp) | Ansonia, CT | 01/22/07 | 01/19/07 |
| 60804 | Fedders USA (Comp) | Effingham, IL | 01/22/07 | 01/18/07 |
| 60805 | Saxonburg Ceramics Inc. (Comp) | Saxonburg, PA | 01/22/07 | 01/19/07 |
| 60806 | Berwick/Offray (Wkrs) | Berwick, PA | 01/22/07 | 01/19/07 |
| 60807 | Nothelfer Gilman, Inc. (Comp) | Janesville, WI | 01/22/07 | 01/19/07 |
| 60808 | Invista S.a.r.l—Chattanooga Plant (Comp) | Chattanooga, TN | 01/22/07 | 01/15/06 |
| 60809 | Woods Equipment Co. (Comp) | Gardner, MA | 01/23/07 | 01/09/07 |
| 60810 | Interstate Steel Co. (Comp) | Des Plaines, IL | 01/23/07 | 01/12/07 |
| 60811 | George Weston Bakeries (State) | Bayshore, KY | 01/23/07 | 01/22/07 |
| 60812 | J.S. Die and Mold (Wkrs) | Byron Center, MI | 01/23/07 | 01/19/07 |
| 60813 | New State Fashion, Inc. (Wkrs) | New York, NY | 01/23/07 | 01/22/07 |
| 60814 | Pall Life Sciences (Comp) | Ann Arbor, MI | 01/23/07 | 01/19/07 |
| 60815 | Dicey Mills, Inc. (Comp) | Shelby, NC | 01/24/07 | 01/22/07 |
| 60816 | Cooper Standard Automotive (Worker) | Goldsboro, NC | 01/24/07 | 01/23/07 |
| 60817 | Fleetwood Folding Trailers, Inc. (Comp) | Somerset, PA | 01/24/07 | 01/23/07 |
| 60818 | Case New Holland, LLC (Comp) | Goodfield, IL | 01/24/07 | 01/23/07 |
| 60819 | EMS-Enchanced Manufacturing Solutions (Worker). | New Castle, IN | 01/24/07 | 01/15/07 |
| 60820 | Spencerville Metal Systems (UAW) | Spencerville, OH | 01/24/07 | 01/09/07 |
| 60821 | Eagle Picher/Hillsdale Automotive (UAW) | Traverse City, MI | 01/24/07 | 01/19/07 |
| 60822 | Shiloh Industries (UAW) | Parma, OH | 01/24/07 | 01/23/07 |
| 60823 | Industrial Metal Products Corporation (UAW) | Lansing, MI | 01/24/07 | 01/19/07 |
| 60824 | Hamilton Sundstrand (Rockford Manufacturing)(UAW). | Rockford, IL | 01/24/07 | 01/19/07 |
| 60825 | Golden Ratio Woodworks (Wkrs) | Emigrant, MT | 01/25/07 | 01/23/07 |
| 60826 | Paxar Americas, Inc. Machine Division (Comp). | Sayre, PA | 01/25/07 | 01/16/07 |
| 60827 | Sun Microsystems (Wkrs) | Louisville, CO | 01/25/07 | 01/19/07 |
| 60828 | Stimson Lumber Company (LPIW) | Libby, MT | 01/25/07 | 01/24/07 |
| 60829 | F and M Hat Company, Inc. (Wkrs) | Denver, PA | 01/25/07 | 01/24/07 |
| 60830 | GE Aviation Engine Services West Coast Operation Plant #1 (State). | Ortario, CA | 01/25/07 | 01/23/07 |
| 60831 | Kreehler Furniture Mfg. Co. Inc. (Comp) | Conover, NC | 01/25/07 | 01/24/07 |
| 60832 | Lear Corporation (Wkrs) | Madisonville, KY | 01/25/07 | 01/12/07 |
| 60833 | Master Halco (State) | Fontana, CA | 01/25/07 | 01/23/07 |
| 60834 | CEP Products, LLC (Comp) | Vandalia, OH | 01/25/07 | 12/31/06 |
| 60835 | Kimberly Clark Global Sales and Kimberly Clark World Wide (Comp). | Neenah, WI | 01/25/07 | 01/24/07 |
| 60836 | Velsicol Chemical Corporation (Comp) | Chattanooga, TN | 01/25/07 | 01/24/07 |
| 60837 | Bright Horizons/MSX (Wkrs) | Norfolk, VA | 01/26/07 | 01/11/07 |
| 60838 | Goodyear Tire and Rubber Corporation (Wkrs). | Lincoln, NE | 01/26/07 | 01/25/07 |
| 60839 | Johnco Hosiery (Comp) | Fort Payne, AL | 01/26/07 | 01/22/07 |
| 60840 | Marathon Apparel (Comp) | Childersburg, AL | 01/26/07 | 01/25/07 |
| 60841 | Eagle Picher (UAW) | Traverse City, MI | 01/26/07 | 01/19/07 |
| 60842 | United Parcel Service Inc. (Wkrs) | Dayton, OH | 01/26/07 | 01/14/07 |
| 60843 | Clorox Company (The) (Wkrs) | Oakland, CA | 01/26/07 | 01/24/07 |

[FR Doc. E7–2162 Filed 2–8–07; 8:45 am]
BILLING CODE 4510–10–P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Proposed Information Collection RequestSubmitted for Public Comment and Recommendations; Applications for a permit to Fire More Than 20 Boreholes, for the Use of Nonpermissible Blasting Units, Explosives, and Shot-Firing Units.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the application for a permit to fire more than 20 boreholes, for the use of nonpermissible blasting units, and for the use of nonpermissible explosives and nonpermissible shot-firing units, and posting of warning notices with regard to mis-fired explosives.

**DATES:** Submit comments on or before April 10, 2007.

**ADDRESSES:** Send comments to U.S. Department of Labor, Mine Safety and Health Administration, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via E-mail to *Ferraro.Debbie@dol.gov*, along with an original printed copy. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

**FOR FURTHER INFORMATION:** Contact the employee listed in the "**ADDRESSES**" section of this notice.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Under Section 313 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 873, a mine operator is required to use permissible explosives in underground coal mines. The Mine Act also provides that under safeguards prescribed by the Secretary of Labor, a mine operator may permit the firing of more than 20 shots and the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. Title 30, CFR 75.1321 outlines the procedures by which a permit may be issued for the firing of more than 20 boreholes and/or the use of nonpermissible shot-firing units in underground coal mines. In those instances in which there is a misfire of explosives, 30 CFR 75.1327 requires that a qualified person post each accessible entrance to the affected area with a warning to prohibit entry. Title 30 CFR 77.1909–1 outlines the procedures by which a coal mine operator may apply for a permit to use nonpermissible explosives and/or shot-firing units in the blasting of rock while sinking shafts or slopes for underground coal mines.

#### II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION COTNACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Rules and Regs" and "**Federal Register** Documents."

#### III. Current Actions

Title 30, CFR 75.1321, 75.1327 and 77.1901–1 provide MSHA District Managers with the authority to address unusual but recurring blasting practices needed for breaking rock types more resilient than coal and for misfires in blasting coal. MSHA uses the information requested to issue permits to mine operators or shaft and slope contractors for the use of nonpermissible explosives and/or shot-firing units under 30 CFR part 77, Subpart T—Slope and Shaft Sinking. Similar permits are issued by MSHA to underground coal mine operators for shooting more than 20 bore holes and/or for the use of nonpermissible shot firing units when requested under 30 CFR part 75, Subpart N—Explosives and Blasting. The approved permits allow the use of specific equipment and explosives in limited applications and under exceptional circumstances where standard coal blasting techniques or equipment is inadequate to the task. These permits inform mine management and the miners of the steps to be employed to protect the safety of any person exposed to such blasting while using nonpermissible items. Also, the posting of danger/warning signs at entrances to locations where a misfired blast hole or round remains indisposed is a safety precaution predating the Coal Mine Safety and Health Act.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Application for a Permit to Fire More than 20 Boreholes for the use of Nonpermissible Blasting Units, Explosives, and Shot-firing Units.

*OMB Number:* 1219–0025.

*Affected Public:* Business or other for-profit.

*Respondents:* 50.

*Responses:* 107.

*Total Burden Hours:* 69.

*Total Burden Cost (operating/maintaining):* $635.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 5th day of February, 2007.

**David L. Meyer,**

*Director, Office of Administration and Management.*

[FR Doc. E7–2092 Filed 2–8–07; 8:45 am]
BILLING CODE 4510–43–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (07–007)]

### Notice of Information Collection

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 60 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

In 2005, NASA TV switched from transmitting an analog TV signal to a Digital signal that requires viewers to buy a digital receiver. NASA needs to determine how this switch affects viewers, how viewers use NASA TV, and what changes they request. Responses will be used to recommend improvements to NASA TV.

#### II. Method of Collection

Respondents will complete an online survey. All study data will be collected online using Web-based database technologies.

#### III. Data

*Title:* NASA TV Viewers Survey.
*OMB Number:* 2700–XXXX.
*Type of review:* Emergency new collection.
*Affected Public:* Individuals or households; Not-for-profit institutions.
*Number of Respondents:* 1020.
*Responses Per Respondent:* 1.
*Annual Responses:* 1020.
*Hours Per Response:* 0.17 hours.
*Annual Burden Hours:* 170.

#### IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Gary Cox,**
*Deputy Chief Information Officer (Acting).*
[FR Doc. E7–2204 Filed 2–8–07; 8:45 am]
BILLING CODE 7510–13–P

## NATIONAL SCIENCE FOUNDATION

### National Science Board; National Science Board Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics (29127); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Board announces the following meeting:

*Date and Time:* Wednesday, February 21, 2007, 11:30 a.m.–1 p.m. EST (teleconference meeting)

*Place:* National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia. Room II–535 will be available to the public to listen to this teleconference meeting.

*Type of Meeting:* Open.

*Contact Person:* Dr. Elizabeth Strickland, Commission Executive Secretary, National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4527. E-mail: *estrickl@nsf.gov.*

*Purpose of Meeting:* To discuss the report of the National Science Board's Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics.

*Agenda:* Discussion of feedback from the National Science Board to the Commission on preliminary draft recommendations and discussion of the format of the complete report.

*Reason for Late Notice:* Time and date of meeting were not established until February 5, 2007.

**Susanne Bolton,**
*Committee Management Officer.*
[FR Doc. E7–2198 Filed 2–8–07; 8:45 am]
BILLING CODE 7555–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission of OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:*
Rule 31a–2, SEC File No. 270–174, OMB Control No. 3235–0179.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 31(a)(1) of the Investment Company Act of 1940 (the "Act") requires registered investment companies ("funds") and certain principal underwriters, broker-dealers, investment advisers and depositors of funds to maintain and preserve records as prescribed by Commission rules.[1] Rule 31a–1 specifies the books and records that each of these entities must maintain.[2] Rule 31a–2, which was adopted on April 17, 1944, specifies the time periods that entities must retain books and records required to be maintained under rule 31a–1.[3]

Rule 31a–2 requires the following:

1. Every fund must preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a–1(b)(1)–(4).[4]

[1] 15 U.S.C. 80a–30(a)(1).

[2] 17 CFR 270.31a–1.

[3] 17 CFR 270.31a–2.

[4] 17 CFR 270.31a–1(b)(1)–(4). These include, among other records, journals detailing daily purchases and sales of securities or contracts to purchase and sell securities, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, separate ledgers reflecting, separately for each portfolio security as of the trade date all "long" and "short" positions carried by the fund for its own account, and corporate charters, certificates of incorporation and by-laws.

2. Every fund must preserve for at least six years, and in an easily accessible place for the first two years:

a. all books and records required under rule 31a–1(b)(5)–(12);[5]

b. all vouchers, memoranda, correspondence, checkbooks, bank statements, canceled checks, cash reconciliations, canceled stock certificates and all schedules that support each computation of net asset value of fund shares;

c. any advertisement, pamphlet, circular, form letter or other sales literature addressed or intended for distribution to prospective investors;

d. any record of the initial determination that a director is not an interested person of the fund, and each subsequent determination that the director is not an interested person of the fund, including any questionnaire and any other document used to determine that a director is not an interested person of the company;

e. any materials used by the disinterested directors of a fund to determine that a person who is acting as legal counsel to those directors is an independent legal counsel; and

f. any documents or other written information considered by the directors of the fund pursuant to section 15(c) of the Act in approving the terms or renewal of a contract or agreement between the company and an investment advisor.

3. Every underwriter, broker or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act of 1934[6] ("section 17") for the periods established in those rules.

4. Every depositor of any fund, and every principal underwriter of any fund other than a closed-end fund, must preserve for at least six years records required to be preserved by brokers and dealers under rules adopted under section 17 to the extent the records are necessary or appropriate to record the entity's transactions with the fund.

5. Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be maintained by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940[7] ("section 204") for the periods specified in those rules.

6. Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 to the extent the records are necessary or appropriate to reflect the adviser's transactions with the fund.

The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, a fund on (i) micrographic media, including microfilm, microfiche, or any similar medium, or (ii) electronic storage media, including any digital storage medium or system that meets the terms of this section. The fund, or person that maintains and preserves records on its behalf, must arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.[8]

The Commission periodically inspects the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. The Commission staff spends a significant portion of their time in these inspections reviewing the information contained in the books and records required to be kept by rule 31a–1 and to be preserved by rule 31a–2.

There are approximately 4,920 funds as of December 31, 2006, all of which are required to comply with rule 31a–2. Based on recent conversations with representatives of the fund industry and past estimates, our staff estimates that each fund currently spends 220 hours per year complying with the records preservation required by rule 31a–2. The hour burden is incurred by a variety of fund staff, and the type of staff position used for compliance with the rule varies widely from fund to fund. Based on these estimates, our staff estimates that the total annual burden of a fund to comply with rule 31a–2, is 220 hours, with a total annual burden for all funds of 1,082,400 hours.[9]

The hour burden estimates for retaining records under rule 31a–2 are based on our experience with registrants and our experience with similar requirements under the Act and the rules under the Act. The number of burden hours may vary depending on, among other things, the complexity of the fund, the issues faced by the fund, and the number of series and classes of the fund. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from quantitative, comprehensive, or even representative survey or study of the burdens associated with our rules and forms.

The Commission staff estimates the average cost of preserving books and records required by rule 31a–2, to be approximately $.000035 per $1.00 of net assets per year.[10] As of December 31, 2006, our staff estimates total net assets of all funds at about $10 trillion, and that compliance with rule 31a–2 costs the fund industry approximately $350 million per year.[11] Our staff estimates, however, based on conversations with representatives of the fund industry, that funds would already spend half of this amount ($175 million) to preserve these same books and records, as they are also necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns. Therefore, we estimate that the total annual cost burden for registered fund due to compliance with rule 31a–2 is $175 million per year.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of

[5] 17 CFR 270.31a–1(b)(5)–(12). These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund, all other portfolio purchases, records of all puts, calls, spreads, straddles or other options in which the fund has an interest, has granted, or has guaranteed, records of proof of money balances in all ledger accounts, files of all advisory material received from the investment adviser, and memoranda identifying persons, committees or groups authorizing the purchase or sale of securities for the fund.

[6] 15 U.S.C. 78q.

[7] 15 U.S.C. 80b–4.

[8] In addition, the fund, or whoever maintains the documents for the fund must provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the fund may request: (A) A legible, true, and complete copy of the record in the medium and format in which it is stored; (B) a legible, true, and complete printout of the record; and (C) means to access, view, and print the records; and separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section. In the case of records retained on electronic storage media, the fund, or person that maintains and preserves records on its behalf, must establish and maintain procedures: (i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (ii) to limit access to the records to properly authorized personnel, the directors of the fund, and the Commission (including its examiners and other representatives); and (iii) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

[9] This estimate is based on the following calculation : 4,920 registered investment companies × 220 hours = 1,082,400 total hours.

[10] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs for several funds and then relating this total cost to the average net assets of these funds during the year. The staff estimates that the annual cost of preserving records is $70,000 per fund; the funds queried in support of this analysis had an average asset base of approximately $2 billion (70,000/2 billion = .000035).

[11] This estimate is based on the annual cost per dollar of net assets of the average fund as applied to the net assets of all funds ($10 trillion × .000035 = $350 million).

the costs of Commission rules. 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.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson 6432 General Green Way, Alexandria, Virginia, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: February 5, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–2170 Filed 2–8–07; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

### Federal Register Citation of Previous Announcement: [72 FR 5090, February 2, 2007]

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street, NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Thursday, February 8, 2007 at 2 p.m.

**CHANGE IN THE MEETING:** Time Change.

The Closed Meeting scheduled for Thursday, February 8, 2007 at 2 p.m. has been changed to Thursday, February 8, 2007 at 10 a.m.

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: February 6, 2007.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. 07–610 Filed 2–7–07; 10:52 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55229; File No. SR–Amex–2007–12]**

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Clarification to the Exchange's Payment for Order Flow Plan

February 2, 2007.

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 January 22, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to clarify the current Payment for Order Flow Plan with respect to funds collected from Supplemental Registered Options Traders ("SROTs").

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has substantially 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 adopted its current Payment for Order Flow Plan in February of 2006.[5] Under the current plan, the Exchange charges an equity options marketing fee of $0.75 per contract[6] solely to customer orders that are from payment accepting firms with whom a specialist or a Supplemental Registered Options Trader ("SROT"), has negotiated a payment for order flow arrangement.[7] This fee solely applies to those orders which are executed electronically through the Exchange's ANTE system.

As noted in the Exchange's previous Payment for Order Flow filings, fees are collected from any SROT, specialist or ROT who participates in a trade with a payment accepting firm with whom a specialist has negotiated a payment for order flow arrangement, or with whom an SROT has negotiated a payment with an affiliated SROT.

The Exchange proposes to clarify the current Payment for Order Flow Plan to limit the spending of funds collected from SROTs, which are allocated to a specialist, when the SROT participates in a trade where the specialist has negotiated a payment for order flow arrangement. In these instances, the Exchange proposes to require that the specialist be limited to spending any SROT collected funds only in those options classes in which the SROT is able to trade.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and Section 6(b)(4) of the Act[9] in particular, because it is an equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 53341 (February 21, 2006), 71 FR 10085 (February 28, 2006) (approving SR–Amex 2006–15).

[6] The fee is $1.00 for SPDR contracts.

[7] *See* Securities Exchange Act Release Nos. 54324 (August 16, 2006), 71 FR 50110 (August 24, 2006) (SR–Amex 2006–63); and 54486 (September 22, 2006), 71 FR 57009 (September 28, 2006) (SR–Amex 2006–79).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) [11] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–12 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–Amex–2007–12. 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. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–12 and should be submitted on or before March 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–2150 Filed 2–8–07; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55226; File No. SR–Amex–2007–15]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend a Pilot Program That Increases Position and Exercise Limits for Equity Options and Options on the Nasdaq-100 Tracking Stock

February 1, 2007.

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 January 30, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange seeks a six-month extension of its pilot program increasing the standard position and exercise limits for options on the QQQQ and equity option classes traded on the Exchange ("Pilot Program"). The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com*.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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 is requesting to extend its current Pilot Program increasing the standard position and exercise limits for options on the QQQQ and equity option classes traded on the Exchange for a time period of six months from March 1, 2007, through and including September 1, 2007.

In March 2005, the Exchange established the Pilot Program for a six-month period.[5] Under the Pilot

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 51316 (March 3, 2005), 70 FR 12251 (March 11, 2005) (SR–Amex–2005–029). The Pilot Program was extended three times and is due to expire on March 1, 2007. *See* Securities Exchange Act Release Nos. 54386 (August 30, 2006), 71 FR 52831 (September 7, 2006) (SR–Amex–2006–75); 53349 (February 22, 2006), 71 FR 10571 (March 1, 2006) (SR–Amex–2006–07); and 52260 (August 15, 2005), 70 FR 48991 (August 22, 2005) (SR–Amex–2005–082).

Program, position and exercise limits for options on the QQQQ and equity options classes traded on the Exchange were increased to the following levels:

| Current equity option contract limit [6] | Pilot program equity option contract limit |
|---|---|
| 13,500 | 25,000 |
| 22,500 | 50,000 |
| 31,500 | 75,000 |
| 60,000 | 200,000 |
| 75,000 | 250,000 |
| **Current QQQQ Option Contract Limit** | **Pilot Program QQQQ Option Contract Limit** |
| 300,000 | 900,000 |

The standard position limits were last increased on December 31, 1998.[7] Since that time there has been a steady increase in the number of accounts that: (a) Approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit. Several member firms have petitioned the options exchanges to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. In addition, a significant number of accounts that maintain sizable positions are utilizing the Pilot Program's increased equity option contract limits. Furthermore, overall volume in the options market has continually increased over the past five years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences over the past twenty years justifies the proposed increases in the position and exercise limits.

The Exchange has not encountered any problems or difficulties relating to the Pilot Program since its inception. The instant proposed rule change makes no substantive change to the Pilot Program other than to extend it for six months through and including September 1, 2007.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general and furthers the objective of Section 6(b)(5) of the Act[9] 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.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received by the Exchange on this proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2007–15 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Amex–2007–15. 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. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[6] Except when the Pilot Program is in effect.

[7] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR–Amex–98–22).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) also requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Amex has satisfied the five-day pre-filing requirements.

should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2007–15 and should be submitted on or before March 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–2151 Filed 2–7–07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55230; File No. SR–BSE–2006–16]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Adopt a Universal Price Improvement Period for Public Customer Orders

February 2, 2007.

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 December 11, 2006, the Boston Stock Exchange, Inc. ("BSE" 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 BSE. On February 1, 2007, BSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the rules of the Boston Options Exchange ("BOX") to adopt a Universal Price Improvement Period ("UPIP") to offer the opportunity for price improvement for eligible Public Customer[4] orders. The text of the proposed rule change is available at BSE, the Commission's Public Reference Room, and *http://www.bostonstock.com/legal/pending_rule_filings.html.*

### 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 BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE 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

Currently, the BOX offers Options Participants, who wish to price improve their Customer Orders, access to a price improvement auction referred to as the "PIP" (Price Improvement Period). In order for a Customer Order to be entered into a PIP auction, Options Participants must be willing to improve the execution price themselves or seek price improvement through the PIP via a Directed Order. In either instance, initial access to the PIP is dependent upon the ability of at least one party to guarantee price improvement for the full size of the Customer Order. UPIP, however, is a *universal* price improvement mechanism such that all Public Customer Orders submitted to the BOX Trading Host will be eligible, for potential price improvement in the UPIP auction, subject to the eligibility requirements discussed below. UPIP is similar to the PIP and other price improvement mechanisms, such as the Price Improvement Mechanism ("PIM") of the International Stock Exchange, Inc. ("ISE") and the Simple Auction Liaison system ("SAL") of the Chicago Board Options Exchange, Incorporated ("CBOE"), that initiate auctions in penny increments through which exchange participants compete to potentially price improve a customer order above the National Best Bid or Offer ("NBBO"). Unlike the PIP and other similar price improvement mechanisms, however, UPIP permits a broader universe of orders to obtain price improvement.

In the discussion to follow, BSE provides an overview of the UPIP auction and discusses some of the more salient features and benefits of the UPIP. In addition, BSE addresses the underlying purpose of the UPIP by, in part, comparing the UPIP to the industry practice of "paying for order flow," and by discussing the overall effectiveness of UPIP in the context of the Commission's Penny Pilot.[5]

*a. UPIP Eligibility.* Under the proposed rule, a Public Customer Order will be eligible for the UPIP auction ("Eligible Order") provided certain conditions have been satisfied.[6] For example, the Eligible Order must be a Limit, Market or BOX-Top Order that is marketable against the NBBO.[7] In addition, the Trading Host will not permit the commencement of a UPIP auction in the following scenarios: (1) If a PIP or UPIP in the same series is already underway, or (2) if the NBBO is locked or crossed and the BOX Best Bid or Offer ("BBO") on the same side of the market as the Eligible Order equals the NBBO.

*b. The UPIP Order[8] and the Auction.* Upon satisfaction of the foregoing conditions, the BOX Trading Host will proceed to automatically commence a UPIP auction. Prior to the commencement, however, the BOX Trading Host will transmit a broadcast message ("Broadcast Message") to Options Participants informing them of the auction's initiation, the relevant details of the UPIP Order (*i.e.*, the UPIP Order's series, size and side of the market), the end time of the auction, and the applicable Start Price.[9] The Start Price for each auction is driven primarily by the price of the BBO on the opposite side of the market from the UPIP Order vis-à-vis the NBBO such that if the BBO is equal to the NBBO, the Start Price will be one improvement increment (*e.g.*, a penny) better than the NBBO. Conversely, if the BBO does not equal the NBBO, the Start Price will be the NBBO. The same conditions apply with respect to the Start Price whether or not the NBBO is locked or crossed.

The rule proposal allows UPIP Orders to be modified and cancelled at any time prior to the conclusion of the UPIP auction. The cancellation of a UPIP Order will result in the subsequent

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, BSE granted the Commission an extension of the time period specified in Section 19(b)(2) of the Act for Commission action.

[4] Capitalized terms not otherwise defined herein shall have the meanings prescribed under the BOX rules.

[5] *See* Securities Exchange Act Release No. 54789 (November 20, 2006), 71 FR 68654 (November 27, 2006) (SR–BSE–2006–49).

[6] *See* proposed rule Section 29(e) of Chapter V of the BOX Rules.

[7] The Exchange also notes that an Eligible Order must be for a series of options that is open for trading and can not indicate a minimum quantity condition or be an Inbound Inter-Market Linkage P/A order.

[8] Under the proposal, upon commencement of the UPIP auction the "Eligible Order" shall be referred to as the "UPIP Order."

[9] The Start Price is defined as the minimum/maximum (buy/sell) price at which an Improvement Order must be submitted.

cancellation of all related Improvement Orders. Certain modifications of a UPIP Order will not result in the termination of the UPIP auction. Such modifications include the reduction of a UPIP Order quantity, the recharacterization of the UPIP Order type from a Limit Order to a BOX Top or Market Order, and an improvement of the UPIP Order's original limit price. Otherwise, any other modification will result in the termination of the UPIP auction.

*c. Improvement Orders and the Auction.* Any Options Participant may submit an Improvement Order [10] in response to a Broadcast Message for an impending UPIP auction. Such Improvement Orders shall be visible to all Options Participants and are required to be submitted in increments of one-penny or more and must equal or improve the Start Price. Improvement Orders may also be cancelled or modified by the Options Participant prior to the conclusion of the UPIP auction. An increase in the quantity of the Improvement Order or modifications of the Improvement Order's limit price will result in the creation of a new Improvement Order reflecting the revised terms (*i.e.*, increased quantity amount or modified price) and the cancellation of the original Improvement Order. At the conclusion of a UPIP auction, the unexecuted portion of an Improvement Order will be cancelled by the Trading Host.

*d. Improvement Orders and Priority.* Like the PIP, Improvement Orders may be submitted by any BOX market participant such as Customers (including CPOs), Order Flow Providers ("OFP"), or Market Makers (including Executing Participants [11]). Improvement Orders will generally be ranked in order of price and time. The rule proposal, however, provides alternative ranking and/or allocation status for certain Improvement Orders depending on certain criteria, as discussed more fully below.

*i. Proprietary Improvement Orders.* Under the rule proposal, the Options Participant who submitted the Eligible Order to BOX and subsequently submitted a Proprietary Improvement Order will be last in time priority at all price levels in the relevant UPIP auction. Notwithstanding, if the Proprietary Improvement Order is generated by an automated quotation system that operates independently from the existence or non-existence of the pending Eligible Order prior to its submission to BOX, the Options Participant's Proprietary Improvement Order will be treated like an ordinary Improvement Order and qualify for execution at each price level without prejudice.

*ii. Executing Participant Improvement Orders.* The rule proposal also seeks to deter Executing Participants who receive Directed Orders from simply releasing the Directed Order to the BOX Book in order to compete in the ensuing UPIP auction by placing the Executing Participant last in priority at all price levels in any subsequent UPIP auction related to that Directed Order.

*iii. Customer Price Improvement Orders.* Similar to the CPO in the PIP, Public Customers that submit a CPO to an OFP must indicate the price at which the order shall be placed in the BOX Book ("BOX Book Reference Price") [12] as well as the price at which the Public Customer would like to participate in any UPIP that may occur while the order is on the BOX Book. In order for the CPO to be eligible for participation in a UPIP auction, the BOX Book Reference Price must equal the BBO at the commencement of a UPIP auction.[13] The CPO will also benefit from enhanced time priority pursuant to NBBO Prime as described in section iv below.

*iv. NBBO Prime.* The current rule proposal allows certain Improvement Orders to be designated as NBBO Prime ("NBBO Prime Order"). The NBBO Prime designation is only applicable for a UPIP auction, not the PIP, and generally confers time priority to a particular Improvement Order over other Improvement Orders and Unrelated Orders with the same price upon satisfaction of certain conditions, as discussed more fully below. Any Improvement Order may be eligible for the NBBO Prime designation in a UPIP auction.

In order to receive the benefits of the NBBO Prime designation, the same beneficial account,[14] such as a customer account, for whom the Options Participant is acting as principal or agent (whether Market Maker, OFP, or Customer) and is seeking the NBBO Prime designation must itself have quotes or orders on the BOX Book that are on the opposite side of the UPIP Order ("NBBO Prime Participant Quote"). The NBBO Prime Participant Quote must be equal to the NBBO and must have been on the BOX Book prior to receipt of the Eligible Order by the Trading Host. In addition, NBBO Prime Orders shall only have enhanced time priority for the quantity that does not exceed the size of its NBBO Prime Participant Quote; any residual quantity will be handled in accordance with the normal time priority rules. As between NBBO Prime Orders, the priority shall be governed by the relevant Trading Host order receipt time stamp of each NBBO Prime Participant Quote.

An Options Participant seeking priority through the NBBO Prime designation must indicate to the Trading Host the order number of the NBBO Prime Participant Quote when the Options Participant submits the Improvement Order for the same beneficial account. In addition, under the proposed rule the Options Participant is permitted the flexibility to indicate whether the NBBO Prime Participant Quote size should be decremented to reflect any execution of the NBBO Prime Order. In the absence of such an indication, the Trading Host will not decrement the NBBO Prime Participant Quote. Market Makers will not be required to identify their relevant order number but will need to indicate to the Trading Host that their applicable NBBO Prime Participation Quote size should be decremented; otherwise their NBBO Prime Participation Quote size will remain unchanged on the BOX Book.

*e. Price Protection in the UPIP.* As previously discussed, the potential execution price of any UPIP auction will be, except in limited circumstances,[15] at least equal to the NBBO at the time UPIP auction commences. At the conclusion of the UPIP auction, including in the event of a premature termination (as discussed more fully below), the UPIP Order shall be matched against the best prevailing orders. These orders include Improvement Order(s), CPOs, Unrelated Orders, and quotes submitted during the UPIP auction that are equal to or better

[10] Improvement Orders are those orders submitted to a UPIP auction in response to a Broadcast Message by Options Participants that are on the opposite side of the market as the UPIP Order.

[11] An "Executing Participant" is defined in the BOX Rules as a Market Maker that systemically indicates its willingness to accept and receive Directed Orders. *See* Section 5(c)(i) of Chapter VI of the BOX Rules.

[12] The BOX Book reference price must be stated in standard five-cent or ten-cent increments.

[13] The Exchange also notes that a CPO must be in the same series and on opposite side of the UPIP Order.

[14] For purposes of the proposed rule, a "beneficial account" means the underlying type of account (*e.g.*, customer, broker-dealer, market maker, etc.) on whose behalf the Participant is trading.

[15] At the conclusion of a UPIP auction, the quantity of the UPIP Order that exceeds the Initial Aggregate Quote Size, if any, will not execute against Improvement Orders at prices inferior to the NBBO except in the following circumstances: (1) In accordance with Chapter XII, Section 3(e) of BOX Rules; or (2) the away options exchange posting the NBBO is conducting a trading rotation in that options class.

than the Start Price. In addition, the rule proposal provides for the initial quantity of the UPIP Order to be "stopped" against any order on the BOX Book that is marketable against the UPIP Order at the time the UPIP Order is received by the Trading Host ("Initial BOX Book Quote")[16] up to the size of the Initial BOX Book Quote ("Initial Aggregate Quote Size"). When the UPIP auction terminates, the UPIP Order may be matched against the Initial Aggregate Quote Size of the Initial BOX Book Quote and will not be executed at a price worse than the Initial BOX Book Quote.

A modification or cancellation of the Initial BOX Book Quote during the UPIP auction that decreases the Initial Aggregate Quote size below the size of the UPIP Order, at the commencement of the UPIP auction, will cause the UPIP auction to immediately terminate. Such modification or cancellation will only be processed after the UPIP Order has been executed. An Options Participant who is part of the Initial BOX Book Quote, and whose cancellation or modification of its order/quote causes the UPIP auction to terminate, will have its order/quote placed at the end of the quote and order queue at the applicable price level on the BOX Book. At which point, the UPIP Order will be matched according to the UPIP trade allocation rules. Any modification or cancellation of the Initial BOX Book Quote that does not cause the Initial Aggregate Quote Size to decrease below the size of the UPIP Order, however, will be processed immediately by the Trading Host without penalty and the UPIP auction will continue.[17]

*f. Treatment of Unrelated Orders in the UPIP.* Unrelated Orders that are submitted to the Trading Host during a UPIP auction that are on the opposite side of the market from a UPIP Order and are executable against the NBBO will be executed immediately against the UPIP Order at the mid-point of the National Best Bid (or Offer) and the best of either the best UPIP Improvement Order, the UPIP Start Price or the National Best Offer (or Bid).[18] If the Unrelated Order on the opposite of the market as the UPIP Order has a quantity equal to or greater than the UPIP Order, the UPIP auction will terminate; otherwise, the immediate execution of the Unrelated Order will not cause the termination of the UPIP auction and the auction will continue. Conversely, an Unrelated Order that is on the same side of the market as the UPIP Order that is executable against the NBBO will cause the UPIP to immediately terminate.

*g. UPIP versus Payment for Order Flow.* As the Commission has previously indicated, payment for order flow ("PFOF") programs are made possible by the fixed bid/ask spreads that are presently imposed on the marketplace. The UPIP, however, infiltrates those spreads by allowing Options Participants to bid or offer a UPIP Order in penny increments. The UPIP is, in many ways, the antithesis of PFOF programs because it transfers any "payment" that is paid by an Options Participant for an order to the customer, rather than the customer's broker. The pennies that were once accrued to the broker are now paid directly to customers in the form of price improvement.

*h. UPIP and the Penny Pilot.* The impending "Penny Pilot Program" planned for 2007 endeavors, in part, to determine whether price improvement is possible in a "penny-quoting" environment and the cost of such an environment in the face of possible increased quote traffic and the related burdens placed on capacity. BOX believes UPIP is the Penny Pilot but on a much grander scale. UPIP will allow penny pricing for all option classes without any traffic consequences.

2. Statutory Basis

The proposal is consistent with the requirements of Section 6(b) of the Act,[19] in general, and Section 6(b)(5) of the Act,[20] in particular, in that it provides potential price improvement in excess of the NBBO to certain qualifying orders, it is generally designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**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 BSE consents, the Commission shall: (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 No. SR–BSE–2006–16 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–16. 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

[16] The Initial BOX Book Quote is defined as the quote(s) and/or order(s) on the BOX Book at the best price, on the opposite side, and in the same series as the Eligible Order at the time the Trading Host receives it. The Initial Aggregate Quote Size is defined as the aggregate size of the Initial BOX Book Quote.

[17] The Exchange also notes that any orders or quotes on the opposite side of the UPIP Order that are received by the BOX Book after the UPIP auction has commenced (*i.e.*, orders that are not otherwise part of the Initial BOX Book Quote), may be cancelled or modified without causing the UPIP auction to terminate as described in this paragraph (n).

[18] Any rounding required will be to the benefit of the Unrelated Order.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

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. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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–BSE–2006–16 and should be submitted on or before March 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–2171 Filed 2–8–07; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55219; File No. SR–CBOE–2007–10]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

February 1, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the CBOE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the "Rule"), relating to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System ("Hybrid") through April 30, 2007. No other changes are being made to the Rule. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and (*http://www.cboe.org/Legal*).

### 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 CBOE 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 those 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 parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

In March 2005, the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.[6] Among other things, the Rule, pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, the Rule was amended to limit the duration of the Rule until September 14, 2005. The duration of the Rule was thereafter extended through January 31, 2007.[7] As the duration period expires on January 31, 2007, the Exchange proposes to extend the effectiveness of the Rule through April 30, 2007.[8]

2. Statutory Basis

Extension of the duration of the rule will allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. Accordingly, CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

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[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii). *See* discussion *infra* Section III.

[6] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR–CBOE–2004–75).

[7] *See* Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (extending the duration of the Rule through December 14, 2005) and 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (extending the Rule through March 14, 2006), 53524 (March 21, 2006), 71 FR 15235 (March 27, 2006) (extending the duration of the Rule through July 14, 2006), 54164 (July 17, 2006), 71 FR 42143 (July 25, 2006) (extending the duration of the Rule through October 31, 2006) and 54680 (November 1, 2006), 71 FR 65554 (November 8, 2006) (extending the duration of the Rule through January 31, 2007).

[8] In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of the Rule, members are also required to comply with the requirements of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) restricts securities transactions of a member of any national securities exchange effected on that exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange has issued regulatory circulars to members informing them of the applicability of these Section 11(a)(1) requirements each time the duration of the Rule was extended. *See* CBOE Regulatory Circulars RG05–103 (November 2, 2005), RG06–001 (January 3, 2006), RG06–34 (April 7, 2006), RG06–79 (July 31, 2006) and RG06–115 (November 8, 2006). The Exchange represents that it expects to issue a similar regulatory circular to members reminding them of the applicability of the Section 11(a)(1) requirements with respect to the proposed rule change.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.[13]

A proposed rule change filed under Commission Rule 19b–4(f)(6) [14] normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the Rule without interruption. For these reasons, the Commission designates the proposed rule change as effective and operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Pursuant to Rule 19b–4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. *See* 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–10 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–10 and should be submitted on or before March 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–2139 Filed 2–8–07; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55223; File No. SR–NYSEArca–2007–07]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to Exchange Fees and Charges

February 1, 2007.

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 January 22, 2007, NYSE Arca, Inc. ("NYSE Arca" 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 NYSE Arca. On January 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On January 31, 2007, NYSE Arca withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change. The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Exchange under Section 19(b)(3)(A) [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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

NYSE Arca proposes to amend its Schedule of Fees and Charges for Services ("Schedule") in order to revise certain Transaction Fees and to eliminate Marketing Fees for issues that trade as part of the Penny Pilot Program ("Pilot" or "Penny Pilot Program").[5] The text of the proposed rule change is available at *http://www.nysearca.com/regulation/filings.asp*, at the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 55156 (January 23, 2007) 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73).

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to revise the existing NYSE Arca Schedule in conjunction with the introduction of the Penny Pilot Program. The Exchange plans to include the following issues as part of the Penny Pilot Program. Agilent Technologies: (A), Advanced Micro Devices (AMD), Caterpillar (CAT), Flextronics International (FLEX), General Electric (GE), Intel (INTC), iShares Russell 2000 Index fund (IWM), Microsoft (MSFT), Nasdaq-100 Index Tracking Stock (QQQQ), Semiconductor Holders Trust (SMH), Sun Microsystems (SUNW), Texas Instruments (TXN), and Whole Foods Markets (WFMI). NYSE Arca is proposing to amend its Schedule in order to make the following changes to certain fees and charges that are assessed to OTP Holders and OTP Firms [6] in the above listed issues.

*Transaction Fees*

NYSE Arca is proposing to implement a Post/Take pricing model for electronically executed transactions in issues that are part of the Penny Pilot Program. Under the proposed rate schedule, all electronic orders that add or "post" liquidity to the Consolidated Book (resting orders and resting quotes) will receive a transaction credit upon execution. Registered Market Makers [7] will receive a credit of $0.30 per contract. All other trade participants, including but not limited to Brokers-Dealers and OTP Firms representing both Firm and Public Customer orders, will receive a credit of $0.25 per contract.

The Transaction Fee for all trade participants that "take" liquidity from the Consolidated Book (incoming electronic quotes and orders that are executed upon receipt) will be $0.50 per contract. This fee will be applied to all trade participants, including Market Makers, Broker-Dealers and OTP Firms executing orders on behalf of Public Customers.

Electronically entered Contingency Orders, such as All or None ("AON") and Immediate or Cancel ("IOC") are deemed to be taking liquidity and therefore will be assessed the $0.50 per contract fee.

Orders that take place as part of an Opening Auction are deemed to neither take nor post liquidity. For this reason, in issues that trade as part of the Penny Pilot Program, executions that take place as part of an Opening Auction will neither be assessed nor credited the Transaction Fee.

*Linkage Fees*

Linkage Orders executed at NYSE Arca are subject to the same billing treatment as other Broker Dealer orders.[8] Since Linkage Orders that are sent to and executed on NYSE Arca will be taking liquidity, these orders will be assessed a $0.50 per contract fee. This fee remains unchanged from the present fee. Linkage Orders that are not executed upon receipt are rejected back to the sender and are never posted in the Consolidated Book. Therefore, a Linkage Order would never be eligible to receive a credit of the Transaction Fee.

*Royalty Fees*

For electronic executions in issues included in the Penny Pilot Program, where the Exchange pays a Royalty Fee to a licensed underwriter, the Royalty Fee will be passed through to the trading participant on the "take" side of the transaction. Royalty Fees will not be assessed on executions occurring during the Opening Auction in Pilot issues. Open Outcry executions in Pilot issues and all executions in non-Pilot issues will be subject to the current billing treatment covering Royalty Fees.

The above rates apply only to electronically executed transactions in Penny Pilot issues mentioned above, effective upon the date that they rollout as part of the Pilot. Initial plans for the Penny Pilot Program do not include any issues that have Royalty Fees associated with them. In the event that the Exchange was to propose the inclusion of a Royalty Fee issue in the Penny Pilot Program, it would do so through a rule filing with the Commission pursuant to Rule 19b–4.

*Marketing Fees*

The Exchange presently assesses Market Makers [9] a $0.65 per contract Marketing Fee on all transactions involving public customer orders. For orders in the NASDAQ–100 Tracking Stock (QQQQ), the Exchange charges Market Makers $0.95 per contract; in the Standard and Poor's Depository Receipts (SPY), the Exchange charges $1.00 per contract. Market Makers are assessed Marketing Fees on both public customer orders and Broker Dealer orders in the QQQQ and the SPY. Market Maker to Market Maker orders are never assessed a Marketing Fee.

As part of the Penny Pilot Program, NYSE Arca will be quoting and trading a limited number of issues in one cent increments. For transactions in issues which are included as part of the Penny Pilot Program, the Exchange will no longer collect a Marketing Fee. All other aspects of the Marketing Fee will remain the same.

*Rollout of the Pilot*

The Penny Pilot Program commenced on January 26, 2007.[10] Initially, as mentioned above, only a limited number of issues will be included in the Pilot. It is anticipated that the rollout of all issues will be completed over a three week period. The above rate changes apply only to transactions in Pilot issues, effective upon the date that they rollout as part of the Penny Pilot Program.

2. Statutory Basis

NYSE Arca believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(4) of the Act,[12] in particular, in that it is designed to provide for the equitable allocation of dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NYSE Arca 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.

[6] The terms OTP Holders and OTP Firms are defined in NYSE Arca Rules 1.1(q) and 1.1(r), respectively. OTP Holders and OTP Firms have the status of a "member" of NYSE Arca as that term is defined in Section 3 of the Act.

[7] The term Market Maker is defined in NYSE Arca Rules 6.1(c) and 6.1A(a)(8).

[8] Fees imposed on Linkage Orders are subject to an Exchange pilot program and will expire on July 31, 2007.

[9] *See supra*, note 7.

[10] *See supra*, note 5.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [13] and subparagraph (f)(2) of Rule 19b–4 thereunder [14] because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–07 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2007–07 and should be submitted on or before March 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–2129 Filed 2–8–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b7–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55232; File No. SR–NYSEArca–2007–09]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Expanding the Business Activities of Archipelago Securities, L.L.C.

February 2, 2007.

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 January 25, 2007, NYSE Arca, Inc. ("NYSE Arca" or the "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 NYSE Arca. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NYSE Arca is proposing to expand the business activities of Archipelago Securities, L.L.C. ("Archipelago Securities"), a registered broker-dealer, a member of several self-regulatory organizations including the NASD, and a facility of the Exchange. With this filing, the Exchange proposes that, in addition to providing an optional outbound order routing service for the Exchange, Archipelago Securities shall act as a marketing agent on behalf of NYSE Arca Tech 100 Index (the "Index") and NYSE Arca Tech 100 ETF (the "ETF") and provide reasonable services attendant thereto.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NYSE Arca included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In October 2001, the Commission approved Wave Securities, L.L.C. ("Wave") to operate as a facility of the Exchange, as that term is defined in Section 3(a)(2) of the Act.[3] At that time, the Commission authorized Wave to perform outbound router services for the Exchange, as a facility of the Exchange. Archipelago Securities succeeded Wave in the second quarter of 2003 and assumed certain of Wave's duties, including the outbound router function. The Commission subsequently re-approved the outbound router function as a facility of the Exchange in connection with the acquisition of the Pacific Exchange, Inc. by Archipelago Holdings, Inc., the parent company of the Exchange.[4] Pursuant to the Archipelago/PCX Acquisition Release, any expansion of the business activities of Archipelago Securities must be approved by the Commission. Most recently, the Commission approved the expansion of the business activities of Archipelago Securities to include, as a facility of the Exchange, the function of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25).

[4] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90) ("Archipelago/PCX Acquisition Release").

routing option orders for members of the Exchange.[5]

With this filing, the Exchange proposes that Archipelago Securities act as a marketing agent on behalf of the Index and the ETF and provide reasonable services attendant thereto. This proposed business activity has no connection to Archipelago Securities' facility functions described above. As marketing agent for the Index and the ETF, Archipelago Securities will develop a marketing plan designed to advertise, promote, and increase public awareness of the Index and the ETF within the financial services industry and investing public ("Marketing Plan"), including: branding, promotional activities, development and design of marketing materials, collateral and media campaigns (*i.e.*, electronic media, print media, Internet, etc.), and hosting a Web site for the ETF. Pursuant to this Marketing Plan, Archipelago Securities has drafted and expects to imminently execute an agreement with B.C. Zeigler and Company to provide the foregoing services for a period of one (1) year and renewable, upon agreement of both parties, annually thereafter.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(8)[7] of the Act, in particular, in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**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 No. SR–NYSEArca–2007–09 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–09. 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. Copies of such 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–NYSEArca–2007–09 and should be submitted on or before March 2, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–2152 Filed 2–8–07; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR–NYSEArca–2006–13).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(8).

[8] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2007–0010]**

### Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Department of the Treasury, Internal Revenue Service (IRS))—Match 1310

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of amended computer matching program, which is expected to begin March 27, 2007.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with the IRS.

**DATES:** SSA will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Income Security Programs as shown above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and by adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of

1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Board's approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

**B. SSA Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 2, 2007.

**Martin H. Gerry,**

*Deputy Commissioner for Disability and Income Security Programs.*

**Notice of Computer Matching Program, Social Security Administration (SSA) With Internal Revenue Service (IRS)**

*A. Participating Agencies*

SSA and IRS

*B. Purpose of the Matching Program*

The purpose of this matching program is to establish the correct amount of Medicare Part B premium subsidy adjustment under section 1839(i) of the Medicare Prescription Drug,Improvement and Modernization Act of 2003 (MMA). Pursuant to section 1839(i) of the MMA(42 U.S.C. 1395r), SSA shall determine whether a Medicare Part B enrollee would pay a larger percentage of the Part B premium than an individual with income below the applicable threshold. The agreement has been amended to include individuals who have not dis-enrolled from Medicare Part B, and those who have filed applications specifically for Medicare Part B.

*C. Authority for Conducting the Matching Program*

Section 6103(l)(20) of the Internal Revenue Code (26 U.S.C. 6103(1)(20)) authorizes the IRS to disclose return information with respect to Modified Adjusted Gross Income(MAGI) to SSA for the purpose of adjusting the usual Part B premium subsidy for Medicare beneficiaries with MAGI above the applicable threshold. Section 1839(i) of the MMA requires the Commissioner of SSA to determine the amount of an individual's Part B premium if the MAGI is above the applicable threshold for an individual or a married couple as established in section 1839(i)(2)(A) of the Act.

*D. Categories of Records and Individuals Covered by the Matching Program*

SSA will provide the IRS with identifying information with respect to individuals who are eligible for Medicare Part B, but have not yet enrolled, and individuals who are enrolled for Medicare Part B from the Master Beneficiary Record system of records, SSA/ORSIS 60–0090, originally published at 60 FR 2144 (January 6, 1995) and as revised at 71 FR 1826 (January 11, 2006). MAGI data provided by the IRS will be maintained in the Medicare Database system of records, SSA/ORSIS 60–0321, published at 69 FR 77816 (December 28, 2004), revised at 71FR 42159 (July 25, 2006). IRS will extract return information with respect to MAGI from the Return Transaction File, which is a part of the Individual Returns, Adjustments and Miscellaneous Documents File, Treasury/IRS 22.034, as published at 66 FR 63794 (December 10, 2001).

*E. Inclusive Dates of the Matching Program*

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register,** whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. E7–2174 Filed 2–8–07; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF STATE

**[Public Notice 5687]**

### 30-Day Notice of Proposed Information Collection: DS 3072, Emergency Loan Application and Evacuation Documentation, OMB Control Number 1405–0150

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Emergency Loan Application and Evacuation Documentation
- *OMB Control Number:* OMB Control Number 1405–0150.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS 3072.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 1000.
- *Estimated Number of Responses:* 1000.
- *Average Hours Per Response:* 10 minutes.
- *Total Estimated Burden:* 166 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 9, 2007.

**ADDRESSES:** Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests

for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520, who may be reached on (202) 736–9082 or *ASKPRI@state.gov*.

**SUPPLEMENTARY INFORMATION:**

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:*

The purpose of the DS–3072 is to process these emergency loans for destitute citizens and to document the safe and efficient evacuation of private U.S. citizens, dependents and third country nationals from abroad. The information will be used to process the emergency loan, facilitate reception and resettlement assistance in the United States and for debt collection. Respondents are private U.S. citizens and their dependents abroad who are destitute and in need of repatriation to the United States; private U.S. citizens and their dependents abroad who are in need of emergency medical and dietary assistance who are unable to obtain such services otherwise; and private U.S. citizens abroad and their dependents and third country nationals who are in need of evacuation when their lives are endangered by war, civil unrest, or natural disaster.

*Methodology:*

The information is collected in person, by fax, or via mail. The Bureau of Consular Affairs is currently exploring options to make this information collection available electronically.

Dated: January 19, 2007.

**Maura Harty,**

*Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. E7–2189 Filed 2–8–07; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF STATE

**[Public Notice 5688]**

### 60–Day Notice of Proposed Information Collection: Form DS–117, Application to Determine Returning Resident Status, OMB Control Number 1405–0091

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application to Determine Returning Resident Status.
- *OMB Control Number:* 1405–0091.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–117.
- *Respondents:* Aliens applying for special immigrant classification as a returning resident.
- *Estimated Number of Respondents:* 875 per year.
- *Estimated Number of Responses:* 875.
- *Average Hours Per Response:* 30 minutes.
- *Total Estimated Burden:* 438 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

**DATES:** The Department will accept comments from the public up to 60 days from February 9, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail: VisaRegs@state.gov* (Subject line must read DS–117 Reauthorization).
- *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulation Division, Visa Services—DS–1884 Reauthorization, 2401 E. Street, N.W., Washington D.C. 20520–30106.
- *Fax:* (202) 663–3898

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E. Street, N.W., L–603, Washington, DC 20522, who may be reached at (202) 663–2951 or *prosnikla@state.gov*.

**SUPPLEMENTARY INFORMATION:**

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:*

Form DS–117 is used by consular officers to determine the eligibility of an alien applicant for special immigrant status as a returning resident.

*Methodology:*

Information will be collected by mail.

*Additional Information:*

Dated: January 11, 2007.

**Stephen A. Edson,**

*Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. E7–2192 Filed 2–8–07; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2006–23638]**

### Highway Performance Monitoring System—Reassessment

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice; request for comments.

**SUMMARY:** The FHWA is currently conducting a reassessment of the Highway Performance Monitoring System (HPMS), which is a national highway transportation system database maintained and used primarily by the FHWA as a resource for information about the extent, condition, performance, use, and operating characteristics of the Nation's highways. This notice requests public comment on the draft *HPMS Reassessment Recommendations Report*, which is available in the docket and via the FHWA Web site at *www.fhwa.dot.gov/policy/ohpi/hpms/index.htm*. This draft

report documents in detail various issues and proposed changes to specific HPMS data items and the associated collecting and reporting procedures based in part upon customer and data provider needs. The FHWA requests public comments on this draft report. The report would enhance and improve HPMS procedures and incorporate changing data customer needs while building a stronger partnership with the HPMS data user and provider community.

**DATES:** Comments on the draft report must be received on or before June 30, 2007. The docket however, will remain open until the reassessment is complete. We anticipate that the reassessment will be completed on September 30, 2007.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dms.dot.gov/submit*, or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically. 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 comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. David Winter, Highway System Performance Division, Office of Highway Information, (202) 366–0175, *David.Winter@dot.gov;* or Janet Myers, Office of the Chief Counsel, (202) 366–2019, *Janet.Myers@dot.gov;* Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Electronic Access:* You may submit or retrieve comments online through the Document Management System (DMS) at *http://dms.dot.gov/submit.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov.* and the Government Printing Office's Web site at *http://www.access.gpo.gov.*

## Background

On April 10, 2006, the FHWA published a notice in the **Federal Register** (71 FR 18134) announcing the initiation of a reassessment of the HPMS. The notice served as an announcement and requested public comment on issues related to the reassessment effort of the HPMS that the FHWA initiated. Public comments were solicited at that time on the described conceptual plan for the reassessment, in addition to comments on other issues that should be considered in planning and conducting the reassessment. During the reassessment, the FHWA developed working issue papers and placed them in the docket for review and comment. The working issue papers are still available for comment in the docket.

The HPMS first was developed in 1978 as a national highway transportation system database. In its current configuration, the HPMS includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional systems, and area-wide summary information for urbanized, small urban, and rural areas. Over its nearly 30 year life, the HPMS has evolved, adjusting to legislative and other changes in the focus of the highway program.

## Draft HPMS Reassessment Recommendations Report

The FHWA continues to take an open approach to completing the reassessment effort. Major emphasis is directed towards determining the data needs of FHWA's partners, stakeholders, and customers, the various uses of the existing HPMS, and the ability of data providers to support these data needs.

There are three major categories of proposed changes discussed in the HPMS Reassessment Recommendations Report: (1) Structure of HPMS; (2) Data Items; and, (3) Data Quality Process Improvement. In each category, the report explores the potential impact of the recommended changes on the State data providers, the FHWA, and the data users. Each recommendations is accompanied by an explanation as to why certain decisions were made, along with feedback from HPMS data users and providers gathered through the outreach portion of the reassessment. The recommendation topic areas by category are:

- Structure of HPMS: Data Model, Sampling, Boundaries and Functional Classification, and Interchanges and Ramps;
- Data Items: Safety, Pavements, Interchanges and Ramps, Freight, and Capacity; and
- Data Quality and Process Improvement.

The FHWA has prepared the draft version of the HPMS Reassessment Recommendations Report after taking into consideration comments made directly through the docket, raised at all workshops, and collected through other outreach efforts. Comments on the draft report should be submitted to the FHWA through the docket on or before June 30, 2007. The FHWA will respond to comments on the draft report generated by this notice and expects to complete its final recommendations report and publish it in the **Federal Register** for public review and comment by September 30, 2007.

## Outreach

As a part of the reassessment, the FHWA will conduct a second series of outreach meetings and workshops: On March 7–8 (8 a.m.–4 p.m., e.t.) in Baltimore, MD, on March 13–14 (8 a.m.–4 p.m., p.t.) in Sacramento, CA, and on March 27–28 (8 a.m.–4 p.m., c.t.) in Topeka, KS, at which interested parties are asked to provide input and help to refine a future HPMS direction based on the recommendations made in the draft report. The FHWA will post specific workshop information online at *http://www.fhwa.dot.gov/policy/ohpi/hpms/index.htm.* Soon after the outreach workshops take place, the FHWA will place the minutes and other supporting documents in the docket for review and comment. Interested parties should continue to check the docket for new material.

## Conclusion

The FHWA is soliciting public comments on the draft HPMS Reassessment Recommendations Report. Modifications to this draft report may be based on the comments received, if any. The draft report is available in the docket and via the FHWA Web site at: *http://www.fhwa.dot.gov/policy/ohpi/hpms/index.htm.* Additionally, the FHWA will hold several outreach sessions to further discuss the reassessment of the HPMS. As previously mentioned, the FHWA will

post specific information about the outreach meetings on its Web site at *http://www.fhwa.dot.gov/policy/ohpi/hpms/index.htm.*

**Authority:** 23 U.S.C. 502; 23 CFR 1.5.

Issued on: February 2, 2007.

**J. Richard Capka,**

*Federal Highway Administrator.*

[FR Doc. 07–578 Filed 2–8–07; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket No. FTA–2005–23082]**

**RIN 2132–AA90**

### Buy America: Notice of Public Meeting and Agenda

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice announcing public meeting agenda and conference call capability.

**SUMMARY:** On January 17, 2007, the Federal Transit Administration (FTA) announced a public meeting regarding the Buy America second notice of proposed rulemaking (SNPRM) to allow the public to ask questions regarding the SNPRM published on November 30, 2006. In the public meeting notice, FTA also extended the comment period to February 28, 2007, to allow affected parties time to carefully consider the changes made in the SNRM and the information presented at the public meeting. This Notice announces the agenda for the public meeting, and a conference call number for interested parties who cannot attend in person.

**DATES:** FTA will hold a public meeting on February 13 and 14, 2007 from 9 a.m. to 4:30 p.m. at the Department of Transportation (DOT) headquarters building (400 7th Street, SW., Washington, DC 20590, Room 2201). Individuals interested in attending the meeting should arrive at the southwest entrance of the DOT building to go through security screening. Please allow a minimum of 15 minutes to clear security. A summary of the meeting will be posted in the docket. FTA will not accept public comment during the public meeting. Instead, interested parties must submit their comments to the docket in order to have their comments considered by FTA.

**ADDRESSES:** You may submit comments identified by the docket number [FTA–2005–23082] by any of the following methods:

1. *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
2. *Fax:* 202–493–2251.
3. *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.
4. *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* you must include the agency name (Federal Transit Administration) and Docket number (FTA–2005–23082) for this Notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to *http://dms.dot.gov* including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

*Docket:* For access to the docket to read background documents and comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Wong, Attorney-Advisor, Office of the Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590, (202) 366–4011 or *Richard.Wong@dot.gov.*

**SUPPLEMENTARY INFORMATION:** On January 17, 2007, FTA published a Notice of Public Meeting in the **Federal Register** (72 FR 1976) in which FTA offered to allow the public to ask questions regarding FTA's second notice of proposed rulemaking (SNPRM) that was published in the **Federal Register** on November 30, 2006 (71 FR 69411).

Interested parties who would like to participate in the public meeting but cannot be physically present are invited to use FTA's conference call number at 1–888–603–8914 and to enter the passcode "53081" when prompted. Up to 50 conference call attendees may participate at the same time. Conference call attendees may join and exit the conference call at any time during the public meeting.

The meeting will begin with a brief outline of the SNPRM, followed by in-depth thirty-minute discussion sessions during which FTA will entertain questions on the six key issues proposed in the SNPRM. Any questions not addressed on the first day will be answered on the second. The agenda for the public meeting is as follows:

**Agenda**

*Tuesday, February 13, 2007*

9:30 a.m. Introduction & Welcome

9:45 a.m. Brief Overview of Regulatory History—statutory requirements, initial Notice of Proposed Rulemaking, partial Final Rule, Second Notice of Proposed Rulemaking.

10 a.m. Brief Summary of FTA's Proposals.

10:15 a.m. Discussion on Public Interest Waivers.

10:45 a.m. Discussion on Microprocessor Waivers.

11:15 a.m. Discussion on Post-Award Waivers.

11:45 a.m.–1:15 p.m. Lunch on your own.

1:15 p.m. Discussion on "End Products" and "Systems".

1:45 p.m. Discussion on "Final Assembly".

2:15 p.m. Discussion on Lists of Communications, Train Control, and Traction Power Equipment.

2:45 p.m. Break.

3 p.m. Resume Discussions.

4:30 p.m. Adjournment.

*Wednesday, February 14, 2007 (if necessary)*

9:30 a.m. Summary of Previous Day's Presentations.

10 a.m. Responses to Additional Questions.

11:45 a.m.–1:15 p.m. Lunch on your own.

1:15 p.m. Resume Responses to Questions.

2:45 p.m. Break.

3 p.m. Resume responses to Questions.

4:30 p.m. Final Adjournment.

Issued this 6th day of February, 2007.

**James S. Simpson,**

*Administrator.*

[FR Doc. 07–612 Filed 2–7–05; 1:14 pm

BILLING CODE 4910–57–M

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

February 6, 2007.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. 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, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before March 12, 2007 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0742.

*Type of Review:* Extension.

*Title:* EE–111–80 (Final) Public Inspection of Exempt Organization Return.

*Description:* Section 6104(b) authorizes the Service to make available to the public the returns required to be filed by exempt organizations. The information requested in Treasury Reg. section 301.6104(b)–1 (b)(4) is necessary in order for the Service not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 22 hours.

*OMB Number:* 1545–1098.

*Type of Review:* Extension.

*Title:* Arbitrage Restrictions on Tax-Exempt Bonds TD 8418 Final (FI–91-86; FI–90–86; FI–90–91; and FI–1–90).

*Description:* This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections. all of which must be in writing.

*Respondents:* State, local, or tribal governments.

*Estimated Total Burden Hours:* 8,550 hours.

*OMB Number:* 1545–1507.

*Title:* INTL–656–87 (Final) Treatment of Shareholders of Certain Passive Investment Companies.

*Type of Review:* Extension.

*Form:* 8621.

*Description:* The reporting requirements affect U.S. persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The IRS uses Form 8621 to identify PFICs, U.S. persons that are shareholders, and transactions subject to PFIC taxation and to verify income inclusions, excess distributions and deferred tax amounts.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 100,000 hours.

*OMB Number:* 1545–2031.

*Title:* Railroad Track Maintenance Credit (TD 9286 (RIN 1545–BE91)).

*Type of Review:* Extension.

*Description:* This document contains temporary regulations that provide rules for claiming the railroad track maintenance credit under section 45G of the Internal Revenue Code for qualified railroad track maintenance expenditures paid or incurred by a Class II or Class III railroad and other eligible taxpayers during the taxable year. These temporary regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 1,375 hours.

*OMB Number:* 1545–1590.

*Title:* REG–251698–96 (Final) Subchapter S Subsidiaries.

*Type of Review:* Extension.

*Form:* 13362.

*Description:* The IRS will use the information provided by taxpayers to determine whether a corporation should be treated as an S corporation, a C Corporation, or an entity that is disregarded for federal tax purposes. The collection of information covered in the regulation is necessary for a taxpayer to obtain, retain, or terminate S corporation treatment.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 10,110 hours.

*OMB Number:* 1545–1452.

*Title:* FI–43–94 (Final) Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions.

*Type of Review:* Extension.

*Description:* Section 1258 recharacterizes capital gains from conversion transactions as ordinary income to the extent of the time value element. This regulation provides that certain gains and losses may be netted for purposes of determining the amount of gain recharacterized.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 5,000 hours.

*OMB Number:* 1545–1691.

*Title:* REG–120882–97 (Final) Continuity of Interest.

*Type of Review:* Extension.

*Description:* Taxpayers who entered into a binding agreement on or after January 28, 1998 (the effective date of Sec. 1.368–1T), and before the effective date of the final regulations under Sec. 1.368–1(e) may request a private letter ruling permitting them to apply Sec. 1.368–1(e) to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S, tax purposes with respect to the applicability of Sec. 1.368–1(e) to the transaction.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 1,500 hours.

*OMB Number:* 1545–1271.

*Title:* REG–209035–86 (Final) Stock Transfer Rules; REG–208165–91 (Final) Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements.

*Type of Review:* Extension.

*Description:* A U.S. person must generally file a gain recognition agreement with the IRS in order to defer gain on a section 367(a) transfer of stock to a foreign corporation, and must file a notice with the Service if it realizes any income in a section 367(b) exchange. These requirements ensure compliance with the respective Code sections.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 2,390 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. E7–2186 Filed 2–8–07; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2006–54; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice and request for comments.

**SUMMARY:** This document contains a correction to a notice and request for comments(Revenue Procedure 2006–54) that was published in the **Federal Register** on Monday, January 29, 2007 (72 FR 4061) inviting the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

**FOR FURTHER INFORMATION CONTACT:** Larnice Mack, (202) 622–3179 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The notice and request for comments that is the subject of the correction is required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)).

#### Need for Correction

As published, the comment request for Revenue Procedure 2006–54 contains an error that may prove to be misleading and is in need of clarification.

#### Correction of Publication

Accordingly, the publication of the comment request for Revenue Procedure 2006–54, which was the subject of FR Doc. E7–1301, is corrected as follows:

On page 4061, column 1, in the preamble, under the caption "Summary", fourth line from bottom of the paragraph, the language "Revenue Procedure 2006–49," is corrected to read "Revenue Procedure 2006–54,".

**LaNita Van Dyke,**

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

[FR Doc. E7–2141 Filed 2–8–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of establishment of new system of records.

**SUMMARY:** The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled Department of Veterans Affairs Federal Docket Management System (VAFDMS) (140VA00REG).

**DATES:** Comments on this new system of records must be received no later than March 12, 2007. If no public comment is received, the new system will become effective March 12, 2007.

**ADDRESSES:** Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, comments are available online through the Federal Docket Management System (FDMS).

**FOR FURTHER INFORMATION CONTACT:** John Lawson, Privacy Officer, or Janet Coleman, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9515.

**SUPPLEMENTARY INFORMATION:**

#### I. Description of the Proposed System of Records

The Department of Veterans Affairs Federal Docket Management System (VAFDMS) permits the Department of Veterans Affairs (VA) to identify individuals, who have submitted comments in response to VA rulemaking documents or notices so that communications or other actions, as appropriate and necessary, can be effected, such as to seek clarification of the comment, to directly respond to a comment, and for other activities associated with the rulemaking or notice process. Identification is possible only if the individual voluntarily provides identifying information when submitting a comment. If such information is not furnished, the submitted comments and/or supporting documentation cannot be linked to an individual.

FDMS permits members of the public to search the public comments received by name of the individual submitting the comment. Unless the individual submits the comment anonymously, a name search will result in the comment being displayed for view. Comments may be searched by other means whether submitted anonymously or by an identified individual. If the comment is submitted electronically using FDMS, the viewed comment will not include the name of the submitter or any other identifying information about the individual except that, which the submitter has opted to include as part of his or her general comments. If a comment is submitted by an individual on his or her own behalf, in writing, that has been scanned and uploaded into FDMS, unless the individual submits the comment anonymously, the submitter's name will be on the comment, but other personally identifying information will be redacted before it is scanned and uploaded. Comments submitted on behalf of organizations in writing that have to be scanned and uploaded into FDMS, will not be redacted.

#### II. Proposed Routine Use Disclosures of Data in the System

Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

VA may disclose information contained in this system of records, as necessary, to comply with the requirements of the Administrative Procedure Act (APA) that comments are available for public review if submitted in response to VA's solicitation of public comments as part of the Agency's notice and rulemaking activities under the APA. However, VA will not release individually-identifiable personal information, such as an individual's home telephone number, under this routine-use except where VA determines that release of this information is integral to the public's

understanding of the comment submitted.

VA may disclose, on its own initiative, any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency, charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA may disclose information in this System of Records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

**III. Compatibility of the Proposed Routine Uses**

Release of information from these records, pursuant to routine uses, will be made only in accordance with the provisions of the Privacy Act of 1974. The Privacy Act of 1974 permits agencies to disclose information about individuals, without their consent, for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information was collected. In the routine-use disclosures proposed for this new VA system of records, VA will disclose individually-identified information for the following purposes: in connection with VA's administrative notice and rulemaking process; to contractors to perform a function associated with that process; for law-enforcement activities; and in administrative and judicial proceedings. VA has determined that the disclosure of information for the above purposes is a proper and necessary use of the information collected by the VAFDMS system, and is compatible with the purpose for which VA collected the information.

The notice of intent to publish an advance copy of the system notice has been sent to the appropriate Congressional Committees and to the Director of the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r ) (Privacy Act), as amended, and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: January 11, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

**140VA00REG**

**SYSTEM NAME:**

Department of Veterans Affairs Federal Docket Management System (VAFDMS)

**SYSTEM LOCATION:**

Primary location: Electronic records are kept at the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711–0001. Secondary location: Paper records are kept at Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who voluntarily provide personal contact information when submitting a public comment and/or supporting materials in response to a Department of Veterans Affairs rulemaking document or notice.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Full name, postal address, e-mail address, phone and fax numbers of the individual submitting comments, the name of the organization or individual that the individual represents (if any), and the comments, as well as other supporting documentation, furnished by the individual. Comments may include personal information about the commenter.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3501, Note; Pub. L. 107–347, sec. 206(d); Note; 5 U.S.C. 301, and 553.

**PURPOSE:**

To permit the Department of Veterans Affairs (VA) to identify individuals who have submitted comments in response to VA rulemaking documents or notices, so that communications or other actions, as appropriate and necessary, can be effected, such as to seek clarification of the comment, to directly respond to a comment, and for other activities associated with the rulemaking or notice process.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

2. VA may disclose information contained in this System of Records, as necessary, to comply with the requirements of the Administrative Procedure Act (APA) that comments are available for public review if submitted in response to VA's solicitation of public comments as part of the Agency's notice and rulemaking activities under the APA. However, VA will not release individually-identifiable personal information, such as an individual's home telephone number, under this routine use, except where VA determines that release of this information is integral to the public's understanding of the comment submitted.

3. VA may disclose, on its own initiative, any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating

or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

4. VA may disclose information in this System of Records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines, prior to disclosure, that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records, in this System of Records, in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**(A) STORAGE:**

Records are maintained on electronic storage media and paper.

**(B) RETRIEVABILITY:**

Records are retrieved by various data elements and key word searches, among which are by: Name, Agency, Docket Type, Docket Sub-Type, Agency Docket ID, Docket Title, Docket Category, Document Type, CFR Part, Date Comment Received, and **Federal Register** Published Date.

**(C) SAFEGUARDS:**

Electronic records are maintained in a secure, password protected, electronic system that utilizes security hardware and software to include: multiple firewalls, active intruder detection, and role-based access controls. Paper records are maintained in a controlled facility, where physical entry is restricted by the use of locks, guards, and/or administrative procedures. Access to records is limited to those officials who require the records to perform their official duties consistent with the purpose for which the information was collected. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

**(D) RETENTION AND DISPOSAL:**

Records will be maintained, and disposed of, in accordance with records disposition authority, approved by the Archivist of the United States.

**SYSTEM MANAGER(S) AND ADDRESSES:**

John Lawson, Privacy Officer, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; telephone (202) 273–9515.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this System of Records contains information about themselves should address written inquiries to the Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Requests should contain the full name, address and telephone number of the individual making the inquiry.

**RECORD ACCESS PROCEDURE:**

Individuals seeking to access or contest the contents of records about themselves, contained in this System of Records, should address a written request, including full name, address and telephone number to the Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

**CONTESTING RECORD PROCEDURE:**

(See Record Access Procedure above.)

**RECORD SOURCE CATEGORIES:**

Individual.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

There are no exemptions being claimed for this system.

[FR Doc. E7–2135 Filed 2–8–07; 8:45 am]
BILLING CODE 8320–01–P


Federal Register

Friday,
February 9, 2007

Part II

# Environmental Protection Agency

40 CFR Part 60

**Air Pollution; Standards of Performance for New Stationary Sources: Fossil-Fuel-Fired Steam Generators and Electric Utility and Industrial-Commercial-Institutional Steam Generating Units; Reconsideration, etc.; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[EPA–HQ–OAR–2005–0031; FRL–8275–9]**

**RIN 2060–AN97**

# Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971; Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units; Reconsideration and Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units. On February 27, 2006, EPA promulgated amendments to the NSPS for steam generating units. EPA is proposing to amend specific provisions in the NSPS for steam generating units to resolve issues and questions raised by petitioners for reconsideration of the promulgated amendments, and to correct technical and editorial errors that have been identified since promulgation. In addition, the proposed rule would update the grammatical style of the four NSPS steam generating unit subparts to be consistent across all of the subparts.

**DATES:** *Comments.* Comments must be received on or before March 12, 2007, unless a public hearing is requested by February 20, 2007. If a timely hearing request is submitted, the public hearing will be held on February 26, 2007 and we must receive written comments on or before March 26, 2007.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0031, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *By Facsimile:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, U.S. EPA, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* EPA Docket Center, Docket ID Number EPA–HQ–OAR–2005–0031, EPA West Building, 1301 Constitution Ave., NW., Room 3334, Washington, DC, 20004. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0031. 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 regulations.gov or e-mail. The *www.regulations.gov* Web site is an "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–4003, facsimile number (919) 541–5450, electronic mail (e-mail) address: *fellner.christian@epa.gov.*

**SUPPLEMENTARY INFORMATION:** *Entities Table.* Entities potentially affected by this proposed action include, but are not limited to, the following:

| Category | NAICS code [1] | Examples of potentially regulated entities |
|---|---|---|
| Industry | 221112 | Fossil fuel-fired electric utility steam generating units. |
| Federal Government | 22112 | Fossil fuel-fired electric utility steam generating units owned by the Federal Government. |
| State/local/tribal government | 22112 | Fossil fuel-fired electric utility steam generating units owned by municipalities. |
| | 921150 | Fossil fuel-fired electric utility steam generating units located in Indian Country. |
| Any industrial, commercial, or institutional facility using a steam generating unit as defined in 60.40b or 60.40c. | 211 | Extractors of crude petroleum and natural gas. |
| | 321 | Manufacturers of lumber and wood products. |
| | 322 | Pulp and paper mills. |
| | 325 | Chemical manufacturers. |
| | 324 | Petroleum refiners and manufacturers of coal products. |
| | 316, 326, 339 | Manufacturers of rubber and miscellaneous plastic products. |

| Category | NAICS code [1] | Examples of potentially regulated entities |
|---|---|---|
| | 331 | Steel works, blast furnaces. |
| | 332 | Electroplating, plating, polishing, anodizing, and coloring. |
| | 336 | Manufacturers of motor vehicle parts and accessories. |
| | 221 | Electric, gas, and sanitary services. |
| | 622 | Health services. |
| | 611 | Educational Services. |

[1] North American Industry Classification System (NAICS) code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rule. To determine whether your facility is regulated by the proposed rule, you should examine the applicability criteria in § 60.40a, § 60.40b, or § 60.40c of 40 CFR part 60. If you have any questions regarding the applicability of the proposed rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. *World Wide Web (WWW).* Following the Administrator's signature, a copy of the proposed amendments will be posted on the Technology Transfer Network's (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

*Public Hearing.* If a public hearing is requested, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina or at an alternate site nearby. Contact Mr. Christian Fellner at 919–541–4003 to request a hearing, to request to speak at a public hearing, to determine if a hearing will be held, or to determine the hearing location.

*Outline.* The information presented in this preamble is organized as follows:

I. Background
II. Proposed Amendments
A. Proposed Substantive Amendments to Subpart D
B. Proposed Substantive Amendments to Subpart Da
C. Proposed Substantive Amendments to Subpart Db
D. Proposed Substantive Amendments to Subpart Dc
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paper Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

## Background

EPA promulgated amendments to the new source performance standards for steam generating units on February 27, 2006 (71 FR 9866). The amendments added new emissions limits and compliance requirements applicable to units constructed, modified, or reconstructed after February 28, 2005, for electric utility steam generating units in 40 CFR part 60, subpart Da; industrial-commercial-institutional steam generating units in 40 CFR part 60, subpart Db; and small industrial-commercial-institutional steam generating units in 40 CFR part 60, subpart Dc. In addition, an alternative sulfur dioxide ($SO_2$) emissions limit was added to subparts Db and Dc for steam generating units for which construction, modification, or reconstruction was commenced prior to February 28, 2005.

Petitions for reconsideration of the amendments were filed by the Utility Air Regulatory Group and the Council of Industrial Boiler Owners. The EPA has decided to grant reconsideration to the amendments to the extent specified in the proposed rule. The amendments proposed by this action address issues for which the petitioners requested reconsideration[1] (see docket entries EPA–HQ–OAR–2005–0031–0224 and EPA–HQ–OAR–2005–0031–0225).

As part of this action, EPA is also proposing to amend other rule language to correct technical omissions, typographical errors, cross-reference errors, grammatical errors, and various other issues that have been identified since promulgation. The proposed amendments would not significantly change EPA's original projections for the rule's compliance costs, environmental benefits, burden on industry, or the number of affected facilities.

Finally, as part of the February 28, 2005, proposal to the steam generating unit NSPS, EPA proposed several amendments designed to minimize the continuous emission monitoring systems (CEMS) burden for sources subject to both the NSPS under 40 CFR part 60 and the acid rain regulations under 40 CFR part 75 (70 FR 9720). The intent of these proposed amendments is to address the inconsistent and duplicative CEM requirements in the two rules while still maintaining the integrity of the separate NSPS and acid rain programs. EPA received five comment letters on these proposed amendments. The comments were generally supportive of the amendments, but due to the need for additional internal EPA review, EPA did not include the CEM protocol amendments with the other steam generating unit NSPS amendments that were promulgated on February 27, 2006. EPA intends to include the final CEM requirement amendments with the final action of this reconsideration. A detailed description of the proposed amendments to the CEM requirements is available in the docket.

## II. Proposed Amendments

EPA is proposing to amend 40 CFR part 60, subparts D, Da, Db, and Dc to clarify the intent for applying and implementing specific rule requirements and to correct unintentional technical omissions and editorial errors. A summary of the proposed substantive amendments to the NSPS for steam generating units and the rationale for these amendments are presented below.

In addition, EPA is proposing to republish 40 CFR 60.17 (Incorporations by reference) and subparts D, Da, Db, and Dc in their entirety. The proposed amendments include updating 40 CFR 60.17 to be consistent with the recent formatting style used in subpart KKKK of 40 CFR part 60 and revising the wording and writing style to be more consistent across all the NSPS subparts applicable to steam generating units. EPA does not intend for these editorial revisions to substantively change any of

[1] An issue EPA is not granting reconsideration on is UARG's request "EPA should also clarify that PM CEMS data would not be 'credible evidence' of a violation of the applicable PM standard for a source during a period for which the source has not otped to use PM CEMS to determine compliance."

the technical or administrative requirements of the subparts and has concluded that these do not do so. The various subparts were promulgated at different times and, therefore, vary somewhat in style. EPA has concluded that it is appropriate at this time to reconcile these various styles in order to provide consistency across the subparts. To the extent that the editorial revisions do effect any unintended substantive changes, EPA will correct the problem in taking final action on the proposed rule. The docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2005–0031) contains complete redline/strike-out versions of each subpart, which allows direct comparison of all of the proposed amended rule text with the existing rule text.

*A. Proposed Substantive Amendments to Subpart D*

1. Alternative Emissions Standards

Subpart D of 40 CFR part 60 establishes nitrogen oxides ($NO_X$), $SO_2$, and PM emission standards for steam generating units that began construction between August 17, 1971 and September 18, 1978. Continuous compliance with these emissions standards is determined by comparison of the applicable emissions limit to the actual $NO_X$ and $SO_2$ emissions measured by CEMS and averaged over three contiguous 1-hour periods.

When subpart D was originally developed, the $NO_X$ standards were achievable with the use of available combustion controls, and the $SO_2$ standards were achievable by burning low-sulfur fuels. EPA has concluded some of the electric utility steam generating units presently subject to subpart D will install additional post-combustion controls because they are subject to $NO_X$ and $SO_2$ emissions standards implemented by other air programs after subpart D was promulgated. In many cases, compliance with these other $NO_X$ and $SO_2$ standards is based on 30-day or longer rolling averages instead of the 3-hour averaging period used for the subpart D standards. For example, a coal-fired electric utility steam generating unit subject to both the subpart D NSPS and the Regional Haze Regulations must meet: (1) A 3-hour average $SO_2$ emission of 1.2 pounds per million Btu of heat input (lb/MMBtu) and (2) the Best Available Retrofit Technology (BART) presumptive 30-day rolling average $SO_2$ emissions limit of 0.15 lb/MMBtu or 95 percent reduction in potential emissions. This requires the owners and operators of the units subject to both subpart D and BART to collect and record data and perform compliance determinations for two different averaging periods.

EPA is proposing to allow owners and operators of steam generating units subject to subpart D to elect to comply with the $NO_X$ and $SO_2$ standards for modified units under subpart Da. These standards are based on 30-day rolling averages and would be an alternative to meeting the existing applicable 3-hour average $NO_X$ and $SO_2$ standards in subpart D. Adding these alternative 30-day average $NO_X$ and $SO_2$ standards to subpart D would simplify the compliance requirements and add fuel choice flexibility.

Since averaging time is an important consideration when selecting the numerical level for an emissions standard, the limits EPA is proposing as an alternative to the existing 3-hour average based standards are significantly lower and represent emissions levels achieved by electric utility steam generating units retrofitted with post-combustion controls. As an alternative to the existing 3-hour average subpart D $SO_2$ standard of 0.8 or 1.2 lb/MMBtu (depending on fuel type burned), EPA is proposing to allow a $SO_2$ fuel neutral emissions limit of 1.4 pounds per megawatts hour of output (lb/MWh), 0.15 lb/MMBtu, or 90 percent reduction of potential $SO_2$ emissions based on a 30-day rolling average. This emissions limit could be applied to any electric utility steam generating unit subject to subpart D regardless of the type of fuel burned. For the $NO_X$ emissions limit, EPA is proposing a fuel neutral 30-day rolling average emissions limit of 1.4 lb/MWh or 0.15 lb/MMBtu as an alternative to the existing subpart D 3-hour $NO_X$ emissions limits of 0.2 to 0.8 lb/MMBtu (depending on the type of fuel burned).

To use the alternative standards, an owner or operator would request permission from the EPA Administrator for the affected source to begin complying with the alternative 30-day average $NO_X$ and $SO_2$ standards. After demonstrating initial compliance with the 30-day average standards, the 30-day average standards would apply to the source for the remainder of the operating life of the unit. The decision to comply with the alternative 30-day average $NO_X$ and $SO_2$ emissions standards would be a one-time and irreversible decision, i.e., an owner or operator would not be allowed to switch between complying with the 3-hour average standards and the 30-day rolling average standards. For owners and operators who decide to continue to demonstrate compliance based on the 3-hour rolling average standards, demonstrating that a unit achieved the 30-day average standards does not remove the obligation to demonstrate continuous compliance with the 3-hour average based standards.

2. Alternative PM CEMS Monitoring

The amendments to subpart Da in 40 CFR part 60, promulgated on February 27, 2006, allow affected owners and operators of electric utility steam generating units subject to subpart Da to install and operate a CEMS that measures PM as an alternative to continuously monitoring opacity. EPA is proposing that the same alternative monitoring provisions be added to subpart D. EPA has concluded that since PM CEMS measure the pollutant of primary interest they provide adequate assurance of PM control device performance, and continuous opacity monitoring is an unnecessary burden to affected sources using PM CEMS.

3. Alternate Carbon Monoxide Monitoring for Oil-Fired Steam Generating Units

Under subpart D, all affected electric utility steam generating units (including those that only burn natural gas) are subject to PM and visible emissions limit standards. Steam generating units burning gaseous fuels do not require a continuous opacity monitoring system (COMS), but all other affected facilities burning liquid or solid fuels are required to continuously monitor opacity. Opacity readings from the COMS are not only used to determine compliance with the opacity standard, but also serve as a continuous indicator of PM emission levels. Elevated opacity levels are often indications of operating problems with the PM control device and/or poor combustion.

In general, the level of filterable PM emissions from oil-fired steam generating units is a function of the completeness of fuel combustion as well as the ash content in the oil. Distillate oil contains negligible ash content, so the filterable PM emissions from distillate oil-fired steam generating units are primarily comprised of carbon particles resulting from incomplete combustion of the oil. Residual oil contains larger amounts of ash (as much as 0.2 percent) and additional PM results from the formation of coke, black smoke (soot), and sulfates. Coke is comprised of larger particles and results from poor atomization of the fuel; soot results from incomplete fuel combustion. The larger coke particles comprise the majority of the mass of PM emissions, but are not highly visible. Smaller black smoke particles are comprised of fine particulate carbon and

have relatively little mass, but have maximum visibility (opacity) impacts. Therefore, opacity for oil-fired steam generating units is not always a reliable indicator of the total mass of PM emissions.

Carbon monoxide (CO) emissions from oil-fired steam generating units depend on the combustion efficiency of the fuel. The presence of CO in the exhaust gases from an oil-fired steam generating unit results principally from incomplete fuel combustion, and is an indicator of the levels of both PM and organic compound emissions, and that a unit is being operated improperly or not being well maintained. Furthermore, the PM emissions from oil-fired steam generating units are related to the sulfur content of the oil. Naturally low sulfur crude oil and desulfurized oils are higher quality fuels and exhibit lower viscosity and reduced asphaltene, ash, and sulfur content, which results in better atomization and improved overall combustion properties.

To provide additional flexibility and decrease the compliance burden on affected facilities, EPA is requesting comments on whether oil-fired steam generating units should be permitted to continuously monitoring CO as an alternative to continuously monitoring opacity. Many oil-fired steam generating units subject to subpart D are able to achieve the PM emissions limit without the use of post-combustion PM controls (*e.g.*, electrostatic precipitator (ESP) or fabric filter). For these units, opacity levels are primarily determined by the combustion efficiency of the steam generating units. Since CO emissions are also a direct function of the combustion efficiency, EPA has concluded that either opacity or CO emissions can be used as reliable indicators of PM emissions levels from oil-fired steam generating units not using PM or CO post-combustion controls. Additionally, in situations where an oil-fired steam generating unit is using a wet scrubber and opacity monitoring using COMS is not feasible due to the water vapor in the gas stream exiting the control device, continuous CO monitoring provides an alternative means for monitoring PM emissions. The alternative would not apply to oil-fired steam generating units using an ESP or fabric filter for PM control or a CO catalyst to reduce CO emissions. Opacity can be used by operators to identify problems with the PM control equipment, and post-combustion PM and CO controls alter the relationship between CO and PM emissions.

If this alternative is added to subpart D, owners and operators of affected oil-fired steam generating units without post-combustion technologies to reduce PM, $SO_2$, or CO (except a wet scrubber) would be able to elect to install and operate a CO CEMS in place of a COMS. The owner or operator would be required to periodically review the CO emissions measurements from the CEMS. If the CO emissions level exceeds a specified threshold or action level, the owner or operator would need to initiate investigation of the relevant combustion controls or equipment upon first discovery of the elevated CO emissions incident and, if necessary, take corrective action to adjust or repair the combustion controls or equipment to return the steam generating unit operation to CO emissions levels below the action level.

To select a CO value for the action value, EPA reviewed CO emissions data and CO emissions limits established by State air permits and for existing oil-fired steam generating units. Based on this review, EPA concluded that daily average CO emissions levels below 0.15 lb/MMBtu are representative of the levels of CO emissions achievable by properly operated and maintained oil-fired steam generating units. Thus, for this alternative EPA proposes to use a daily average CO emissions level of 0.15 lb/MMBtu as the action level above which corrective action would be required. EPA is requesting comment on whether this is an appropriate level or whether a different level and/or averaging time should be used.

The fuel characteristics of distillate oil and low sulfur oils result in inherently lower PM emissions. EPA is proposing the CO monitoring alternative be restricted to only those steam generating units burning distillate oil and residual oil that contains no more than 0.30 percent sulfur. As another option, since distillate oil containing no more than 0.05 weight percent sulfur (500 parts per million (ppm) S) has relatively low emissions, should steam generating units burning 500 ppm S distillate oil exclusively or in combination with gaseous fuels be exempt from the COMS requirement, while all other oil-fired facilities would still be required to install COMS?

Finally, should the CO level of 0.15 lb/MMBtu be established as a CO emissions limit or as a deviation that triggers corrective action? If exceeding the CO level is a deviation requiring the owner or operator to take corrective action, what percent of the time should an affected source be allowed to exceed the CO action level before it is considered a potential violation? As an alternative, since monitoring CO provides equivalent or superior protection to the environment as monitoring opacity, would it be appropriate to exempt oil-fired steam generating units monitoring CO emissions from the opacity standard completely? If oil-fired steam generating units were exempt from the opacity standard, the CO level would be established as a CO emissions limit and any exceedance above the level during operation would be a potential violation. Draft language EPA is considering is available in the docket.

*B. Proposed Substantive Amendments to Subpart Da*

1. Applicability

EPA is proposing language to clarify the applicability of subpart Da to electric utility steam generating units to clearly state the intent of the amendments published on February 27, 2006. EPA is revising 40 CFR 60.40Da to clarify that integrated gasification combined cycle (IGCC) facilities are subject to subpart Da, and not the stationary combustion turbine NSPS, subpart KKKK, 40 CFR part 60.

2. Compliance Procedures

Compliance with the PM emissions limits in subpart Da is determined by conducting performance tests, unless the owner or operator elects to demonstrate compliance using PM CEMS. During the performance test, the owner or operator also establishes opacity and appropriate control device operating parameter limits based on the actual values measured during the test. Following the performance test, the owner or operator continuously monitors opacity and the selected operating parameters with respect to the established limits. An owner or operator of an affected steam generating unit using an ESP must monitor voltage and secondary current; while affected sources using a fabric filter must install and monitor bag leak detectors. If the threshold values are exceeded, the owner or operator is required to perform a new performance test to demonstrate that the affected source is still in compliance with the applicable emissions limit.

The PM not collected by an ESP and emitted in the ESP exhaust gas stream has a relatively constant size distribution, which does not change significantly as the ESP performance changes. Consequently, ESP opacity variations from the baseline established during the performance test reflect changes in PM mass emissions. For fabric filters, the opacity and PM relationship is not as constant. An increase in PM emissions from a fabric filter can occur from holes developing

in the bags. This results in a size distribution change of the particles being emitted in the fabric filter exhaust gas stream. Since the particles going through the holes are the same size distribution as the inlet particles (not just the fine diameter particles that escape capture and pass through the bag filter material) PM mass emissions from a fabric filter can increase substantially with little impact on opacity. For fabric filters, bag leak detectors are more sensitive to increases in PM emissions than opacity.

EPA is soliciting comment on whether opacity, in conjunction with either monitoring ESP parameters or using fabric filter bag leak detectors, are adequate and the appropriate monitoring parameters for demonstrating continuous proper operation of the PM control device. If not, what parameters should be monitored, and what percent deviation from the baseline is appropriate? EPA is specifically asking if the 110 percent of the baseline opacity value measured during the performance test is an appropriate indicator of the need for a new performance test. Would it be appropriate to add a 5 percent allowable deviation (on a 30-day rolling average) above the baseline opacity or set a lower indicator limit of 5 percent per clock hour regardless of the opacity value measured during the PM performance test? Since facilities using fabric filters generally have low opacity emissions, an hourly opacity limit of 5 percent would apply for them. In contrast, facilities using ESP to control PM emissions tend to have higher opacity emissions, and would still be able to establish a baseline opacity.

To monitor the performance of an ESP, are voltage and secondary current appropriate additional parameters to monitor, and is the 10 percent deviation from the baseline an appropriate amount of variation to trigger a new performance test? As an alternative to establishing a baseline voltage and secondary current, should daily use of an ESP predictive performance computer model be required? One advantage of using a predictive ESP model is that ESP performance is impacted by the properties of the ash. Without using a model that accounts for both the ash characteristics (amount and resistivity) and the ESP operating parameters, voltage and secondary current cannot be directly correlated to PM emissions. If use of a predictive ESP model was added, an affected facility would be required to establish the model parameters during each performance test and then use daily average ash characteristics and ESP parameters to determine if a new performance test has been triggered. Also, since ash characteristics vary significantly even within the same coal type, EPA is considering requiring that the baseline be re-determined (or model parameters adjusted) each time the affected facility changes the ratio of fuels used or takes delivery from a new coal mine or supplier. In addition, to monitor the performance of a fabric filter, is a 5 percent bag leak detector alarm rate on a 30-day rolling basis an appropriate trigger for a performance test?

EPA is also proposing to shorten the time period required to conduct the "triggered" performance test from 60 days to 45 operating days. Should the period be further shortened to 30 operating days from the day of the initial exceedance, or is 60 operating days appropriate?

3. Alternate Carbon Monoxide Monitoring for Oil-Fired Steam Generating Units

One technical error EPA is correcting is the continuous opacity monitoring requirements for oil-fired steam generating units subject to subparts Da, Db, and Dc. Affected industrial, commercial, and institutional steam generating units burning only low sulfur oil have relatively low filterable particulate matter (PM) emissions and are exempt from the PM standard, but still must continuously monitor opacity. For these units, opacity serves both as an emissions limit on visible emissions and as an indicator that the steam generating unit and associated air pollution controls are being properly maintained and operated. The intent of the amendments was to maintain the PM exemption for affected facilities burning low sulfur oil and therefore not require an initial PM performance test. It was not the intent of the amendments to eliminate continuous opacity monitoring for these facilities without first requesting public comment.

Subpart Da requires all affected existing oil-fired steam generating units to demonstrate compliance with the PM standard through a performance test and installation of a COMS to monitor visible emissions. Similar to subpart D, EPA is requesting comment on whether affected steam generating units burning distillate oil containing less than 0.05 weight percent sulfur (500 ppm S) should be exempt from the COMS requirement. As an alternative, should EPA permit low sulfur oil-fired subpart Da affected facilities without PM, $SO_2$, or CO post-combustion controls (except a wet scrubber) to be allowed to use the same CO monitoring alternative for steam generating units subject to subpart D as discussed in Section A.3 of this notice instead of using a COMS? If EPA adopts this provision, the affected source using a CO CEMS in place of a COMS would be subject to the same daily CO action level of 0.15 lb/MMBtu as would be applied to affected sources subject to subpart D. Similar to units with PM CEMS, the 20 percent opacity standard would still apply to the source, but opacity would not be required to be continuously monitored. Since residual oil-fired steam generating units generally require post-combustion controls to achieve the PM standard in subpart Da, in practice EPA would expect that only owners and operators of distillate oil-fired units and residual oil-fired units using wet scrubbers would elect to use this alternative.

4. Alternative PM CEMS Monitoring

For owners and operators of affected electric utility steam generating units electing to use PM CEMS to demonstrate continuous compliance with the applicable PM emissions limit, EPA is proposing a phased data availability requirement. Initially, PM CEMS hourly averages would be required to be obtained for a minimum of 75 percent of all operating hours on a 30-day rolling average basis. Beginning on January 1, 2012, valid PM CEMS hourly averages would be required for a minimum of 90 percent of all operating hours on a 30-day rolling average basis; this value is consistent with the recently amended 90 percent data availability requirement in subpart Da for $NO_X$ and $SO_2$ CEMS.

EPA is also requesting comments on the proper emissions averaging time for units electing to use PM CEMS. EPA is proposing to maintain that PM emissions be averaged over each operating day, but is requesting comments on whether, alternatively, this average should be on an 8-hour, 24-hour, 30-day, or other appropriate rolling average period. Longer averaging times allow for more stable emission rates and tend toward a lower standard. Shorter averaging times introduce more variability in emission rates and tend toward higher standards. EPA requests that each commenter provide an appropriate emission standard for use with any suggested alternate averaging time.

*C. Proposed Substantive Amendments to Subpart Db*

1. Emissions Standards

EPA is proposing that steam generating units subject to subpart Db that burn natural gas or coke oven gas

(COG) be exempt from the PM emissions standard. Both natural gas and COG-fired steam generating units do not use post-combustion PM controls, and have inherently low PM emissions. As a result, the PM performance test results in limited environmental benefit.

EPA is also proposing to revise the procedure used to grant site-specific $NO_X$ limits under 40 CFR 60.44b. Only a limited number of site-specific limits have been granted under this provision in the past 20 years. Currently, EPA amends subpart Db by a formal notice and comment rulemaking when granting a site-specific limit. To simplify the procedure and reduce administrative burden, EPA is proposing to grant site-specific $NO_X$ limits by sending a letter to the facility owner or operator detailing the site-specific limit and publishing that letter in EPA's applicability determination index.

2. Units Burning Coke Oven Gas

Because of the specific characteristics of the steel industry, EPA is proposing to allow a 30-day exceedance per year from the $SO_2$ emission limit for steam generating units burning COG exclusively or in combination with other gaseous fuels or distillate oil. COG desulfurization facilities require periodic maintenance, but the coking process continues during this time, and it is cost prohibitive to store the COG. Coke-making facilities would either have to install a second desulfurization unit or flare the COG and burn natural gas during the maintenance period. Of these two options, the least cost option would be to flare the COG and use natural gas during the annual maintenance. This would result in both increased cost to the steel industry and $NO_X$ emissions without achieving any reductions in $SO_2$. State permitting authorities have recognized this and have included similar exemptions in their permits.

3. Compliance Procedures

EPA is proposing to amend 40 CFR 60.49b(r) to add a detailed procedure for affected facilities complying with the fuel based limit.

4. Alternate Opacity Monitoring

Since COG-fired steam generating units have filterable PM emissions similar to natural gas, EPA is proposing to exempt industrial-commercial-institutional steam generating units burning COG from the COM requirement.

Under subpart Db, 40 CFR part 60, affected facilities burning coal (except COG), wood, and oil (other than very low sulfur oil) are subject to the PM standard. All coal (except COG), wood, and oil-fired affected facilities are subject to the opacity standard, and are required to install a COMS. Consistent with the CO monitoring alternative for steam generating units subject to subparts D or Da as discussed in Section A.3 of this notice, EPA is proposing to exempt affected industrial-commercial-institutional steam generating units not using post-combustion technology to reduce $SO_2$ or PM emissions and burning only distillate oil containing no greater than 0.05 weight percent (500 ppm) sulfur and low sulfur gasified fuels (desulfurized gasified coal and gasified wood) from the COMS requirements in subpart Db. The filterable PM emissions from sources burning low sulfur distillate are inherently low (less than 0.02 lb/MMBtu), and this change would provide flexibility for natural gas-fired steam generating units to burn distillate oil as a backup fuel without having to install and operate a COMS. As an alternative, should EPA permit low sulfur (less than 0.30 weight percent sulfur) affected oil-fired units not using post-combustion technology (except a wet scrubber) to reduce emissions of $SO_2$, PM, or CO to install a CO CEMS in place of a COMS? EPA is considering using the same daily CO action level of 0.15 lb/MMBtu as would be applied to affected sources subject to subpart D or Da. The industrial boiler MACT requires new oil-fired units to monitor CO; allowing this alternate monitoring would reduce the burden on the regulated community while still providing adequate environmental protection.

*D. Proposed Substantive Amendments to Subpart Dc*

1. Emissions Standards

EPA is proposing that industrial-commercial-institutional steam generating units subject to subpart Dc that burn natural gas or low-sulfur oil be exempt from the PM emissions standard. This amendment reflects EPA's intent for applying the PM emissions limits to industrial-commercial-institutional steam generating units subject to subpart Dc, and would be consistent with the exemption from the PM emissions limits allowed for units subject to Dc that were constructed before February 28, 2005.

2. Compliance Procedures

EPA is proposing to clarify the fuel recordkeeping requirements in 40 CFR 60.48c(g). Owners or operators of steam generating units combusting only natural gas, wood, and distillate oil containing less than 0.5 weight percent sulfur may elect to record fuel usage amounts on a monthly instead of daily basis. In addition, owners or operators of steam generating units with maximum heat input capacities of less than 30 MMBtu/hr and combusting coal and residual oil may elect to record the amounts of fuels combusted each calendar month. EPA has concluded that allowing monthly fuel usage monitoring for these steam generating units provides adequate assurance of compliance, as well as minimizing the burden to affected facilities.

EPA is considering and requesting comments on whether owners or operators of multiple steam generating units located on a contiguous property facility where the only fuels combusted in any steam generating unit located on that property are natural gas, wood, and distillate oil containing no more than 0.50 weight percent sulfur should have the option to elect to only record the total amounts of fuels delivered to the property each calendar month instead of the amount combusted at each affected facility. Draft language EPA is requesting comment on for a potential 40 CFR 60.48c(g)(3) is as follows:

"(3) As an alternative to meeting the requirements of paragraph (g)(1) of this section, the owner or operator of an affected facility or multiple affected facilities located on a contiguous property unit where the only fuels combusted in any steam generating unit (including steam generating units not subject to this subpart) at that property are natural gas, wood, distillate oil meeting the most current requirements in § 60.42c to use fuel certification to demonstrate compliance with the $SO_2$ standard, and/or fuels, excluding coal and residual oil, not subject to an emissions standard (excluding opacity) may elect to record and maintain records of the total amount of each steam generating unit fuel delivered to that property during each calendar month."

This alternative would be restricted to properties where no coal or residual oil is combusted in any steam generating unit located at that property. In addition, the alternative would require that all distillate oil-fired steam generating units located on the property (including those not subject to subpart Dc) only combust distillate oil containing no more than 0.50 weight percent sulfur. If subpart Dc is amended in the future to require the use of lower sulfur distillate oil, all steam generating units located at that property would have to switch to the lower sulfur distillate oil for the owner or operator to elect to use this alternative.

3. Alternate Opacity Monitoring

Under subpart Dc, 40 CFR part 60, affected steam generating units burning coal, wood, and oil containing more than 0.5 weight percent sulfur are subject to the PM standard. All coal, wood, and oil-fired affected facilities are subject to the opacity standard, but affected facilities burning distillate oil containing less than 0.5 weight percent sulfur are exempt from the COM requirement. EPA is proposing that owners and operators of affected steam generating units burning desulfurized gasified coal and gasified wood and not using post-combustion PM or $SO_2$ controls be exempt from continuously monitoring opacity. Should the exemption be limited to fuels with potential $SO_2$ emissions less than 26 nanograms per Joule heat input (0.06 lb/MMBtu), or should a different potential sulfur limit be required? Sources supporting this exemption should provide emissions data demonstrating that uncontrolled PM emissions are consistently below 0.030 lb/MMBtu. These facilities would still be subject to the PM emission limit and opacity standard, but exempt from the COMS requirement.

Finally, should affected steam generating units burning residual oil containing less than 0.5 weight percent sulfur and/or desulfurized gasified coal and gasified wood have the option of monitoring CO emissions in place of opacity consistent with the CO monitoring alternative for steam generating units subject to subpart D as discussed in Section A.3 of this notice? EPA is requesting comment on whether residual oil-fired steam generating units subject to subpart Dc should be able to elect to install a CO CEMS and maintain daily average CO emission below a level of 0.15 lb/MMBtu in place of the COMS requirement. This would reduce the compliance burden for sources already monitoring CO emissions (due to the boiler MACT or other regulation) and still provide adequate environmental protection.

## III. 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 (EO) 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the EO. EPA has concluded that the amendments EPA is requesting additional comments on will not change the costs or benefits of the rule.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The proposed amendments result in no changes to the information collection requirements of the existing standards of performance and would have no impact on the information collection estimate of projected cost and hour burden made and approved by the Office of Management and Budget (OMB) during the development of the existing standards of performance. Therefore, the information collection requests have not been amended. OMB has previously approved the information collection requirements contained in the existing standards of performance (40 CFR part 60, subparts Da, Db, and Dc) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the standards were promulgated on June 11, 1979 (40 CFR part 60, subpart Da, 44 FR 33580), November 25, 1986 (40 CFR part 60, subpart Db, 51 FR 42768), and September 12, 1990 (40 CFR part 60, subpart Dc, 55 FR 37674). OMB assigned OMB control numbers 2060–0023 (ICR 1053.07) for 40 CFR part 60, subpart Da, 2060–0072 (ICR 1088.10) for 40 CFR part 60, subpart Db, 2060–0202 (ICR 1564.06) for 40 CFR part 60, subpart Dc. Copies of the information collection request document(s) may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. 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 generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA is proposing to reduce the fuel usage recordkeeping requirement for subpart Dc facilities. In addition, EPA is taking comment on minimizing the continuous opacity monitoring requirements for oil-fired facilities. EPA has, therefore, concluded that this proposed rule will relieve regulatory burden for all affected small entities. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 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, section 205 of the 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 the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed amendments will contain no Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the proposed amendments are not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments. Therefore, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

*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" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed amendments do not have federalism implications. They 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. The proposed amendments will not impose substantial direct compliance costs on State or local governments; it will not preempt State law. Thus, Executive Order 13132 does not apply to the proposed amendments.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The proposed amendments do not have tribal implications, as specified in Executive Order 13175. The proposed amendments will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the proposed amendments.

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

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

This proposed action is not subject to the Executive Order because it is not economically significant as defined under Executive Order 12866, and because EPA interprets Executive Order 13045 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 Order has the potential to influence the regulation. The proposed amendments are based on technology performance and not on health or safety risks and, therefore, are not subject to Executive Order 13045.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This proposed action 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 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 us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through OMB, explanations when EPA decides not use available and applicable voluntary consensus standards.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of voluntary consensus standards is not relevant to this action.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 31, 2007.

**Stephen L. Johnson,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of the Federal Regulations is proposed to be amended as follows:

## PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

**Subpart A—[Amended]**

2. Section 60.17 is amended by revising paragraph (a) to read as follows:

**§ 60.17 Incorporation by Reference**

* * * * *

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

(1) ASTM A99–76, 82 (Reapproved 1987), Standard Specification for Ferromanganese, incorporation by reference (IBR) approved for § 60.261.

(2) ASTM A100–69, 74, 93, Standard Specification for Ferrosilicon, IBR approved for § 60.261.

(3) ASTM A101–73, 93, Standard Specification for Ferrochromium, IBR approved for § 60.261.

(4) ASTM A482–76, 93, Standard Specification for Ferrochromesilicon, IBR approved for § 60.261.

(5) ASTM A483–64, 74 (Reapproved 1988), Standard Specification for Silicomanganese, IBR approved for § 60.261.

(6) ASTM A495–76, 94, Standard Specification for Calcium-Silicon and Calcium Manganese-Silicon, IBR approved for § 60.261.

(7) ASTM D86–78, 82, 90, 93, 95, 96, Distillation of Petroleum Products, IBR approved for §§ 60.562–2(d), 60.593(d), and 60.633(h).

(8) ASTM D129–64, 78, 95, 00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for §§ 60.106(j)(2), 60.335(b)(10)(i), and Appendix A: Method 19, 12.5.2.2.3.

(9) ASTM D129–00 (Reapproved 2005), Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for § 60.4415(a)(1)(i).

(10) ASTM D240–92, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 60.46(c).

(11) ASTM D240–76, 92, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 60.296(b) and Appendix A: Method 19, Section 12.5.2.2.3.

(12) ASTM D270–65, 75, Standard Method of Sampling Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, Section 12.5.2.2.1.

(13) ASTM D323–82, 94, Test Method for Vapor Pressure of Petroleum Products (Reid Method), IBR approved for §§ 60.111(l), 60.111a(g), 60.111b(g), and 60.116b(f)(2)(ii).

(14) ASTM D388–99 (Reapproved 2004) ε [1], Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.41(g) of subpart D of this part, 60.45(f)(4)(i), 60.45(f)(4)(ii), 60.45(f)(4)(vi), 60.41Da of subpart Da of this part, and 60.41b of subpart Db of this part, 60.41c of subpart Dc of this part.

(15) ASTM D388–77, 90, 91, 95, 98a, Standard Specification for Classification of Coals by Rank, IBR approved for 60.251(b) and (c) of subpart Y of this part.

(16) ASTM D388–77, 90, 91, 95, 98a, 99 (Reapproved 2004) ε [1], Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.24(h)(8), and 60.4102.

(17) ASTM D396–98, Standard Specification for Fuel Oils, IBR approved for §§ 60.41b of subpart Db of this part and 60.41c of subpart Dc of this part.

(18) ASTM D396–78, 89, 90, 92, 96, 98, Standard Specification for Fuel Oils, IBR approved for 60.111(b) of subpart K of this part and 60.111a(b) of subpart Ka of this part.

(19) ASTM D975–78, 96, 98a, Standard Specification for Diesel Fuel Oils, IBR approved for §§ 60.111(b) of subpart K of this part and 60.111a(b) of subpart Ka of this part.

(20) ASTM D1072–80, 90 (Reapproved 1994), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.335(b)(10)(ii).

(21) ASTM D1072–90 (Reapproved 1999), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.4415(a)(1)(ii).

(22) ASTM D1137–75, Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer, IBR approved for § 60.45(f)(5)(i).

(23) ASTM D1193–77, 91, Standard Specification for Reagent Water, IBR approved for Appendix A: Method 5, Section 7.1.3; Method 5E, Section 7.2.1; Method 5F, Section 7.2.1; Method 6, Section 7.1.1; Method 7, Section 7.1.1; Method 7C, Section 7.1.1; Method 7D, Section 7.1.1; Method 10A, Section 7.1.1; Method 11, Section 7.1.3; Method 12, Section 7.1.3; Method 13A, Section 7.1.2; Method 26, Section 7.1.2; Method 26A, Section 7.1.2; and Method 29, Section 7.2.2.

(24) ASTM D1266–87, 91, 98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

(25) ASTM D1266–98 (Reapproved 2003) ε [1], Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for § 60.4415(a)(1)(i).

(26) ASTM D1475–60 (Reapproved 1980), 90, Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products, IBR approved for § 60.435(d)(1), Appendix A: Method 24, Section 6.1; and Method 24A, Sections 6.5 and 7.1.

(27) ASTM D1552–83, 95, 01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for §§ 60.106(j)(2), 60.335(b)(10)(i), and Appendix A: Method 19, Section 12.5.2.2.3.

(28) ASTM D1552–03, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for § 60.4415(a)(1)(i).

(29) ASTM D1826–94, Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for §§ 60.45(f)(5)(ii) and 60.46(c)(2).

(30) ASTM D1826–77, 94, Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for § 60.296(b)(3) and Appendix A: Method 19, Section 12.3.2.4.

(31) ASTM D1835–03a, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for § 60.41Da of subpart Da of this part, 60.41b of subpart Db of this part, and 60.41c of subpart Dc of this part.

(32) ASTM D1945–96, Standard Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for § 60.45(f)(5)(i).

(33) ASTM D1946–77, 90 (Reapproved 1994), Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.18(f)(3), 60.564(f)(1), 60.614(e)(2)(ii), 60.614(e)(4), 60.664(e)(2)(ii), 60.664(e)(4), 60.704(d)(2)(ii), and 60.704(d)(4).

(34) ASTM D1946–90 (Reapproved 1994), Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 60.45(f)(5)(i).

(35) ASTM D2013–72, 86, Standard Method of Preparing Coal Samples for Analysis, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(36) ASTM D2015–96, Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter, IBR approved for §§ 60.45(f)(5)(ii) and 60.46(c)(2).

(37) ASTM D2015–77 (Reapproved 1978), 96, Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter, IBR

approved for Appendix A: Method 19, Section 12.5.2.1.3.

(38) ASTM D2016–74, 83, Standard Test Methods for Moisture Content of Wood, IBR approved for Appendix A: Method 28, Section 16.1.1.

(39) ASTM D2234–76, 96, 97b, 98, Standard Methods for Collection of a Gross Sample of Coal, IBR approved for Appendix A: Method 19, Section 12.5.2.1.1.

(40) ASTM D2369–81, 87, 90, 92, 93, 95, Standard Test Method for Volatile Content of Coatings, IBR approved for Appendix A: Method 24, Section 6.2.

(41) ASTM D2382–76, 88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for §§ 60.18(f)(3), 60.485(g)(6), 60.564(f)(3), 60.614(e)(4), 60.664(e)(4), and 60.704(d)(4).

(42) ASTM D2504–67, 77, 88 (Reapproved 1993), Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved for § 60.485(g)(5).

(43) ASTM D2584–68 (Reapproved 1985), 94, Standard Test Method for Ignition Loss of Cured Reinforced Resins, IBR approved for § 60.685(c)(3)(i).

(44) ASTM D2597–94 (Reapproved 1999), Standard Test Method for Analysis of Demethanized Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Gas Chromatography, IBR approved for § 60.335(b)(9)(i).

(45) ASTM D2622–87, 94, 98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry," IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

(46) ASTM D2622–05, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry," IBR approved for § 60.4415(a)(1)(i).

(47) ASTM D2879–83, 96, 97, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for §§ 60.111b(f)(3), 60.116b(e)(3)(ii), 60.116b(f)(2)(i), and 60.485(e)(1).

(48) ASTM D2880–78, 96, Standard Specification for Gas Turbine Fuel Oils, IBR approved for §§ 60.111(b), 60.111a(b), and 60.335(d).

(49) ASTM D2908–74, 91, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, IBR approved for § 60.564(j).

(50) ASTM D2986–71, 78, 95a, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for Appendix A: Method 5, Section 7.1.1; Method 12, Section 7.1.1; and Method 13A, Section 7.1.1.2.

(51) ASTM D3173–73, 87, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(52) ASTM D3176–89, Standard Method for Ultimate Analysis of Coal and Coke, IBR approved for § 60.45(f)(5)(i).

(53) ASTM D3176–74, 89, Standard Method for Ultimate Analysis of Coal and Coke, IBR approved for Appendix A: Method 19, Section 12.3.2.3.

(54) ASTM D3177–75, 89, Standard Test Method for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(55) ASTM D3178–89, Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke, IBR approved for § 60.45(f)(5)(i).

(56) ASTM D3246–81, 92, 96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.335(b)(10)(ii).

(57) ASTM D3246–05, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.4415(a)(1)(ii).

(58) ASTM D3270–73T, 80, 91, 95, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method), IBR approved for Appendix A: Method 13A, Section 16.1.

(59) ASTM D3286–85, 96, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(60) ASTM D3370–76, 95a, Standard Practices for Sampling Water, IBR approved for § 60.564(j).

(61) ASTM D3792–79, 91, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for Appendix A: Method 24, Section 6.3.

(62) ASTM D4017–81, 90, 96a, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for Appendix A: Method 24, Section 6.4.

(63) ASTM D4057–81, 95, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, Section 12.5.2.2.3.

(64) ASTM D4057–95 (Reapproved 2000), Standard Practice for Manual Sampling of Petroleum and Petroleum Products, IBR approved for § 60.4415(a)(1).

(65) ASTM D4084–82, 94, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 60.334(h)(1).

(66) ASTM D4084–05, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for §§ 60.4360 and 60.4415(a)(1)(ii).

(67) ASTM D4177–95, Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, Section 12.5.2.2.1.

(68) ASTM D4177–95 (Reapproved 2000), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for § 60.4415(a)(1).

(69) ASTM D4239–85, 94, 97, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(70) ASTM D4294–02, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.335(b)(10)(i).

(71) ASTM D4294–03, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.4415(a)(1)(i).

(72) ASTM D4442–84, 92, Standard Test Methods for Direct Moisture Content Measurement in Wood and Wood-base Materials, IBR approved for Appendix A: Method 28, Section 16.1.1.

(73) ASTM D4444–92, Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters, IBR approved for Appendix A: Method 28, Section 16.1.1.

(74) ASTM D4457–85 (Reapproved 1991), Test Method for Determination of Dichloromethane and 1, 1, 1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph, IBR approved for Appendix A: Method 24, Section 6.5.

(75) ASTM D4468–85 (Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for §§ 60.335(b)(10)(ii) and 60.4415(a)(1)(ii).

(76) ASTM D4629–02, Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection, IBR

approved for §§ 60.49b(e) and 60.335(b)(9)(i).

(77) ASTM D4809–95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for §§ 60.18(f)(3), 60.485(g)(6), 60.564(f)(3), 60.614(d)(4), 60.664(e)(4), and 60.704(d)(4).

(78) ASTM D4810–88 (Reapproved 1999), Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length of Stain Detector Tubes, IBR approved for §§ 60.4360 and 60.4415(a)(1)(ii).

(79) ASTM D5287–97 (Reapproved 2002), Standard Practice for Automatic Sampling of Gaseous Fuels, IBR approved for § 60.4415(a)(1).

(80) ASTM D5403–93, Standard Test Methods for Volatile Content of Radiation Curable Materials, IBR approved for Appendix A: Method 24, Section 6.6.

(81) ASTM D5453–00, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(i).

(82) ASTM D5453–05, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.4415(a)(1)(i).

(83) ASTM D5504–01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for §§ 60.334(h)(1) and 60.4360.

(84) ASTM D5762–02, Standard Test Method for Nitrogen in Petroleum and Petroleum Products by Boat-Inlet Chemiluminescence, IBR approved for § 60.335(b)(9)(i).

(85) ASTM D5865–98, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 60.45(f)(5)(ii), 60.46(c)(2), and Appendix A: Method 19, Section 12.5.2.1.3.

(86) ASTM D6216–98, Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, IBR approved for Appendix B, Performance Specification 1.

(87) ASTM D6228–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 60.334(h)(1).

(88) ASTM D6228–98 (Reapproved 2003), Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for §§ 60.4360 and 60.4415.

(89) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, IBR approved for table 7 of Subpart IIII of this part.

(90) ASTM D6366–99, Standard Test Method for Total Trace Nitrogen and Its Derivatives in Liquid Aromatic Hydrocarbons by Oxidative Combustion and Electrochemical Detection, IBR approved for § 60.335(b)(9)(i).

(91) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for § 60.335(a).

(92) ASTM D6667–01, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(ii).

(93) ASTM D6667–04, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.4415(a)(1)(ii).

(94) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), IBR approved for Appendix B to part 60, Performance Specification 12A, Section 8.6.2.

(95) ASTM E168–67, 77, 92, General Techniques of Infrared Quantitative Analysis, IBR approved for §§ 60.593(b)(2) and 60.632(f).

(96) ASTM E169–63, 77, 93, General Techniques of Ultraviolet Quantitative Analysis, IBR approved for §§ 60.593(b)(2) and 60.632(f).

(97) ASTM E260–73, 91, 96, General Gas Chromatography Procedures, IBR approved for §§ 60.593(b)(2) and 60.632(f).

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## Subpart D—[Amended]

3. Part 60 is amended by revising subpart D to read as follows:

## Subpart D—Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971

Sec.

60.40 Applicability and designation of affected facility.
60.41 Definitions.
60.42 Standard for particulate matter (PM).
60.43 Standard for sulfur dioxide ($SO_2$).
60.44 Standard for nitrogen oxides ($NO_x$).
60.45 Emission and fuel monitoring.
60.46 Test methods and procedures.

## Subpart D—Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971

### § 60.40 Applicability and designation of affected facility.

(a) The affected facilities to which the provisions of this subpart apply are:

(1) Each fossil-fuel-fired steam generating unit of more than 73 megawatts (MW) heat input rate (250 million British thermal units per hour (MMBtu/hr)).

(2) Each fossil-fuel and wood-residue-fired steam generating unit capable of firing fossil fuel at a heat input rate of more than 73 MW (250 MMBtu/hr).

(b) Any change to an existing fossil-fuel-fired steam generating unit to accommodate the use of combustible materials, other than fossil fuels as defined in this subpart, shall not bring that unit under the applicability of this subpart.

(c) Except as provided in paragraph (d) of this section, any facility under paragraph (a) of this section that commenced construction or modification after August 17, 1971, is subject to the requirements of this subpart.

(d) The requirements of §§ 60.44 (a)(4), (a)(5), (b) and (d), and 60.45(f)(4)(vi) are applicable to lignite-fired steam generating units that commenced construction or modification after December 22, 1976.

(e) Any facility covered under subpart Da is not covered under this subpart.

### § 60.41 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, and in subpart A of this part.

*Boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

*Fossil-fuel fired steam generating unit* means a furnace or boiler used in the process of burning fossil fuel for the purpose of producing steam by heat transfer.

*Fossil fuel* means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials for the purpose of creating useful heat.

*Coal refuse* means waste-products of coal mining, cleaning, and coal preparation operations (e.g. culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material.

*Fossil fuel and wood residue-fired steam generating unit* means a furnace or boiler used in the process of burning fossil fuel and wood residue for the purpose of producing steam by heat transfer.

*Wood residue* means bark, sawdust, slabs, chips, shavings, mill trim, and other wood products derived from wood processing and forest management operations.

*Coal* means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM D388 (incorporated by reference, see § 60.17).

**§ 60.42 Standard for particulate matter (PM).**

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that:

(1) Contain PM in excess of 43 nanograms per joule (ng/J) heat input (0.10 lb/MMBtu) derived from fossil fuel or fossil fuel and wood residue.

(2) Exhibit greater than 20 percent opacity except for one six-minute period per hour of not more than 27 percent opacity.

(b)(1) On or after December 28, 1979, no owner or operator shall cause to be discharged into the atmosphere from the Southwestern Public Service Company's Harrington Station #1, in Amarillo, TX, any gases which exhibit greater than 35 percent opacity, except that a maximum of 42 percent opacity shall be permitted for not more than 6 minutes in any hour.

(2) Interstate Power Company shall not cause to be discharged into the atmosphere from its Lansing Station Unit No. 4 in Lansing, IA, any gases which exhibit greater than 32 percent opacity, except that a maximum of 39 percent opacity shall be permitted for not more than six minutes in any hour.

**§ 60.43 Standard for sulfur dioxide ($SO_2$).**

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that contain $SO_2$ in excess of:

(1) 340 ng/J heat input (0.80 lb/MMBtu) derived from liquid fossil fuel or liquid fossil fuel and wood residue.

(2) 520 ng/J heat input (1.2 lb/MMBtu) derived from solid fossil fuel or solid fossil fuel and wood residue, except as provided in paragraph (e) of this section.

(b) When different fossil fuels are burned simultaneously in any combination, the applicable standard (in ng/J) shall be determined by proration using the following formula:

$$PS_{SO_2} = \frac{y\,(340) + z\,(520)}{(y + z)}$$

Where:

$PS_{SO_2}$ = Prorated standard for $SO_2$ when burning different fuels simultaneously, in ng/J heat input derived from all fossil fuels;

y = Percentage of total heat input derived from liquid fossil; and

z = Percentage of total heat input derived from solid fossil fuel.

(c) Compliance shall be based on the total heat input from all fossil fuels burned, including gaseous fuels.

(d) As an alternate to reporting excess emissions every 3 contiguous one hour periods as required under paragraphs (a) and (b) of this section, an owner or operator can petition the Administrator (in writing) to comply with § 60.43Da(i)(3) of subpart Da of this part. If the Administrator grants the petition, the source will from then on (unless the unit is modified or reconstructed in the future) have to comply with the requirements in § 60.43Da(i)(3) of subpart Da of this part.

(e) Units 1 and 2 (as defined in appendix G of this part) at the Newton Power Station owned or operated by the Central Illinois Public Service Company will be in compliance with paragraph (a)(2) of this section if Unit 1 and Unit 2 individually comply with paragraph (a)(2) of this section or if the combined emission rate from Units 1 and 2 does not exceed 470 ng/J (1.1 lb/MMBtu) combined heat input to Units 1 and 2.

**§ 60.44 Standard for nitrogen oxides ($NO_X$).**

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that contain $NO_X$, expressed as $NO_2$ in excess of:

(1) 86 ng/J heat input (0.20 lb/MMBtu) derived from gaseous fossil fuel.

(2) 129 ng/J heat input (0.30 lb/MMBtu) derived from liquid fossil fuel, liquid fossil fuel and wood residue, or gaseous fossil fuel and wood residue.

(3) 300 ng/J heat input (0.70 lb/MMBtu) derived from solid fossil fuel or solid fossil fuel and wood residue (except lignite or a solid fossil fuel containing 25 percent, by weight, or more of coal refuse).

(4) 260 ng/J heat input (0.60 lb MMBtu) derived from lignite or lignite and wood residue (except as provided under paragraph (a)(5) of this section).

(5) 340 ng/J heat input (0.80 lb MMBtu) derived from lignite which is mined in North Dakota, South Dakota, or Montana and which is burned in a cyclone-fired unit.

(b) Except as provided under paragraphs (c) and (d) of this section, when different fossil fuels are burned simultaneously in any combination, the applicable standard (in ng/J) is determined by proration using the following formula:

$$PS_{NO_x} = \frac{w\,(260) + x\,(86) + y\,(130) + z\,(300)}{(w + x + y + z)}$$

Where:

$PS_{NO_x}$ = Prorated standard for $NO_X$ when burning different fuels simultaneously, in ng/J heat input derived from all fossil fuels fired or from all fossil fuels and wood residue fired;

w = Percentage of total heat input derived from lignite;

x = Percentage of total heat input derived from gaseous fossil fuel;

y = Percentage of total heat input derived from liquid fossil fuel; and

z = Percentage of total heat input derived from solid fossil fuel (except lignite).

(c) When a fossil fuel containing at least 25 percent, by weight, of coal refuse is burned in combination with gaseous, liquid, or other solid fossil fuel or wood residue, the standard for $NO_X$ does not apply.

(d) Cyclone-fired units which burn fuels containing at least 25 percent of lignite that is mined in North Dakota, South Dakota, or Montana remain

subject to paragraph (a)(5) of this section regardless of the types of fuel combusted in combination with that lignite.

(e) As an alternate to reporting excess emissions every 3 contiguous one hour periods as required under paragraphs (a) and (b) of this section, an owner or operator can petition the Administrator (in writing) to comply with § 60.44Da(e)(3) of subpart Da of this part. If the Administrator grants the petition, the source will from then on (unless the unit is modified or reconstructed in the future) have to comply with the requirements in § 60.44Da(e)(3) of subpart Da of this part.

**§ 60.45 Emission and fuel monitoring.**

(a) Each owner or operator shall install, calibrate, maintain, and operate continuous emissions monitoring systems (CEMS) for measuring the opacity of emissions, $SO_2$ emissions, $NO_X$ emissions, and either oxygen ($O_2$) or carbon dioxide ($CO_2$) except as provided in paragraph (b) of this section.

(b) Certain of the CEMS requirements under paragraph (a) of this section do not apply to owners or operators under the following conditions:

(1) For a fossil fuel-fired steam generator that burns only gaseous fossil fuel and that does not use post combustion technology to reduce emissions of $SO_2$ or PM, CEMS for measuring the opacity of emissions and $SO_2$ emissions are not required.

(2) For a fossil fuel-fired steam generator that does not use a flue gas desulfurization device, a CEMS for measuring $SO_2$ emissions is not required if the owner or operator monitors $SO_2$ emissions by fuel sampling and analysis.

(3) Notwithstanding § 60.13(b), installation of a CEMS for $NO_X$ may be delayed until after the initial performance tests under § 60.8 have been conducted. If the owner or operator demonstrates during the performance test that emissions of $NO_X$ are less than 70 percent of the applicable standards in § 60.44, a CEMS for measuring $NO_X$ emissions is not required. If the initial performance test results show that $NO_X$ emissions are greater than 70 percent of the applicable standard, the owner or operator shall install a CEMS for $NO_X$ within one year after the date of the initial performance tests under § 60.8 and comply with all other applicable monitoring requirements under this part.

(4) If an owner or operator does not install any CEMS for sulfur oxides and $NO_X$, as provided under paragraphs (b)(1) and (b)(3) or paragraphs (b)(2) and (b)(3) of this section a CEMS for measuring either $O_2$ or $CO_2$ is not required.

(5) An owner or operator may petition the Administrator (in writing) to install a PM CEMS as an alternative to the CEMS for monitoring opacity emissions.

(c) For performance evaluations under § 60.13(c) and calibration checks under § 60.13(d), the following procedures shall be used:

(1) Methods 6, 7, and 3B of appendix A of this part, as applicable, shall be used for the performance evaluations of $SO_2$ and $NO_X$ continuous monitoring systems. Acceptable alternative methods for Methods 6, 7, and 3B of appendix A of this part are given in § 60.46(d).

(2) Sulfur dioxide or nitric oxide, as applicable, shall be used for preparing calibration gas mixtures under Performance Specification 2 of appendix B to this part.

(3) For affected facilities burning fossil fuel(s), the span value for a continuous monitoring system measuring the opacity of emissions shall be 80, 90, or 100 percent and for a continuous monitoring system measuring sulfur oxides or $NO_X$ the span value shall be determined as follows:

[In parts per million]

| Fossil fuel | Span value for $SO_2$ | Span value for $NO_X$ |
|---|---|---|
| Gas | (1) | 500 |
| Liquid | 1,000 | 500 |
| Solid | 1,500 | 1,000 |
| Combinations | 1,000y + 1,000z | 500 (x + y) + 1,000z |

[1] Not applicable.

Where:
x = Fraction of total heat input derived from gaseous fossil fuel;
y = Fraction of total heat input derived from liquid fossil fuel; and
z = Fraction of total heat input derived from solid fossil fuel.

(4) All span values computed under paragraph (c)(3) of this section for burning combinations of fossil fuels shall be rounded to the nearest 500 ppm.

(5) For a fossil fuel-fired steam generator that simultaneously burns fossil fuel and nonfossil fuel, the span value of all CEMS shall be subject to the Administrator's approval.

(d) [Reserved]

(e) For any CEMS installed under paragraph (a) of this section, the following conversion procedures shall be used to convert the continuous monitoring data into units of the applicable standards (ng/J, lb/MMBtu):

(1) When a CEMS for measuring $O_2$ is selected, the measurement of the pollutant concentration and $O_2$ concentration shall each be on a consistent basis (wet or dry). Alternative procedures approved by the Administrator shall be used when measurements are on a wet basis. When measurements are on a dry basis, the following conversion procedure shall be used:

$$E = CF\left(\frac{20.9}{(20.9 - \%O_2)}\right)$$

Where E, C, F, and $\%O_2$ are determined under paragraph (f) of this section.

(2) When a CEMS for measuring $CO_2$ is selected, the measurement of the pollutant concentration and $CO_2$ concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure shall be used:

$$E = CF_c\left(\frac{100}{\%CO_2}\right)$$

Where E, C, $F_c$ and $\%CO_2$ are determined under paragraph (f) of this section.

(f) The values used in the equations under paragraphs (e) (1) and (2) of this section are derived as follows:

(1) E = pollutant emissions, ng/J (lb/MMBtu).

(2) C = pollutant concentration, ng/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each one-hour period by $4.15 \times 10^4$ M ng/dscm per ppm ($2.59 \times 10^{-9}$ M lb/dscf per ppm) where M = pollutant

molecular weight, g/g-mole (lb/lb-mole). M = 64.07 for $SO_2$ and 46.01 for $NO_X$.

(3) $\%O_2$, $\%CO_2$ = $O_2$ or $CO_2$ volume (expressed as percent), determined with equipment specified under paragraph (a) of this section.

(4) F, $F_c$ = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), and a factor representing a ratio of the volume of $CO_2$ generated to the calorific value of the fuel combusted ($F_c$), respectively. Values of F and $F_c$ are given as follows:

(i) For anthracite coal as classified according to ASTM D388 (incorporated by reference, see § 60.17), $F = 2,723 \times 10^{-17}$ dscm/J (10,140 dscf/MMBtu and $F_c = 0.532 \times 10^{-17}$ scm $CO_2$/J (1,980 scf $CO_2$/MMBtu).

(ii) For subbituminous and bituminous coal as classified according to ASTM D388 (incorporated by reference, see § 60.17), $F = 2.637 \times 10^{-7}$ dscm/J (9,820 dscf/MMBtu) and $F_c = 0.486 \times 10^{-7}$ scm $CO_2$/J (1,810 scf $CO_2$/MMBtu).

(iii) For liquid fossil fuels including crude, residual, and distillate oils, $F = 2.476 \times 10^{-7}$ dscm/J (9,220 dscf/MMBtu) and $F_c = 0.384 \times 10^{-7}$ scm $CO_2$/J (1,430 scf $CO_2$/MMBtu).

(iv) For gaseous fossil fuels, $F = 2.347 \times 10^{-7}$ dscm/J (8,740 dscf/MMBtu). For natural gas, propane, and butane fuels, $F_c = 0.279 \times 10^{-7}$ scm $CO_2$/J (1,040 scf $CO_2$/MMBtu) for natural gas, $0.322 \times 10^{-7}$ scm $CO_2$/J (1,200 scf $CO_2$/MMBtu) for propane, and $0.338 \times M\ 10^{-7}$ scm $CO_2$/J (1,260 scf $CO_2$/MMBtu) for butane.

(v) For bark $F = 2.589 \times 10^{-7}$ dscm/J (9,640 dscf/MMBtu) and $F_c = 0.500 \times 10^{-7}$ scm $CO_2$/J (1,840 scf $CO_2$/MMBtu). For wood residue other than bark $F = 2.492 \times 10^{-7}$ dscm/J (9,280 dscf/MMBtu) and $F_c = 0.494 \times 10^{-7}$ scm $CO_2$/J (1,860 scf $CO_2$/MMBtu).

(vi) For lignite coal as classified according to ASTM D388 (incorporated by reference, see § 60.17), $F = 2.659 \times 10^{-7}$ dscm/J (9,900 dscf/MMBtu) and $F_c = 0.516 \times 10^{-7}$ scm $CO_2$/J (1,920 scf $CO_2$/MMBtu).

(5) The owner or operator may use the following equation to determine an F factor (dscm/J or dscf/MMBtu) on a dry basis (if it is desired to calculate F on a wet basis, consult the Administrator) or $F_c$ factor (scm $CO_2$/J, or scf $CO_2$/MMBtu) on either basis in lieu of the F or $F_c$ factors specified in paragraph (f)(4) of this section:

$$F = 10^{-6}\frac{[227.2\,(\%H) + 95.5\,(\%C) + 35.6\,(\%S) + 8.7\,(\%N) - 28.7\,(\%O)]}{GCV}$$

$$F_c = \frac{2.0 \times 10^{-5}\,(\%C)}{GCV\ (SI\ units)}$$

$$F = 10^{-6}\frac{[3.64\,(\%H) + 1.53\,(\%C) + 0.57\,(\%S) + 0.14\,(\%N) - 0.46\,(\%O)]}{GCV\ (English\ units)}$$

$$F_c = \frac{20.0\,(\%C)}{GCV\ (SI\ units)}$$

$$F_c = \frac{321 \times 10^{3}\,(\%C)}{GCV\ (English\ units)}$$

(i) %H, %C, %S, %N, and %O are content by weight of hydrogen, carbon, sulfur, nitrogen, and $O_2$ (expressed as percent), respectively, as determined on the same basis as GCV by ultimate analysis of the fuel fired, using ASTM D3178 or D3176 (solid fuels), or computed from results using ASTM D1137, D1945, or D1946 (gaseous fuels) as applicable. (These five methods are incorporated by reference, see § 60.17.)

(ii) GVC is the gross calorific value (kJ/kg, Btu/lb) of the fuel combusted determined by the ASTM test methods D2015 or D5865 for solid fuels and D1826 for gaseous fuels as applicable. (These two methods are incorporated by reference, see § 60.17.)

(iii) For affected facilities which fire both fossil fuels and nonfossil fuels, the F or $F_c$ value shall be subject to the Administrator's approval.

(6) For affected facilities firing combinations of fossil fuels or fossil fuels and wood residue, the F or Fc factors determined by paragraphs (f)(4) or (f)(5) of this section shall be prorated in accordance with the applicable formula as follows:

$$F = \sum_{i=1}^{n} X_i F_i \quad \text{or} \quad F_c = \sum_{i=1}^{n} X_i (F_c)_i$$

Where:

$X_i$ = Fraction of total heat input derived from each type of fuel (e.g. natural gas, bituminous coal, wood residue, etc.);

$F_i$ or $(F_c)_i$ = Applicable F or $F_c$ factor for each fuel type determined in accordance with paragraphs (f)(4) and (f)(5) of this section; and

n = Number of fuels being burned in combination.

(g) Excess emission and monitoring system performance reports shall be submitted to the Administrator semiannually for each six-month period in the calendar year. All semiannual reports shall be postmarked by the 30th day following the end of each six-month period. Each excess emission and MSP report shall include the information required in § 60.7(c). Periods of excess emissions and monitoring systems (MS) downtime that shall be reported are defined as follows:

(1) *Opacity.* Excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds 20 percent opacity, except that one six-minute average per hour of up to 27 percent opacity need not be reported.

(i) For sources subject to the opacity standard of § 60.42(b)(1), excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds 35 percent opacity, except that one six-minute average per hour of up to 42 percent opacity need not be reported.

(ii) For sources subject to the opacity standard of § 60.42(b)(2), excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds 32 percent opacity, except that one six-minute average per hour of up to 39 percent opacity need not be reported.

(2) *Sulfur dioxide.* Excess emissions for affected facilities are defined as:

(i) Any three-hour period during which the average emissions (arithmetic average of three contiguous one-hour periods) of $SO_2$ as measured by a CEMS exceed the applicable standard under § 60.43, or

(ii) Any 30 operating day period during which the average emissions (arithmetic average of all one-hour periods during the 30 operating days) of $SO_2$ as measured by a CEMS exceed the applicable standard under § 60.43. Facilities complying with the 30-day $SO_2$ standard shall use the most current associated $SO_2$ compliance and monitoring requirements in §§ 60.48Da and 60.49Da of subpart Da of this part.

(3) *Nitrogen oxides.* Excess emissions for affected facilities using a CEMS for measuring $NO_X$ are defined as:

(i) Any three-hour period during which the average emissions (arithmetic average of three contiguous one-hour periods) exceed the applicable standards under § 60.44, or

(ii) Any 30 operating day period during which the average emissions (arithmetic average of all one-hour periods during the 30 operating days) of $NO_X$ as measured by a CEMS exceed the applicable standard under § 60.43. Facilities complying with the 30-day $NO_X$ standard shall use the most current associated $NO_X$ compliance and monitoring requirements in §§ 60 48Da and 60.49Da of subpart Da of this part.

(4) *Particulate matter.* Excess emissions for affected facilities using a CEMS for measuring PM are defined as any boiler operating day period during which the average emissions (arithmetic average of all operating one-hour periods) exceed the applicable standards under § 60.43. Affected facilities using PM CEMS in lieu of a CEMS for monitoring opacity emissions must follow the most current applicable compliance and monitoring provisions in §§ 60.48Da and 60.49Da of subpart Da of this part.

**§ 60.46 Test methods and procedures.**

(a) In conducting the performance tests required in § 60.8, and subsequent performance tests as requested by the EPA Administrator, the owner or operator shall use as reference methods and procedures the test methods in appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (d) of this section.

(b) The owner or operator shall determine compliance with the PM, $SO_2$, and $NO_X$ standards in §§ 60.42, 60.43, and 60.44 as follows:

(1) The emission rate (E) of PM, $SO_2$, or $NO_X$ shall be computed for each run using the following equation:

$$E = CF_d\left(\frac{20.9}{(20.9 - \%O_2)}\right)$$

E = Emission rate of pollutant, ng/J (lb/million Btu);
C = Concentration of pollutant, ng/dscm (lb/dscf);
$\%O_2$ = $O_2$ concentration, percent dry basis; and
$F_d$ = Factor as determined from Method 19 of appendix A of this part.

(2) Method 5 of appendix A of this part shall be used to determine the PM concentration (C) at affected facilities without wet flue-gas-desulfurization (FGD) systems and Method 5B of appendix A of this part shall be used to determine the PM concentration (C) after FGD systems.

(i) The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). The probe and filter holder heating systems in the sampling train shall be set to provide an average gas temperature of 160 ± 14 °C (320 ± 25 °F).

(ii) The emission rate correction factor, integrated or grab sampling and analysis procedure of Method 3B of appendix A of this part shall be used to determine the $O_2$ concentration ($\%O_2$). The $O_2$ sample shall be obtained simultaneously with, and at the same traverse points as, the particulate sample. If the grab sampling procedure is used, the $O_2$ concentration for the run shall be the arithmetic mean of the sample $O_2$ concentrations at all traverse points.

(iii) If the particulate run has more than 12 traverse points, the $O_2$ traverse points may be reduced to 12 provided that Method 1 of appendix A of this part is used to locate the 12 $O_2$ traverse points.

(3) Method 9 of appendix A of this part and the procedures in § 60.11 shall be used to determine opacity.

(4) Method 6 of appendix A of this part shall be used to determine the $SO_2$ concentration.

(i) The sampling site shall be the same as that selected for the particulate sample. The sampling location in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft). The sampling time and sample volume for each sample run shall be at least 20 minutes and 0.020 dscm (0.71 dscf). Two samples shall be taken during a 1-hour period, with each sample taken within a 30-minute interval.

(ii) The emission rate correction factor, integrated sampling and analysis procedure of Method 3B of appendix A of this part shall be used to determine the $O_2$ concentration ($\%O_2$). The $O_2$ sample shall be taken simultaneously with, and at the same point as, the $SO_2$ sample. The $SO_2$ emission rate shall be computed for each pair of $SO_2$ and $O_2$ samples. The $SO_2$ emission rate (E) for each run shall be the arithmetic mean of the results of the two pairs of samples.

(5) Method 7 of appendix A of this part shall be used to determine the $NO_X$ concentration.

(i) The sampling site and location shall be the same as for the $SO_2$ sample. Each run shall consist of four grab samples, with each sample taken at about 15-minute intervals.

(ii) For each $NO_X$ sample, the emission rate correction factor, grab sampling and analysis procedure of Method 3B of appendix A of this part shall be used to determine the $O_2$ concentration ($\%O_2$). The sample shall be taken simultaneously with, and at the same point as, the $NO_X$ sample.

(iii) The $NO_X$ emission rate shall be computed for each pair of $NO_X$ and $O_2$ samples. The $NO_X$ emission rate (E) for each run shall be the arithmetic mean of the results of the four pairs of samples.

(c) When combinations of fossil fuels or fossil fuel and wood residue are fired, the owner or operator (in order to compute the prorated standard as shown in §§ 60.43(b) and 60.44(b)) shall determine the percentage (w, x, y, or z) of the total heat input derived from each type of fuel as follows:

(1) The heat input rate of each fuel shall be determined by multiplying the gross calorific value of each fuel fired by the rate of each fuel burned.

(2) ASTM Methods D2015, or D5865 (solid fuels), D240 (liquid fuels), or D1826 (gaseous fuels) (all of these methods are incorporated by reference, see § 60.17) shall be used to determine the gross calorific values of the fuels. The method used to determine the calorific value of wood residue must be approved by the Administrator.

(3) Suitable methods shall be used to determine the rate of each fuel burned during each test period, and a material balance over the steam generating system shall be used to confirm the rate.

(d) The owner or operator may use the following as alternatives to the reference methods and procedures in this section or in other sections as specified:

(1) The emission rate (E) of PM, $SO_2$ and $NO_X$ may be determined by using the $F_c$ factor, provided that the following procedure is used:

(i) The emission rate (E) shall be computed using the following equation:

$$E = CF_c\left(\frac{100}{\%CO_2}\right)$$

Where:

E = Emission rate of pollutant, ng/J (lb/MMBtu);
C = Concentration of pollutant, ng/dscm (lb/dscf);
$\%CO_2 = CO_2$ concentration, percent dry basis; and
$F_c$ = Factor as determined in appropriate sections of Method 19 of appendix A of this part.

(ii) If and only if the average $F_c$ factor in Method 19 of appendix A of this part is used to calculate E and either E is from 0.97 to 1.00 of the emission standard or the relative accuracy of a continuous emission monitoring system is from 17 to 20 percent, then three runs of Method 3B of appendix A of this part shall be used to determine the $O_2$ and $CO_2$ concentration according to the procedures in paragraph (b) (2)(ii), (4)(ii), or (5)(ii) of this section. Then if $F_o$ (average of three runs), as calculated from the equation in Method 3B of appendix A of this part, is more than ±3 percent than the average $F_o$ value, as determined from the average values of $F_d$ and $F_c$ in Method 19 of appendix A of this part, i.e., $F_{oa} = 0.209 (F_{da} / F_{ca})$, then the following procedure shall be followed:

(A) When $F_o$ is less than 0.97 $F_{oa}$, then E shall be increased by that proportion under 0.97 $F_{oa}$, e.g., if $F_o$ is 0.95 $F_{oa}$, E shall be increased by 2 percent. This recalculated value shall be used to determine compliance with the emission standard.

(B) When $F_o$ is less than 0.97 $F_{oa}$ and when the average difference (d) between the continuous monitor minus the reference methods is negative, then E shall be increased by that proportion under 0.97 $F_{oa}$, e.g., if $F_o$ is 0.95 $F_{oa}$, E shall be increased by 2 percent. This recalculated value shall be used to determine compliance with the relative accuracy specification.

(C) When $F_o$ is greater than 1.03 $F_{oa}$ and when the average difference d is positive, then E shall be decreased by that proportion over 1.03 $F_{oa}$, e.g., if $F_o$ is 1.05 $F_{oa}$, E shall be decreased by 2 percent. This recalculated value shall be used to determine compliance with the relative accuracy specification.

(2) For Method 5 or 5B of appendix A of this part, Method 17 of appendix A of this part may be used at facilities with or without wet FGD systems if the stack gas temperature at the sampling location does not exceed an average temperature of 160 °C (320 °F). The procedures of sections 2.1 and 2.3 of Method 5B of appendix A of this part may be used with Method 17 of appendix A of this part only if it is used after wet FGD systems. Method 17 of appendix A of this part shall not be used after wet FGD systems if the effluent gas is saturated or laden with water droplets.

(3) Particulate matter and $SO_2$ may be determined simultaneously with the Method 5 of appendix A of this part train provided that the following changes are made:

(i) The filter and impinger apparatus in sections 2.1.5 and 2.1.6 of Method 8 of appendix A of this part is used in place of the condenser (section 2.1.7) of Method 5 of appendix A of this part.

(ii) All applicable procedures in Method 8 of appendix A of this part for the determination of $SO_2$ (including moisture) are used:

(4) For Method 6 of appendix A of this part, Method 6C of appendix A of this part may be used. Method 6A of appendix A of this part may also be used whenever Methods 6 and 3B of appendix A of this part data are specified to determine the $SO_2$ emission rate, under the conditions in paragraph (d)(1) of this section.

(5) For Method 7 of appendix A of this part, Method 7A, 7C, 7D, or 7E of appendix A of this part may be used. If Method 7C, 7D, or 7E of appendix A of this part is used, the sampling time for each run shall be at least 1 hour and the integrated sampling approach shall be used to determine the $O_2$ concentration ($\%O_2$) for the emission rate correction factor.

(6) For Method 3 of appendix A of this part, Method 3A or 3B of appendix A of this part may be used.

(7) For Method 3B of appendix A of this part, Method 3A of appendix A of this part may be used.

## Subpart Da—[Amended]

4. Subpart Da is revised as follows:

### Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978

Sec.

60.40Da Applicability and designation of affected facility.
60.41Da Definitions.
60.42Da Standard for particulate matter (PM).
60.43Da Standard for sulfur dioxide ($SO_2$).
60.44Da Standard for nitrogen oxides ($NO_x$).
60.45Da Standard for mercury (Hg).
60.46Da [Reserved]
60.47Da Commercial demonstration permit.
60.48Da Compliance provisions.
60.49Da Emission monitoring.
60.50Da Compliance determination procedures and methods.
60.51Da Reporting requirements.
60.52Da Recordkeeping requirements.

### Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978

#### § 60.40Da Applicability and designation of affected facility.

(a) The affected facility to which this subpart applies is each electric utility steam-generating unit:

(1) That is capable of combusting more than 73 megawatts (MW) (250 million British thermal units per hour (MMBtu/hr)) heat input of fossil fuel (either alone or in combination with any other fuel); and

(2) For which construction, modification, or reconstruction is commenced after September 18, 1978.

(b) Combined cycle gas turbines (both the stationary combustion turbine and any associated duct burners) are subject to this part and not subject to subpart GG or KKKK of this part if:

(1) The combined cycle gas turbine is capable of combusting more than 73 MW (250 MMBtu/hr) heat input of fossil fuel (either alone or in combination with any other fuel); and

(2) The combined cycle gas turbine is designed and intended to burn fuels containing 50 percent (by heat input) or more solid-derived fuel not meeting the definition of natural gas on a 12-month rolling average basis; and

(3) The combined cycle gas turbine commenced construction, modification, or reconstruction after February 28, 2005.

(4) This subpart will continue to apply to all other electric utility combined cycle gas turbines that are capable of combusting more than 73 MW (250 MMBtu/hr) heat input of fossil fuel in the heat recovery steam generator. If the heat recovery steam generator is subject to this subpart and the stationary combustion turbine is subject to either subpart GG or KKKK of this part, only emissions resulting from combustion of fuels in the steam-generating unit are subject to this subpart. (The stationary combustion turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

(c) Any change to an existing fossil-fuel-fired steam generating unit to accommodate the use of combustible materials, other than fossil fuels, shall not bring that unit under the applicability of this subpart.

(d) Any change to an existing steam generating unit originally designed to fire gaseous or liquid fossil fuels, to accommodate the use of any other fuel

(fossil or nonfossil) shall not bring that unit under the applicability of this subpart.

**§ 60.41Da Definitions.**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A of this part.

*Anthracite* means coal that is classified as anthracite according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

*Available purchase power* means the lesser of the following:

(a) The sum of available system capacity in all neighboring companies.

(b) The sum of the rated capacities of the power interconnection devices between the principal company and all neighboring companies, minus the sum of the electric power load on these interconnections.

(c) The rated capacity of the power transmission lines between the power interconnection devices and the electric generating units (the unit in the principal company that has the malfunctioning flue gas desulfurization system and the unit(s) in the neighboring company supplying replacement electrical power) less the electric power load on these transmission lines.

*Available system capacity* means the capacity determined by subtracting the system load and the system emergency reserves from the net system capacity.

*Biomass* means plant materials and animal waste.

*Bituminous coal* means coal that is classified as bituminous according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

*Boiler operating day* for units constructed, reconstructed, or modified on or before February 28, 2005, means a 24-hour period during which fossil fuel is combusted in a steam-generating unit for the entire 24 hours. For units constructed, reconstructed, or modified after February 28, 2005, *boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

*Coal* means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17) and coal refuse. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures are included in this definition for the purposes of this subpart.

*Coal-fired electric utility steam generating unit* means an electric utility steam generating unit that burns coal, coal refuse, or a synthetic gas derived from coal either exclusively, in any combination together, or in any combination with other fuels in any amount.

*Coal refuse* means waste products of coal mining, physical coal cleaning, and coal preparation operations (e.g. culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material.

*Cogeneration, also known as "combined heat and power,"* means a steam-generating unit that simultaneously produces both electric (or mechanical) and useful thermal energy from the same primary energy source.

*Combined cycle gas turbine* means a stationary turbine combustion system where heat from the turbine exhaust gases is recovered by a steam generating unit.

*Dry flue gas desulfurization technology* or *dry FGD* means a sulfur dioxide control system that is located downstream of the steam generating unit and removes sulfur oxides ($SO_2$) from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline slurries or solutions used in dry FGD technology include, but are not limited to, lime and sodium.

*Duct burner* means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

*Electric utility combined cycle gas turbine* means any combined cycle gas turbine used for electric generation that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 219,000 megawatt hour (MWh) net electrical output to any utility power distribution system for sale. Any steam distribution system that is constructed for the purpose of providing steam to a steam electric generator that would produce electrical power for sale is also considered in determining the electrical energy output capacity of the affected facility.

*Electric utility company* means the largest interconnected organization, business, or governmental entity that generates electric power for sale (e.g., a holding company with operating subsidiary companies).

*Electric utility steam-generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 219,000 MWh net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected facility.

*Electrostatic precipitator* or *ESP* means an add-on air pollution control device used to capture particulate matter (PM) by charging the particles using an electrostatic field, collecting the particles using a grounded collecting surface, and transporting the particles into a hopper.

*Emergency condition* means that period of time when:

(1) The electric generation output of an affected facility with a malfunctioning flue gas desulfurization system cannot be reduced or electrical output must be increased because:

(i) All available system capacity in the principal company interconnected with the affected facility is being operated, and

(ii) All available purchase power interconnected with the affected facility is being obtained, or

(2) The electric generation demand is being shifted as quickly as possible from an affected facility with a malfunctioning flue gas desulfurization system to one or more electrical generating units held in reserve by the principal company or by a neighboring company, or

(3) An affected facility with a malfunctioning flue gas desulfurization system becomes the only available unit to maintain a part or all of the principal company's system emergency reserves and the unit is operated in spinning reserve at the lowest practical electric generation load consistent with not causing significant physical damage to the unit. If the unit is operated at a higher load to meet load demand, an emergency condition would not exist unless the conditions under paragraph (1) of this definition apply.

*Emission limitation* means any emissions limit or operating limit.

*Emission rate period* means any calendar month included in a 12-month rolling average period.

*Federally enforceable* means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 51.24.

*Fossil fuel* means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

*Gaseous fuel* means any fuel derived from coal or petroleum that is present as a gas at standard conditions and includes, but is not limited to, refinery fuel gas, process gas, coke-oven gas, synthetic gas, and gasified coal.

*Gross output* means the gross useful work performed by the steam generated. For units generating only electricity, the gross useful work performed is the gross electrical output from the turbine/generator set. For cogeneration units, the gross useful work performed is the gross electrical or mechanical output plus 75 percent of the useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output (i.e., steam delivered to an industrial process).

*24-hour period* means the period of time between 12:01 a.m. and 12 midnight.

*Integrated gasification combined cycle electric utility steam generating unit* or *IGCC* means a coal-fired electric utility steam generating unit that burns a synthetic gas derived from coal in a combined-cycle gas turbine. No coal is directly burned in the unit during operation.

*Interconnected* means that two or more electric generating units are electrically tied together by a network of power transmission lines, and other power transmission equipment.

*ISO conditions* means a temperature of 288 Kelvin, a relative humidity of 60 percent, and a pressure of 101.3 kilopascals.

*Lignite* means coal that is classified as lignite A or B according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

*Natural gas* means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquid petroleum gas, as defined by the American Society of Testing and Materials in ASTM D1835 (incorporated by reference, see § 60.17); or

(3) A mixture of hydrocarbons that maintains a gaseous state at ISO conditions. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 34 and 43 megajoules (MJ) per standard cubic meter (910 and 1,150 Btu per standard cubic foot).

*Neighboring company* means any one of those electric utility companies with one or more electric power interconnections to the principal company and which have geographically adjoining service areas.

*Net-electric output* means the gross electric sales to the utility power distribution system minus purchased power on a calendar year basis.

*Net system capacity* means the sum of the net electric generating capability (not necessarily equal to rated capacity) of all electric generating equipment owned by an electric utility company (including steam generating units, internal combustion engines, gas turbines, nuclear units, hydroelectric units, and all other electric generating equipment) plus firm contractual purchases that are interconnected to the affected facility that has the malfunctioning flue gas desulfurization system. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.

*Noncontinental area* means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

*Petroleum* means crude oil or petroleum or a fuel derived from crude oil or petroleum, including, but not limited to, distillate oil, residual oil, and petroleum coke.

*Potential combustion concentration* means the theoretical emissions (nanograms per joule (ng/J), lb/MMBtu heat input) that would result from combustion of a fuel in an uncleaned state without emission control systems) and:

(1) For particulate matter (PM) is:

(i) 3,000 ng/J (7.0 lb/MMBtu) heat input for solid fuel; and

(ii) 73 ng/J (0.17 lb/MMBtu) heat input for liquid fuels.

(2) For sulfur dioxide ($SO_2$) is determined under § 60.50Da(c).

(3) For nitrogen oxides ($NO_X$) is:

(i) 290 ng/J (0.67 lb/MMBtu) heat input for gaseous fuels;

(ii) 310 ng/J (0.72 lb/MMBtu) heat input for liquid fuels; and

(iii) 990 ng/J (2.30 lb/MMBtu) heat input for solid fuels.

*Potential electrical output capacity* means 33 percent of the maximum design heat input capacity of the steam generating unit, divided by 3,413 Btu/KWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr (e.g., a steam generating unit with a 100 MW (340 MMBtu/hr) fossil-fuel heat input capacity would have a 289,080 MWh 12 month potential electrical output capacity). For electric utility combined cycle gas turbines the potential electrical output capacity is determined on the basis of the fossil-fuel firing capacity of the steam generator exclusive of the heat input and electrical power contribution by the gas turbine.

*Principal company* means the electric utility company or companies which own the affected facility.

*Resource recovery unit* means a facility that combusts more than 75 percent non-fossil fuel on a quarterly (calendar) heat input basis.

*Responsible official* means responsible official as defined in 40 CFR 70.2.

*Solid-derived fuel* means any solid, liquid, or gaseous fuel derived from solid fuel for the purpose of creating useful heat and includes, but is not limited to, solvent refined coal, liquified coal, synthetic gas, gasified coal, gasified petroleum coke, gasified biomass, and gasified tire derived fuel.

*Spare flue gas desulfurization system module* means a separate system of $SO_2$ emission control equipment capable of treating an amount of flue gas equal to the total amount of flue gas generated by an affected facility when operated at maximum capacity divided by the total number of nonspare flue gas desulfurization modules in the system.

*Spinning reserve* means the sum of the unutilized net generating capability of all units of the electric utility company that are synchronized to the power distribution system and that are capable of immediately accepting additional load. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.

*Steam generating unit* means any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam (including fossil-fuel-fired steam generators associated with

combined cycle gas turbines; nuclear steam generators are not included).

*Subbituminous coal* means coal that is classified as subbituminous A, B, or C according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

*System emergency reserves* means an amount of electric generating capacity equivalent to the rated capacity of the single largest electric generating unit in the electric utility company (including steam generating units, internal combustion engines, gas turbines, nuclear units, hydroelectric units, and all other electric generating equipment) which is interconnected with the affected facility that has the malfunctioning flue gas desulfurization system. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.

*System load* means the entire electric demand of an electric utility company's service area interconnected with the affected facility that has the malfunctioning flue gas desulfurization system plus firm contractual sales to other electric utility companies. Sales to other electric utility companies (e.g., emergency power) not on a firm contractual basis may also be included in the system load when no available system capacity exists in the electric utility company to which the power is supplied for sale.

*Wet flue gas desulfurization technology* or *wet FGD* means a $SO_2$ control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a liquid material. This definition applies to devices where the aqueous liquid material product of this contact is subsequently converted to other forms. Alkaline reagents used in wet FGD technology include, but are not limited to, lime, limestone, and sodium.

**§ 60.42Da Standard for particulate matter (PM).**

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced before or on February 28, 2005, any gases that contain PM in excess of:

(1) 13 ng/J (0.03 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel;

(2) 1 percent of the potential combustion concentration (99 percent reduction) when combusting solid fuel; and

(3) 30 percent of potential combustion concentration (70 percent reduction) when combusting liquid fuel.

(b) On and after the date the initial PM performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(c) Except as provided in paragraph (d) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005 shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of either:

(1) 18 ng/J (0.14 lb/MWh) gross energy output; or

(2) 6.4 ng/J (0.015 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel.

(d) As an alternative to meeting the requirements of paragraph (c) of this section, the owner or operator of an affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility shall cause to be discharged into the atmosphere from that affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, any gases that contain PM in excess of:

(1) 13 ng/J (0.03 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel, and

(2) 0.1 percent of the combustion concentration determined according to the procedure in § 60.48Da(o)(5) (99.9 percent reduction) for an affected facility for which construction or reconstruction commenced after February 28, 2005 when combusting solid, liquid, or gaseous fuel, or

(3) 0.2 percent of the combustion concentration determined according to the procedure in § 60.48Da(o)(5) (99.8 percent reduction) for an affected facility for which modification commenced after February 28, 2005 when combusting solid, liquid, or gaseous fuel.

**§ 60.43Da Standard for sulfur dioxide ($SO_2$).**

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts solid fuel or solid-derived fuel and for which construction, reconstruction, or modification commenced before or on February 28, 2005, except as provided under paragraphs (c), (d), (f) or (h) of this section, any gases that contain $SO_2$ in excess of:

(1) 520 ng/J (1.20 lb/MMBtu) heat input and 10 percent of the potential combustion concentration (90 percent reduction); or

(2) 30 percent of the potential combustion concentration (70 percent reduction), when emissions are less than 260 ng/J (0.60 lb/MMBtu) heat input.

(b) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts liquid or gaseous fuels (except for liquid or gaseous fuels derived from solid fuels and as provided under paragraphs (e) or (h) of this section) and for which construction, reconstruction, or modification commenced before or on February 28, 2005, any gases that contain $SO_2$ in excess of:

(1) 340 ng/J (0.80 lb/MMBtu) heat input and 10 percent of the potential combustion concentration (90 percent reduction); or

(2) 100 percent of the potential combustion concentration (zero percent reduction) when emissions are less than 86 ng/J (0.20 lb/MMBtu) heat input.

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts solid solvent

refined coal (SRC–I) any gases that contain $SO_2$ in excess of 520 ng/J (1.20 lb/MMBtu) heat input and 15 percent of the potential combustion concentration (85 percent reduction) except as provided under paragraph (f) of this section; compliance with the emission limitation is determined on a 30-day rolling average basis and compliance with the percent reduction requirement is determined on a 24-hour basis.

(d) Sulfur dioxide emissions are limited to 520 ng/J (1.20 lb/MMBtu) heat input from any affected facility which:

(1) Combusts 100 percent anthracite;

(2) Is classified as a resource recovery unit; or

(3) Is located in a noncontinental area and combusts solid fuel or solid-derived fuel.

(e) Sulfur dioxide emissions are limited to 340 ng/J (0.80 lb/MMBtu) heat input from any affected facility which is located in a noncontinental area and combusts liquid or gaseous fuels (excluding solid-derived fuels).

(f) The emission reduction requirements under this section do not apply to any affected facility that is operated under an $SO_2$ commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.47Da.

(g) Compliance with the emission limitation and percent reduction requirements under this section are both determined on a 30-day rolling average basis except as provided under paragraph (c) of this section.

(h) When different fuels are combusted simultaneously, the applicable standard is determined by proration using the following formula:

(1) If emissions of $SO_2$ to the atmosphere are greater than 260 ng/J (0.60 lb/MMBtu) heat input.

$$E_s = \frac{(340x + 520y)}{100}$$

and

$$\%P_s = 10$$

(2) If emissions of $SO_2$ to the atmosphere are equal to or less than 260 ng/J (0.60 lb/MMBtu) heat input:

$$E_s = \frac{(340x + 520y)}{100}$$

and

$$\%P_s = \frac{(10x + 30y)}{100}$$

Where:

$E_s$ = Prorated $SO_2$ emission limit (ng/J heat input);

$\%P_s$ = Percentage of potential $SO_2$ emission allowed;

x = Percentage of total heat input derived from the combustion of liquid or gaseous fuels (excluding solid-derived fuels); and

y = Percentage of total heat input derived from the combustion of solid fuel (including solid-derived fuels).

(i) Except as provided in paragraphs (j) and (k) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification commenced after February 28, 2005 shall cause to be discharged into the atmosphere from that affected facility, any gases that contain $SO_2$ in excess of the applicable emission limitation specified in paragraphs (i)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis; or

(ii) 5 percent of the potential combustion concentration (95 percent reduction) on a 30-day rolling average basis.

(2) For an affected facility for which reconstruction commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis; or

(iii) 5 percent of the potential combustion concentration (95 percent reduction) on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis; or

(iii) 10 percent of the potential combustion concentration (90 percent reduction) on a 30-day rolling average basis.

(j) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification commenced after February 28, 2005, and that burns 75 percent or more (by heat input) coal refuse on a 12-month rolling average basis, shall caused to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of the applicable emission limitation specified in paragraphs (j)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis; or

(ii) 6 percent of the potential combustion concentration (94 percent reduction) on a 30-day rolling average basis.

(2) For an affected facility for which reconstruction commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis; or

(iii) 6 percent of the potential combustion concentration (94 percent reduction) on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, any gases that contain $SO_2$ in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis; or

(iii) 10 percent of the potential combustion concentration (90 percent reduction) on a 30-day rolling average basis.

(k) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility located in a noncontinental area that commenced construction, reconstruction, or modification commenced after February 28, 2005, shall cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of the applicable emission limitation specified in paragraphs (k)(1) and (2) of this section.

(1) For an affected facility that burns solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 520 ng/J (1.2 lb/MMBtu) heat input on a 30-day rolling average basis.

(2) For an affected facility that burns other than solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any

gases that contain $SO_2$ in excess of if the affected facility or 230 ng/J (0.54 lb/MMBtu) heat input on a 30-day rolling average basis.

**§ 60.44Da Standard for nitrogen oxides ($NO_X$).**

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility, except as provided under paragraphs (b), (d), (e), and (f) of this section, any gases that contain $NO_X$ (expressed as $NO_2$) in excess of the following emission limits, based on a 30-day rolling average basis, except as provided under § 60.48Da(j)(1):

(1) $NO_X$ emission limits.

| Fuel type | Emission limit for heat input | |
|---|---|---|
| | ng/J | lb/MMBtu |
| Gaseous fuels: | | |
| Coal-derived fuels | 210 | 0.50 |
| All other fuels | 86 | 0.20 |
| Liquid fuels: | | |
| Coal-derived fuels | 210 | 0.50 |
| Shale oil | 210 | 0.50 |
| All other fuels | 130 | 0.30 |
| Solid fuels: | | |
| Coal-derived fuels | 210 | 0.50 |
| Any fuel containing more than 25%, by weight, coal refuse[1]. | | |
| Any fuel containing more than 25%, by weight, lignite if the lignite is mined in North Dakota, South Dakota, or Montana, and is combusted in a slag tap furnace[2] | 340 | 0.80 |
| Any fuel containing more than 25%, by weight, lignite not subject to the 340 ng/J heat input emission limit[2] | 260 | 0.60 |
| Subbituminous coal | 210 | 0.50 |
| Bituminous coal | 260 | 0.60 |
| Anthracite coal | 260 | 0.60 |
| All other fuels | 260 | 0.60 |

[1] Exempt from $NO_X$ standards and $NO_X$ monitoring requirements.
[2] Any fuel containing less than 25%, by weight, lignite is not prorated but its percentage is added to the percentage of the predominant fuel.

(2) *$NO^x$ reduction requirement.*

| Fuel type | Percent reduction of potential combustion concentration |
|---|---|
| Gaseous fuels | 25 |
| Liquid fuels | 30 |
| Solid fuels | 65 |

(b) The emission limitations under paragraph (a) of this section do not apply to any affected facility which is combusting coal-derived liquid fuel and is operating under a commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.47Da.

(c) Except as provided under paragraphs (d), (e), and (f) of this section, when two or more fuels are combusted simultaneously, the applicable standard is determined by proration using the following formula:

$$E_n = \frac{(86w + 130x + 210y + 260z + 340v)}{100}$$

Where:

$E_n$ = Applicable standard for $NO_X$ when multiple fuels are combusted simultaneously (ng/J heat input);
w = Percentage of total heat input derived from the combustion of fuels subject to the 86 ng/J heat input standard;
x = Percentage of total heat input derived from the combustion of fuels subject to the 130 ng/J heat input standard;
y = Percentage of total heat input derived from the combustion of fuels subject to the 210 ng/J heat input standard;
z = Percentage of total heat input derived from the combustion of fuels subject to the 260 ng/J heat input standard; and
v = Percentage of total heat input delivered from the combustion of fuels subject to the 340 ng/J heat input standard.

(d)(1) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction after July 9, 1997, but before or on February 28, 2005 shall cause to the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of 200 ng/J (1.6 lb/MWh) gross energy output, based on a 30-day rolling average basis, except as provided under § 60.48Da(k).

(2) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of affected facility for which reconstruction commenced after July 9, 1997, but before or on February 28, 2005 shall cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of 65 ng/J (0.15 lb/MMBtu) heat input, based on a 30-day rolling average basis.

(e) Except for an IGCC meeting the requirements of paragraph (f) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005 shall cause to be discharged into the atmosphere from that affected facility any gases that contain $NO_X$ (expressed as $NO_2$) in excess of the applicable emission limitation specified in paragraphs (e)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis, except as provided under § 60.48Da(k).

(2) For an affected facility for which reconstruction commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of either:

(i) 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis; or

(ii) 47 ng/J (0.11 lb/MMBtu) heat input on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis; or

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis.

(f) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an IGCC subject to the provisions of this subpart that burns liquid fuel as a supplemental fuel and for which construction, reconstruction, or modification commenced after February 28, 2005, shall meet the requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis, except as provided for in paragraphs (f)(2) and (3) of this section.

(2) When burning liquid fuel exclusively or in combination with solid-derived fuel such that the liquid fuel contributes 50 percent or more of the total heat input to the combined cycle combustion turbine, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of 190 ng/J (1.5 lb/MWh) gross energy output on a 30-day rolling average basis.

(3) In cases when during a 30-day rolling average compliance period liquid fuel is burned in such a manner to meet the conditions in paragraph (f)(2) of this section for only a portion of the clock hours in the 30-day period, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain $NO_X$ (expressed as $NO_2$) in excess of the computed weighted-average emissions limit based on the proportion of gross energy output (in MWh) generated during the compliance period for each of emissions limits in paragraphs (f)(1) and (2) of this section.

**§ 60.45Da Standard for mercury (Hg).**

(a) For each coal-fired electric utility steam generating unit other than an IGCC electric utility steam generating unit, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, modification, or reconstruction commenced after January 30, 2004, any gases that contain mercury (Hg) emissions in excess of each Hg emissions limit in paragraphs (a)(1) through (5) of this section that applies to you. The Hg emissions limits in paragraphs (a)(1) through (5) of this section are based on a 12-month rolling average basis using the procedures in § 60.50Da(h).

(1) For each coal-fired electric utility steam generating unit that burns only bituminous coal, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of $20 \times 10^{-6}$ pound per megawatt hour (lb/MWh) or 0.020 lb/gigawatt-hour (GWh) on an output basis. The International System of Units (SI) equivalent is 0.0025 ng/J.

(2) For each coal-fired electric utility steam generating unit that burns only subbituminous coal:

(i) If your unit is located in a county-level geographical area receiving greater than 25 inches per year (in/yr) mean annual precipitation, based on the most recent publicly available U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of $66 \times 10^{-6}$ lb/MWh or 0.066 lb/GWh on an output basis. The SI equivalent is 0.0083 ng/J.

(ii) If your unit is located in a county-level geographical area receiving less than or equal to 25 in/yr mean annual precipitation, based on the most recent publicly available U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of $97 \times 10^{-6}$ lb/MWh or 0.097 lb/GWh on an output basis. The SI equivalent is 0.0122 ng/J.

(3) For each coal-fired electric utility steam generating unit that burns only lignite, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of $175 \times 10^{-6}$ lb/MWh or 0.175 lb/GWh on an output basis. The SI equivalent is 0.0221 ng/J.

(4) For each coal-burning electric utility steam generating unit that burns only coal refuse, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of $16 \times 10^{-6}$ lb/MWh or 0.016 lb/GWh on an output basis. The SI equivalent is 0.0020 ng/J.

(5) For each coal-fired electric utility steam generating unit that burns a blend of coals from different coal ranks (i.e., bituminous coal, subbituminous coal, lignite) or a blend of coal and coal refuse, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of the unit-specific Hg emissions limit established according to paragraph (a)(5)(i) or (ii) of this section, as applicable to the affected unit.

(i) If you operate a coal-fired electric utility steam generating unit that burns a blend of coals from different coal ranks or a blend of coal and coal refuse, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of the computed weighted Hg emissions limit based on the Btu, MWh, or MJ contributed by each coal rank burned during the compliance period and its applicable Hg emissions limit in paragraphs (a)(1) through (4) of this section as determined using Equation 1 in this section. For each affected source, you must comply with the weighted Hg emissions limit calculated using Equation 1 in this section based on the total Hg emissions from the unit and the total Btu, MWh, or MJ contributed by all fuels burned during the compliance period.

$$EL_b = \frac{\sum_{i=1}^{n} EL_i\,(HH_i)}{\sum_{i=1}^{n} HH_i} \qquad \text{(Eq. 1)}$$

Where:

$EL_b$ = Total allowable Hg in lb/MWh that can be emitted to the atmosphere from any affected source being averaged according to this paragraph.

$EL_i$ = Hg emissions limit for the subcategory i (coal rank) that applies to affected source, lb/MWh;

$HH_i$ = For each affected source, the Btu, MWh, or MJ contributed by the corresponding subcategory i (coal rank) burned during the compliance period; and

n = Number of subcategories (coal ranks) being averaged for an affected source.

(ii) If you operate a coal-fired electric utility steam generating unit that burns a blend of coals from different coal ranks or a blend of coal and coal refuse together with one or more non-regulated, supplementary fuels, you must not discharge into the atmosphere any gases from a new affected source that contain Hg in excess of the computed weighted Hg emission limit based on the Btu, MWh, or MJ

contributed by each coal rank burned during the compliance period and its applicable Hg emissions limit in paragraphs (a)(1) through (4) of this section as determined using Equation 1 in this section. For each affected source, you must comply with the weighted Hg emissions limit calculated using Equation 1 in this section based on the total Hg emissions from the unit contributed by both regulated and nonregulated fuels burned during the compliance period and the total Btu, MWh, or MJ contributed by both regulated and nonregulated fuels burned during the compliance period.

(b) For each IGCC electric utility steam generating unit, on and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, modification, or reconstruction commenced after January 30, 2004, any gases that contain Hg emissions in excess of $20 \times 10^{-6}$ lb/MWh or 0.020 lb/GWh on an output basis. The SI equivalent is 0.0025 ng/J. This Hg emissions limit is based on a 12-month rolling average basis using the procedures in § 60.50Da(h).

**§ 60.46Da [Reserved]**

**§ 60.47Da Commercial demonstration permit.**

(a) An owner or operator of an affected facility proposing to demonstrate an emerging technology may apply to the Administrator for a commercial demonstration permit. The Administrator will issue a commercial demonstration permit in accordance with paragraph (e) of this section. Commercial demonstration permits may be issued only by the Administrator, and this authority will not be delegated.

(b) An owner or operator of an affected facility that combusts solid solvent refined coal (SRC–I) and who is issued a commercial demonstration permit by the Administrator is not subject to the $SO_2$ emission reduction requirements under § 60.43Da(c) but must, as a minimum, reduce $SO_2$ emissions to 20 percent of the potential combustion concentration (80 percent reduction) for each 24-hour period of steam generator operation and to less than 520 ng/J (1.20 lb/MMBtu) heat input on a 30-day rolling average basis.

(c) An owner or operator of a fluidized bed combustion electric utility steam generator (atmospheric or pressurized) who is issued a commercial demonstration permit by the Administrator is not subject to the $SO_2$ emission reduction requirements under § 60.43Da(a) but must, as a minimum, reduce $SO_2$ emissions to 15 percent of the potential combustion concentration (85 percent reduction) on a 30-day rolling average basis and to less than 520 ng/J (1.20 lb/MMBtu) heat input on a 30-day rolling average basis.

(d) The owner or operator of an affected facility that combusts coal-derived liquid fuel and who is issued a commercial demonstration permit by the Administrator is not subject to the applicable $NO_X$ emission limitation and percent reduction under § 60.44Da(a) but must, as a minimum, reduce emissions to less than 300 ng/J (0.70 lb/MMBtu) heat input on a 30-day rolling average basis.

(e) Commercial demonstration permits may not exceed the following equivalent MW electrical generation capacity for any one technology category, and the total equivalent MW electrical generation capacity for all commercial demonstration plants may not exceed 15,000 MW.

| Technology | Pollutant | Equivalent Electrical Capacity (MW electrical output) |
|---|---|---|
| Solid solvent refined coal (SCR I) | $SO_2$ | 6,000–10,000 |
| Fluidized bed combustion (atmospheric) | $SO_2$ | 400–3,000 |
| Fluidized bed combustion (pressurized) | $SO_2$ | 400–1,200 |
| Coal liquification | $NO_X$ | 750–10,000 |
| Total allowable for all technologies | | 15,000 |

**§ 60.48Da Compliance provisions.**

(a) Compliance with the PM emission limitation under § 60.42Da(a)(1) constitutes compliance with the percent reduction requirements for PM under § 60.42Da(a)(2) and (3).

(b) Compliance with the $NO_X$ emission limitation under § 60.44Da(a)(1) constitutes compliance with the percent reduction requirements under § 60.44Da(a)(2).

(c) The PM emission standards under § 60.42Da, the $NO_X$ emission standards under § 60.44Da, and the Hg emission standards under § 60.45Da apply at all times except during periods of startup, shutdown, or malfunction.

(d) During emergency conditions in the principal company, an affected facility with a malfunctioning flue gas desulfurization system may be operated if $SO_2$ emissions are minimized by:

(1) Operating all operable flue gas desulfurization system modules, and bringing back into operation any malfunctioned module as soon as repairs are completed,

(2) Bypassing flue gases around only those flue gas desulfurization system modules that have been taken out of operation because they were incapable of any $SO_2$ emission reduction or which would have suffered significant physical damage if they had remained in operation, and

(3) Designing, constructing, and operating a spare flue gas desulfurization system module for an affected facility larger than 365 MW (1,250 MMBtu/hr) heat input (approximately 125 MW electrical output capacity). The Administrator may at his discretion require the owner or operator within 60 days of notification to demonstrate spare module capability. To demonstrate this capability, the owner or operator must demonstrate compliance with the appropriate requirements under paragraph under § 60.43Da(a), (b), (d), (e), and (h) for any period of operation lasting from 24 hours to 30 days when:

(i) Any one flue gas desulfurization module is not operated,

(ii) The affected facility is operating at the maximum heat input rate,

(iii) The fuel fired during the 24-hour to 30-day period is representative of the type and average sulfur content of fuel used over a typical 30-day period, and

(iv) The owner or operator has given the Administrator at least 30 days notice of the date and period of time over which the demonstration will be performed.

(e) After the initial performance test required under § 60.8, compliance with

the $SO_2$ emission limitations and percentage reduction requirements under § 60.43Da and the $NO_X$ emission limitations under § 60.44Da is based on the average emission rate for 30 successive boiler operating days. A separate performance test is completed at the end of each boiler operating day after the initial performance test, and a new 30 day average emission rate for both $SO_2$ and $NO_X$ and a new percent reduction for $SO_2$ are calculated to show compliance with the standards.

(f) For the initial performance test required under § 60.8, compliance with the $SO_2$ emission limitations and percent reduction requirements under § 60.43Da and the $NO_X$ emission limitation under § 60.44Da is based on the average emission rates for $SO_2$, $NO_X$, and percent reduction for $SO_2$ for the first 30 successive boiler operating days. The initial performance test is the only test in which at least 30 days prior notice is required unless otherwise specified by the Administrator. The initial performance test is to be scheduled so that the first boiler operating day of the 30 successive boiler operating days is completed within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of the facility.

(g) The owner or operator of an affected facility subject to emission limitations in this subpart shall determine compliance as follows:

(1) Compliance with applicable 30-day rolling average $SO_2$ and $NO_X$ emission limitations is determined by calculating the arithmetic average of all hourly emission rates for $SO_2$ and $NO_X$ for the 30 successive boiler operating days, except for data obtained during startup, shutdown, malfunction ($NO_X$ only), or emergency conditions ($SO_2$ only).

(2) Compliance with applicable $SO_2$ percentage reduction requirements is determined based on the average inlet and outlet $SO_2$ emission rates for the 30 successive boiler operating days.

(3) Compliance with applicable daily average PM emission limitations is determined by calculating the arithmetic average of all hourly emission rates for PM each boiler operating day, except for data obtained during startup, shutdown, and malfunction. Averages are not calculated for boiler operating days with less than 18 hours of valid data. Instead, the valid hourly emission rates are averaged with the immediately following boiler operating day emission rates to determine compliance.

(h) If an owner or operator has not obtained the minimum quantity of emission data as required under § 60.49Da of this subpart, compliance of the affected facility with the emission requirements under §§ 60.43Da and 60.44Da of this subpart for the day on which the 30-day period ends may be determined by the Administrator by following the applicable procedures in section 7 of Method 19 of appendix A of this part.

(i) *Compliance provisions for sources subject to § 60.44Da(d)(1), (e)(1), (e)(2)(i), (e)(3)(i), or (f).* The owner or operator of an affected facility subject to § 60.44Da(d)(1), (e)(1), (e)(2)(i), (e)(3)(i), or (f) shall calculate $NO_X$ emissions by multiplying the average hourly $NO_X$ output concentration, measured according to the provisions of § 60.49Da(c), by the average hourly flow rate, measured according to the provisions of § 60.49Da(l), and dividing by the average hourly gross energy output, measured according to the provisions of § 60.49Da(k).

(j) *Compliance provisions for duct burners subject to § 60.44Da(a)(1).* To determine compliance with the emissions limits for $NO_X$ required by § 60.44Da(a) for duct burners used in combined cycle systems, either of the procedures described in paragraph (j)(1) or (2) of this section may be used:

(1) The owner or operator of an affected duct burner shall conduct the performance test required under § 60.8 using the appropriate methods in appendix A of this part. Compliance with the emissions limits under § 60.44Da(a)(1) is determined on the average of three (nominal 1-hour) runs for the initial and subsequent performance tests. During the performance test, one sampling site shall be located in the exhaust of the turbine prior to the duct burner. A second sampling site shall be located at the outlet from the heat recovery steam generating unit. Measurements shall be taken at both sampling sites during the performance test; or

(2) The owner or operator of an affected duct burner may elect to determine compliance by using the continuous emission monitoring system (CEMS) specified under § 60.49Da for measuring $NO_X$ and oxygen ($O_2$) and meet the requirements of § 60.49Da. Data from a CEMS certified (or recertified) according to the provisions of 40 CFR 75.20, meeting the QA and QC requirements of 40 CFR 75.21, and validated according to 40 CFR 75.23 may be used. The sampling site shall be located at the outlet from the steam generating unit. The $NO_X$ emission rate at the outlet from the steam generating unit shall constitute the $NO_X$ emission rate from the duct burner of the combined cycle system.

(k) *Compliance provisions for duct burners subject to § 60.44Da(d)(1) or (e)(1).* To determine compliance with the emission limitation for $NO_X$ required by § 60.44Da(d)(1) or (e)(1) for duct burners used in combined cycle systems, either of the procedures described in paragraphs (k)(1) and (2) of this section may be used:

(1) The owner or operator of an affected duct burner used in combined cycle systems shall determine compliance with the applicable $NO_X$ emission limitation in § 60.44Da(d)(1) or (e)(1) as follows:

(i) The emission rate (E) of $NO_X$ shall be computed using Equation 2 in this section:

$$E = \frac{(C_{sg} \times Q_{sg}) - (C_{te} \times Q_{te})}{(O_{sg} \times h)} \qquad \text{(Eq. 2)}$$

Where:

E = Emission rate of $NO_X$ from the duct burner, ng/J (lb/MWh) gross output;

$C_{sg}$ = Average hourly concentration of $NO_X$ exiting the steam generating unit, ng/dscm (lb/dscf);

$C_{te}$ = Average hourly concentration of $NO_X$ in the turbine exhaust upstream from duct burner, ng/dscm (lb/dscf);

$Q_{sg}$ = Average hourly volumetric flow rate of exhaust gas from steam generating unit, dscm/hr (dscf/hr);

$Q_{te}$ = Average hourly volumetric flow rate of exhaust gas from combustion turbine, dscm/hr (dscf/hr);

$O_{sg}$ = Average hourly gross energy output from steam generating unit, J (MWh); and

h = Average hourly fraction of the total heat input to the steam generating unit derived from the combustion of fuel in the affected duct burner.

(ii) Method 7E of appendix A of this part shall be used to determine the $NO_X$ concentrations ($C_{sg}$ and $C_{te}$). Method 2, 2F or 2G of appendix A of this part, as appropriate, shall be used to determine the volumetric flow rates ($Q_{sg}$ and $Q_{te}$) of the exhaust gases. The volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(iii) The owner or operator shall develop, demonstrate, and provide information satisfactory to the Administrator to determine the average hourly gross energy output from the steam generating unit, and the average hourly percentage of the total heat input to the steam generating unit derived from the combustion of fuel in the affected duct burner.

(iv) Compliance with the applicable $NO_X$ emission limitation in § 60.44Da(d)(1) or (e)(1) is determined

by the three-run average (nominal 1-hour runs) for the initial and subsequent performance tests.

(2) The owner or operator of an affected duct burner used in a combined cycle system may elect to determine compliance with the applicable $NO_X$ emission limitation in § 60.44Da(d)(1) or (e)(1) on a 30-day rolling average basis as indicated in paragraphs (k)(2)(i) through (iv) of this section.

(i) The emission rate (E) of $NO_X$ shall be computed using Equation 3 in this section:

$$E = \frac{(C_{sg} \times Q_{sd})}{(O_{cc})} \qquad \text{(Eg. 3)}$$

Where:

E = Emission rate of $NO_X$ from the duct burner, ng/J (lb/MWh) gross output;
$C_{sg}$ = Average hourly concentration of $NO_X$ exiting the steam generating unit, ng/dscm (lb/dscf);
$Q_{sg}$ = Average hourly volumetric flow rate of exhaust gas from steam generating unit, dscm/hr (dscf/hr); and
$O_{cc}$ = Average hourly gross energy output from entire combined cycle unit, J (MWh).

(ii) The CEMS specified under § 60.49Da for measuring $NO_X$ and $O_2$ shall be used to determine the average hourly $NO_X$ concentrations ($C_{sg}$). The continuous flow monitoring system specified in § 60.49Da(l) shall be used to determine the volumetric flow rate ($Q_{sg}$) of the exhaust gas. The sampling site shall be located at the outlet from the steam generating unit. Data from a continuous flow monitoring system certified (or recertified) following procedures specified in 40 CFR 75.20, meeting the quality assurance and quality control requirements of 40 CFR 75.21, and validated according to 40 CFR 75.23 may be used.

(iii) The continuous monitoring system specified under § 60.49Da(k) for measuring and determining gross energy output shall be used to determine the average hourly gross energy output from the entire combined cycle unit ($O_{cc}$), which is the combined output from the combustion turbine and the steam generating unit.

(iv) The owner or operator may, in lieu of installing, operating, and recording data from the continuous flow monitoring system specified in § 60.49Da(l), determine the mass rate (lb/hr) of $NO_X$ emissions by installing, operating, and maintaining continuous fuel flowmeters following the appropriate measurements procedures specified in appendix D of part 75 of this chapter. If this compliance option is selected, the emission rate (E) of $NO_X$ shall be computed using Equation 4 in this section:

$$E = \frac{(ER_{sg} \times H_{cc})}{(O_{cc})} \qquad \text{(Eg. 4)}$$

Where:

E = Emission rate of $NO_X$ from the duct burner, ng/J (lb/MWh) gross output;
$ER_{sg}$ = Average hourly emission rate of $NO_X$ exiting the steam generating unit heat input calculated using appropriate F factor as described in Method 19 of appendix A of this part, ng/J (lb/MMBtu);
$H_{cc}$ = Average hourly heat input rate of entire combined cycle unit, J/hr (MMBtu/hr); and
$O_{cc}$ = Average hourly gross energy output from entire combined cycle unit, J (MWh).

(3) When an affected duct burner steam generating unit utilizes a common steam turbine with one or more affected duct burner steam generating units, the owner or operator shall either:

(i) Determine compliance with the applicable $NO_X$ emissions limits by measuring the emissions combined with the emissions from the other unit(s) utilizing the common steam turbine; or

(ii) Develop, demonstrate, and provide information satisfactory to the Administrator on methods for apportioning the combined gross energy output from the steam turbine for each of the affected duct burners. The Administrator may approve such demonstrated substitute methods for apportioning the combined gross energy output measured at the steam turbine whenever the demonstration ensures accurate estimation of emissions regulated under this part.

(l) *Compliance provisions for sources subject to § 60.45Da.* The owner or operator of an affected facility subject to § 60.45Da (new sources constructed or reconstructed after January 30, 2004) shall calculate the Hg emission rate (lb/MWh) for each calendar month of the year, using hourly Hg concentrations measured according to the provisions of § 60.49Da(p) in conjunction with hourly stack gas volumetric flow rates measured according to the provisions of § 60.49Da(l) or (m), and hourly gross electrical outputs, determined according to the provisions in § 60.49Da(k). Compliance with the applicable standard under § 60.45Da is determined on a 12-month rolling average basis.

(m) *Compliance provisions for sources subject to § 60.43Da(i)(1)(i), (i)(2)(i), (i)(3)(i), (j)(1)(i), (j)(2)(i), or (j)(3)(i).* The owner or operator of an affected facility subject to § 60.43Da(i)(1)(i), (i)(2)(i), (i)(3)(i), (j)(1)(i), (j)(2)(i),or (j)(3)(i) shall calculate $SO_2$ emissions by multiplying the average hourly $SO_2$ output concentration, measured according to the provisions of § 60.49Da(b), by the average hourly flow rate, measured according to the provisions of § 60.49Da(l), and divided by the average hourly gross energy output, measured according to the provisions of § 60.49Da(k).

(n) *Compliance provisions for sources subject to § 60.42Da(c)(1).* The owner or operator of an affected facility subject to § 60.42Da(c)(1) shall calculate PM emissions by multiplying the average hourly PM output concentration, measured according to the provisions of § 60.49Da(t), by the average hourly flow rate, measured according to the provisions of § 60.49Da(l), and divided by the average hourly gross energy output, measured according to the provisions of § 60.49Da(k). Compliance with the emission limit is determined by calculating the arithmetic average of the hourly emission rates computed for each boiler operating day.

(o) *Compliance provisions for sources subject to § 60.42Da(c)(2) or (d).* Except as provided for in paragraph (p) of this section, the owner or operator of an affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, shall demonstrate compliance with each applicable emission limit according to the requirements in paragraphs (o)(1) through (o)(5) of this section.

(1) Conduct an initial performance test according to the requirements in § 60.50Da to demonstrate compliance by the applicable date specified in § 60.8(a) and, thereafter, conduct subsequent performance test within 365 calendar days of the prior test, and

(2) An owner or operator must use opacity monitoring equipment as an indicator of continuous PM control device performance and demonstrate compliance with § 60.42Da(b). In addition, baseline parameters shall be established as the highest clock hour opacity average (average of 10 6-minute measurements) measured by the continuous opacity monitoring system during the PM performance test. If any clock hour average opacity measurement is more than 110 percent of the baseline level, the owner or operator will conduct another performance test within 45 operating days to demonstrate compliance. A new baseline is established during each PM performance test. The new baseline shall not exceed the opacity limit specified in § 60.42Da(b), and

(3) An owner or operator using an ESP to comply with the applicable emission limits shall use voltage and secondary current monitoring equipment to

measure voltage and secondary current to the ESP. Baseline parameters shall be established as average rates measured during the performance test. If a 3-hour average voltage and secondary current average deviates more than 10 percent from the baseline level, the owner or operator will conduct another performance test within 45 operating days to demonstrate compliance. A new baseline is established during each PM performance test, and

(4) An owner or operator using a fabric filter to comply with the applicable emission limits shall install, calibrate, maintain, and continuously operate a bag leak detection system according to paragraphs (o)(4)(i) through (viii) of this section.

(i) Install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(ii) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations and in accordance with the "Fabric Filter Bag Leak Detection Guidance" (EPA 454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Sector Policies and Programs Division; Measurement Policy Group (D243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Continuous Emission Monitoring.

(iii) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter or less.

(iv) The bag leak detection system sensor must provide output of relative or absolute PM loadings.

(v) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(vi) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel. Corrective actions must be initiated within 1 hour of a bag leak detection system alarm. If the alarm is engaged for more than 5 percent of the total operating time on a 30-day rolling average basis, a performance test must be performed within 45 operating days to demonstrate compliance.

(vii) For positive pressure fabric filter systems that do not duct all compartments of cells to a common stack, a bag leak detection system must be installed in each baghouse compartment or cell.

(viii) Where multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors, and

(5) An owner or operator of a modified affected source electing to meet the emission limitations in § 60.42Da(d) shall determine the percent reduction in PM by using the emission rate for PM determined by the performance test conducted according to the requirements in paragraph (o)(1) of this section and the ash content on a mass basis of the fuel burned during each performance test run as determined by analysis of the fuel as fired.

(p) As an alternative to meeting the compliance provisions specified in paragraph (o) of this section, an owner or operator may elect to install, certify, maintain, and operate a CEMS measuring PM emissions discharged from the affected facility to the atmosphere and record the output of the system as specified in paragraphs (p)(1) through (p)(8) of this section.

(1) The owner or operator shall submit a written notification to the Administrator of intent to demonstrate compliance with this subpart by using a CEMS measuring PM. This notification shall be sent at least 30 calendar days before the initial startup of the monitor for compliance determination purposes. The owner or operator may discontinue operation of the monitor and instead return to demonstration of compliance with this subpart according to the requirements in paragraph (o) of this section by submitting written notification to the Administrator of such intent at least 30 calendar days before shutdown of the monitor for compliance determination purposes.

(2) Each CEMS shall be installed, certified, operated, and maintained according to the requirements in § 60.49Da(v).

(3) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of the date of notification to the Administrator required under paragraph (p)(1) of this section, whichever is later.

(4) Compliance with the applicable emissions limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emissions concentrations using the continuous monitoring system outlet data. The 24-hour block arithmetic average emission concentration shall be calculated using EPA Reference Method 19 of appendix A of this part, section 4.1.

(5) At a minimum, valid CEMS hourly averages shall be obtained for 75 percent of all operating hours on a 30-day rolling average basis. Beginning on January 1, 2012, valid CEMS hourly averages shall be obtained for 90 percent of all operating hours on a 30-day rolling average basis.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) [Reserved]

(6) The 1-hour arithmetic averages required shall be expressed in ng/J, MMBtu/hr, or lb/MWh and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(7) All valid CEMS data shall be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (j)(5) of this section are not met.

(8) When PM emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 of appendix A of this part to provide, as necessary, valid emissions data for a minimum of 90 percent (only 75 percent is required prior to January 1, 2012) of all operating hours per 30-day rolling average.

**§ 60.49Da Emission monitoring.**

(a) Except as provided for in paragraphs (t) and (u) of this section, the owner or operator of an affected facility, shall install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring the opacity of emissions discharged to the atmosphere. If opacity interference due to water droplets exists in the stack (for example, from the use of an FGD system), the opacity is monitored upstream of the interference (at the inlet to the FGD system). If opacity interference is experienced at all locations (both at the inlet and outlet of the $SO_2$ control system), alternate parameters indicative of the PM control system's performance and/or good combustion are monitored (subject to the approval of the Administrator).

(b) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring $SO_2$ emissions, except where natural gas is the only fuel combusted, as follows:

(1) Sulfur dioxide emissions are monitored at both the inlet and outlet of the $SO_2$ control device.

(2) For a facility that qualifies under the numerical limit provisions of § 60.43Da(d), (i), (j), or (k) $SO_2$ emissions are only monitored as discharged to the atmosphere.

(3) An "as fired" fuel monitoring system (upstream of coal pulverizers) meeting the requirements of Method 19 of appendix A of this part may be used to determine potential $SO_2$ emissions in place of a continuous $SO_2$ emission monitor at the inlet to the $SO_2$ control device as required under paragraph (b)(1) of this section.

(c)(1) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring $NO_X$ emissions discharged to the atmosphere; or

(2) If the owner or operator has installed a $NO_X$ emission rate CEMS to meet the requirements of part 75 of this chapter and is continuing to meet the ongoing requirements of part 75 of this chapter, that CEMS may be used to meet the requirements of this section, except that the owner or operator shall also meet the requirements of § 60.51Da. Data reported to meet the requirements of § 60.51Da shall not include data substituted using the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

(d) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring the $O_2$ or carbon dioxide ($CO_2$) content of the flue gases at each location where $SO_2$ or $NO_X$ emissions are monitored.

(e) The CEMS under paragraphs (b), (c), and (d) of this section are operated and data recorded during all periods of operation of the affected facility including periods of startup, shutdown, malfunction or emergency conditions, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments.

(f)(1) For units that began construction, reconstruction, or modification on or before February 28, 2005, the owner or operator shall obtain emission data for at least 18 hours in at least 22 out of 30 successive boiler operating days. If this minimum data requirement cannot be met with CEMS, the owner or operator shall supplement emission data with other monitoring systems approved by the Administrator or the reference methods and procedures as described in paragraph (h) of this section.

(2) For units that began construction, reconstruction, or modification after February 28, 2005, the owner or operator shall obtain emission data for at least 90 percent of all operating hours for each 30 successive boiler operating days. If this minimum data requirement cannot be met with a CEMS, the owner or operator shall supplement emission data with other monitoring systems approved by the Administrator or the reference methods and procedures as described in paragraph (h) of this section.

(g) The 1-hour averages required under paragraph § 60.13(h) are expressed in ng/J (lb/MMBtu) heat input and used to calculate the average emission rates under § 60.48Da. The 1-hour averages are calculated using the data points required under § 60.13(b). At least two data points must be used to calculate the 1-hour averages.

(h) When it becomes necessary to supplement CEMS data to meet the minimum data requirements in paragraph (f) of this section, the owner or operator shall use the reference methods and procedures as specified in this paragraph. Acceptable alternative methods and procedures are given in paragraph (j) of this section.

(1) Method 6 of appendix A of this part shall be used to determine the $SO_2$ concentration at the same location as the $SO_2$ monitor. Samples shall be taken at 60-minute intervals. The sampling time and sample volume for each sample shall be at least 20 minutes and 0.020 dscm (0.71 dscf). Each sample represents a 1-hour average.

(2) Method 7 of appendix A of this part shall be used to determine the $NO_X$ concentration at the same location as the $NO_X$ monitor. Samples shall be taken at 30-minute intervals. The arithmetic average of two consecutive samples represents a 1-hour average.

(3) The emission rate correction factor, integrated bag sampling and analysis procedure of Method 3B of appendix A of this part shall be used to determine the $O_2$ or $CO_2$ concentration at the same location as the $O_2$ or $CO_2$ monitor. Samples shall be taken for at least 30 minutes in each hour. Each sample represents a 1-hour average.

(4) The procedures in Method 19 of appendix A of this part shall be used to compute each 1-hour average concentration in ng/J (1b/MMBtu) heat input.

(i) The owner or operator shall use methods and procedures in this paragraph to conduct monitoring system performance evaluations under § 60.13(c) and calibration checks under § 60.13(d). Acceptable alternative methods and procedures are given in paragraph (j) of this section.

(1) Methods 3B, 6, and 7 of appendix A of this part shall be used to determine $O_2$, $SO_2$, and $NO_X$ concentrations, respectively.

(2) $SO_2$ or $NO_X$ (NO), as applicable, shall be used for preparing the calibration gas mixtures (in $N_2$, as applicable) under Performance Specification 2 of appendix B of this part.

(3) For affected facilities burning only fossil fuel, the span value for a CEMS for measuring opacity is between 60 and 80 percent and for a CEMS measuring $NO_X$ is determined as follows:

| Fossil fuel | Span values for $NO_X$ (ppm) |
|---|---|
| Gas | 500 |
| Liquid | 500 |
| Solid | 1,000 |
| Combination | 500(x + y) + 1,000z |

Where:
x = Fraction of total heat input derived from gaseous fossil fuel,
y = Fraction of total heat input derived from liquid fossil fuel, and
z = Fraction of total heat input derived from solid fossil fuel.

(4) All span values computed under paragraph (i)(3) of this section for burning combinations of fossil fuels are rounded to the nearest 500 ppm.

(5) For affected facilities burning fossil fuel, alone or in combination with non-fossil fuel, the span value of the $SO_2$ CEMS at the inlet to the $SO_2$ control device is 125 percent of the maximum estimated hourly potential emissions of the fuel fired, and the outlet of the $SO_2$ control device is 50 percent of maximum estimated hourly potential emissions of the fuel fired.

(j) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 6 of appendix A of this part, Method 6A or 6B (whenever Methods 6 and 3 or 3B of appendix A of this part data are used) or 6C of appendix A of this part may be used. Each Method 6B of appendix A of this part sample obtained over 24 hours represents 24 1-hour averages. If Method 6A or 6B of appendix A of this part is used under paragraph (i) of this section, the conditions under § 60.48Da(d)(1)

apply; these conditions do not apply under paragraph (h) of this section.

(2) For Method 7 of appendix A of this part, Method 7A, 7C, 7D, or 7E of appendix A of this part may be used. If Method 7C, 7D, or 7E of appendix A of this part is used, the sampling time for each run shall be 1 hour.

(3) For Method 3 of appendix A of this part, Method 3A or 3B of appendix A of this part may be used if the sampling time is 1 hour.

(4) For Method 3B of appendix A of this part, Method 3A of appendix A of this part may be used.

(k) The procedures specified in paragraphs (k)(1) through (3) of this section shall be used to determine gross output for sources demonstrating compliance with the output-based standard under § 60.44Da(d)(1).

(1) The owner or operator of an affected facility with electricity generation shall install, calibrate, maintain, and operate a wattmeter; measure gross electrical output in MWh on a continuous basis; and record the output of the monitor.

(2) The owner or operator of an affected facility with process steam generation shall install, calibrate, maintain, and operate meters for steam flow, temperature, and pressure; measure gross process steam output in joules per hour (or Btu per hour) on a continuous basis; and record the output of the monitor.

(3) For affected facilities generating process steam in combination with electrical generation, the gross energy output is determined from the gross electrical output measured in accordance with paragraph (k)(1) of this section plus 75 percent of the gross thermal output (measured relative to ISO conditions) of the process steam measured in accordance with paragraph (k)(2) of this section.

(l) The owner or operator of an affected facility demonstrating compliance with an output-based standard under § 60.42Da, § 60.43Da, § 60.44Da, or § 60.45Da shall install, certify, operate, and maintain a continuous flow monitoring system meeting the requirements of Performance Specification 6 of appendix B and procedure 1 of appendix F of this part, and record the output of the system, for measuring the flow of exhaust gases discharged to the atmosphere; or

(m) Alternatively, data from a continuous flow monitoring system certified according to the requirements of 40 CFR 75.20, meeting the applicable quality control and quality assurance requirements of 40 CFR 75.21, and validated according to appendix B of part 75 of this chapter, may be used.

(n) Gas-fired and oil-fired units. The owner or operator of an affected unit that qualifies as a gas-fired or oil-fired unit, as defined in 40 CFR 72.2, may use, as an alternative to the requirements specified in either paragraph (l) or (m) of this section, a fuel flow monitoring system certified and operated according to the requirements of appendix D of part 75 of this chapter.

(o) The owner or operator of a duct burner, as described in § 60.41Da, which is subject to the $NO_X$ standards of § 60.44Da(a)(1), (d)(1), or (e)(1) is not required to install or operate a CEMS to measure $NO_X$ emissions; a wattmeter to measure gross electrical output; meters to measure steam flow, temperature, and pressure; and a continuous flow monitoring system to measure the flow of exhaust gases discharged to the atmosphere.

(p) The owner or operator of an affected facility demonstrating compliance with an Hg limit in § 60.45Da shall install and operate a CEMS to measure and record the concentration of Hg in the exhaust gases from each stack according to the requirements in paragraphs (p)(1) through (p)(3) of this section. Alternatively, for an affected facility that is also subject to the requirements of subpart I of part 75 of this chapter, the owner or operator may install, certify, maintain, operate and quality-assure the data from a Hg CEMS according to § 75.10 of this chapter and appendices A and B to part 75 of this chapter, in lieu of following the procedures in paragraphs (p)(1) through (p)(3) of this section.

(1) The owner or operator must install, operate, and maintain each CEMS according to Performance Specification 12A in appendix B to this part.

(2) The owner or operator must conduct a performance evaluation of each CEMS according to the requirements of § 60.13 and Performance Specification 12A in appendix B to this part.

(3) The owner or operator must operate each CEMS according to the requirements in paragraphs (p)(3)(i) through (iv) of this section.

(i) As specified in § 60.13(e)(2), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(ii) The owner or operator must reduce CEMS data as specified in § 60.13(h).

(iii) The owner or operator shall use all valid data points collected during the hour to calculate the hourly average Hg concentration.

(iv) The owner or operator must record the results of each required certification and quality assurance test of the CEMS.

(4) Mercury CEMS data collection must conform to paragraphs (p)(4)(i) through (iv) of this section.

(i) For each calendar month in which the affected unit operates, valid hourly Hg concentration data, stack gas volumetric flow rate data, moisture data (if required), and electrical output data (i.e., valid data for all of these parameters) shall be obtained for at least 75 percent of the unit operating hours in the month.

(ii) Data reported to meet the requirements of this subpart shall not include hours of unit startup, shutdown, or malfunction. In addition, for an affected facility that is also subject to subpart I of part 75 of this chapter, data reported to meet the requirements of this subpart shall not include data substituted using the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

(iii) If valid data are obtained for less than 75 percent of the unit operating hours in a month, you must discard the data collected in that month and replace the data with the mean of the individual monthly emission rate values determined in the last 12 months. In the 12-month rolling average calculation, this substitute Hg emission rate shall be weighted according to the number of unit operating hours in the month for which the data capture requirement of § 60.49Da(p)(4)(i) was not met.

(iv) Notwithstanding the requirements of paragraph (p)(4)(iii) of this section, if valid data are obtained for less than 75 percent of the unit operating hours in another month in that same 12-month rolling average cycle, discard the data collected in that month and replace the data with the highest individual monthly emission rate determined in the last 12 months. In the 12-month rolling average calculation, this substitute Hg emission rate shall be weighted according to the number of unit operating hours in the month for which the data capture requirement of § 60.49Da(p)(4)(i) was not met.

(q) As an alternative to the CEMS required in paragraph (p) of this section, the owner or operator may use a sorbent trap monitoring system (as defined in § 72.2 of this chapter) to monitor Hg concentration, according to the procedures described in § 75.15 of this

chapter and appendix K to part 75 of this chapter.

(r) For Hg CEMS that measure Hg concentration on a dry basis or for sorbent trap monitoring systems, the emissions data must be corrected for the stack gas moisture content. A certified continuous moisture monitoring system that meets the requirements of § 75.11(b) of this chapter is acceptable for this purpose. Alternatively, the appropriate default moisture value, as specified in § 75.11(b) or § 75.12(b) of this chapter, may be used.

(s) The owner or operator shall prepare and submit to the Administrator for approval a unit-specific monitoring plan for each monitoring system, at least 45 days before commencing certification testing of the monitoring systems. The owner or operator shall comply with the requirements in your plan. The plan must address the requirements in paragraphs (s)(1) through (6) of this section.

(1) Installation of the CEMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of the exhaust emissions (e.g., on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems;

(3) Performance evaluation procedures and acceptance criteria (e.g., calibrations, relative accuracy test audits (RATA), etc.);

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of § 60.13(d) or part 75 of this chapter (as applicable);

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 60.13 or part 75 of this chapter (as applicable); and

(6) Ongoing recordkeeping and reporting procedures in accordance with the requirements of this subpart.

(t) The owner or operator of an affected facility demonstrating compliance with the output-based emissions limitation under § 60.42Da(c)(1) shall install, certify, operate, and maintain a CEMS for measuring PM emissions according to the requirements of paragraph (v) of this section. An owner or operator of an affected source demonstrating compliance with the input-based emission limitation under § 60.42Da(c)(2) may install, certify, operate, and maintain a CEMS for measuring PM emissions according to the requirements of paragraph (v) of this section.

(u) An owner or operator of an affected source that meets the conditions in either paragraph (u)(1) or (2) of this section is exempted from the continuous opacity monitoring system requirements in paragraph (a) of this section and the monitoring requirements in § 60.48Da(o).

(1) A CEMS for measuring PM emissions is used to demonstrate continuous compliance on a boiler operating day average with the emissions limitations under § 60.42Da(a)(1) or § 60.42Da(c)(2) and is installed, certified, operated, and maintained on the affected source according to the requirements of paragraph (v) of this section; or

(2) The affected source burns only gaseous fuels and does not use a post combustion technology to reduce emissions of $SO_2$ or PM.

(v) The owner or operator of an affected facility using a CEMS measuring PM emissions to meet requirements of this subpart shall install, certify, operate, and maintain the CEMS as specified in paragraphs (v)(1) through (v)(3).

(1) The owner or operator shall conduct a performance evaluation of the CEMS according to the applicable requirements of § 60.13, Performance Specification 11 in appendix B of this part, and procedure 2 in appendix F of this part.

(2) During each relative accuracy test run of the CEMS required by Performance Specification 11 in appendix B of this part, PM and $O_2$ (or $CO_2$) data shall be collected concurrently (or within a 30-to 60-minute period) by both the CEMS and conducting performance tests using the following test methods.

(i) For PM, EPA Reference Method 5, 5B, or 17 of appendix A of this part shall be used.

(ii) For $O_2$ (or $CO_2$), EPA Reference Method 3, 3A, or 3B of appendix A of this part, as applicable, shall be used.

(3) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audits must be performed annually and Response Correlation Audits must be performed every 3 years.

**§ 60.50Da Compliance determination procedures and methods.**

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the methods in appendix A of this part or the methods and procedures as specified in this section, except as provided in § 60.8(b). Section 60.8(f) does not apply to this section for $SO_2$ and $NO_X$. Acceptable alternative methods are given in paragraph (e) of this section.

(b) The owner or operator shall determine compliance with the PM standards in § 60.42Da as follows:

(1) The dry basis F factor ($O_2$) procedures in Method 19 of appendix A of this part shall be used to compute the emission rate of PM.

(2) For the particular matter concentration, Method 5 of appendix A of this part shall be used at affected facilities without wet FGD systems and Method 5B of appendix A of this part shall be used after wet FGD systems.

(i) The sampling time and sample volume for each run shall be at least 120 minutes and 1.70 dscm (60 dscf). The probe and filter holder heating system in the sampling train may be set to provide an average gas temperature of no greater than 160 ± 14 °C (320 ± 25 °F).

(ii) For each particulate run, the emission rate correction factor, integrated or grab sampling and analysis procedures of Method 3B of appendix A of this part shall be used to determine the $O_2$ concentration. The $O_2$ sample shall be obtained simultaneously with, and at the same traverse points as, the particulate run. If the particulate run has more than 12 traverse points, the $O_2$ traverse points may be reduced to 12, provided that Method 1 of appendix A of this part is used to locate the 12 $O_2$ traverse points. If the grab sampling procedure is used, the $O_2$ concentration for the run shall be the arithmetic mean of the sample $O_2$ concentrations at all traverse points.

(3) Method 9 of appendix A of this part and the procedures in § 60.11 shall be used to determine opacity.

(c) The owner or operator shall determine compliance with the $SO_2$ standards in § 60.43Da as follows:

(1) The percent of potential $SO_2$ emissions (%Ps) to the atmosphere shall be computed using the following equation:

$$\%P_s = \frac{(100 - \%R_f)(100 - \%R_g)}{100}$$

Where:

$\%P_s$ = Percent of potential $SO_2$ emissions, percent;

$\%R_f$ = Percent reduction from fuel pretreatment, percent; and

$\%R_g$ = Percent reduction by $SO_2$ control system, percent.

(2) The procedures in Method 19 of appendix A of this part may be used to determine percent reduction ($\%R_f$) of

sulfur by such processes as fuel pretreatment (physical coal cleaning, hydrodesulfurization of fuel oil, etc.), coal pulverizers, and bottom and fly ash interactions. This determination is optional.

(3) The procedures in Method 19 of appendix A of this part shall be used to determine the percent $SO_2$ reduction ($\%R_g$) of any $SO_2$ control system. Alternatively, a combination of an "as fired" fuel monitor and emission rates measured after the control system, following the procedures in Method 19 of appendix A of this part, may be used if the percent reduction is calculated using the average emission rate from the $SO_2$ control device and the average $SO_2$ input rate from the "as fired" fuel analysis for 30 successive boiler operating days.

(4) The appropriate procedures in Method 19 of appendix A of this part shall be used to determine the emission rate.

(5) The CEMS in § 60.49Da(b) and (d) shall be used to determine the concentrations of $SO_2$ and $CO_2$ or $O_2$.

(d) The owner or operator shall determine compliance with the $NO_X$ standard in § 60.44Da as follows:

(1) The appropriate procedures in Method 19 of appendix A of this part shall be used to determine the emission rate of $NO_X$.

(2) The continuous monitoring system in § 60.49Da(c) and (d) shall be used to determine the concentrations of $NO_X$ and $CO_2$ or $O_2$.

(e) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 5 or 5B of appendix A of this part, Method 17 of appendix A of this part may be used at facilities with or without wet FGD systems if the stack temperature at the sampling location does not exceed an average temperature of 160°C (320°F). The procedures of §§ 2.1 and 2.3 of Method 5B of appendix A of this part may be used in Method 17 of appendix A of this part only if it is used after wet FGD systems. Method 17 of appendix A of this part shall not be used after wet FGD systems if the effluent is saturated or laden with water droplets.

(2) The $F_c$ factor ($CO_2$) procedures in Method 19 of appendix A of this part may be used to compute the emission rate of PM under the stipulations of § 60.46(d)(1). The $CO_2$ shall be determined in the same manner as the $O_2$ concentration.

(f) Electric utility combined cycle gas turbines are performance tested for PM, $SO_2$, and $NO_X$ using the procedures of Method 19 of appendix A of this part. The $SO_2$ and $NO_X$ emission rates from the gas turbine used in Method 19 of appendix A of this part calculations are determined when the gas turbine is performance tested under subpart GG of this part. The potential uncontrolled PM emission rate from a gas turbine is defined as 17 ng/J (0.04 lb/MMBtu) heat input.

(g) For the purposes of determining compliance with the emission limits in § 60.45Da, the owner or operator of an electric utility steam generating unit which is also a cogeneration unit shall use the procedures in paragraphs (g)(1) and (2) of this section to calculate emission rates based on electrical output to the grid plus 75 percent of the equivalent electrical energy (measured relative to ISO conditions) in the unit's process stream.

(1) All conversions from Btu/hr unit input to MW unit output must use equivalents found in 40 CFR 60.40(a)(1) for electric utilities (i.e., 250 MMBtu/hr input to an electric utility steam generating unit is equivalent to 73 MW input to the electric utility steam generating unit); 73 MW input to the electric utility steam generating unit is equivalent to 25 MW output from the boiler electric utility steam generating unit; therefore, 250 MMBtu input to the electric utility steam generating unit is equivalent to 25 MW output from the electric utility steam generating unit).

(2) Use the Equation 5 in this section to determine the cogeneration Hg emission rate over a specific compliance period.

$$E = \frac{M}{(V_{grid} + 0.75 \times V_{process})} \qquad \text{(Eq. 5)}$$

Where:

$ER_{cogen}$ = Cogeneration Hg emission rate over a compliance period in lb/MWh;

E = Mass of Hg emitted from the stack over the same compliance period (lb);

$V_{grid}$ = Amount of energy sent to the grid over the same compliance period (MWh); and

$V_{process}$ = Amount of energy converted to steam for process use over the same compliance period (MWh).

(h) The owner or operator shall determine compliance with the Hg limit in § 60.45Da according to the procedures in paragraphs (h)(1) through (3) of this section.

(1) The initial performance test shall be commenced by the applicable date specified in § 60.8(a). The required CEMS must be certified prior to commencing the test. The performance test consists of collecting hourly Hg emission data (lb/MWh) with the CEMS for 12 successive months of unit operation (excluding hours of unit startup, shutdown and malfunction). The average Hg emission rate is calculated for each month, and then the weighted, 12-month average Hg emission rate is calculated according to paragraph (h)(2) or (h)(3) of this section, as applicable. If, for any month in the initial performance test, the minimum data capture requirement in § 60.49Da(p)(4)(i) is not met, the owner or operator shall report a substitute Hg emission rate for that month, as follows. For the first such month, the substitute monthly Hg emission rate shall be the arithmetic average of all valid hourly Hg emission rates recorded to date. For any subsequent month(s) with insufficient data capture, the substitute monthly Hg emission rate shall be the highest valid hourly Hg emission rate recorded to date. When the 12-month average Hg emission rate for the initial performance test is calculated, for each month in which there was insufficient data capture, the substitute monthly Hg emission rate shall be weighted according to the number of unit operating hours in that month. Following the initial performance test, the owner or operator shall demonstrate compliance by calculating the weighted average of all monthly Hg emission rates (in lb/MWh) for each 12 successive calendar months, excluding data obtained during startup, shutdown, or malfunction.

(2) If a CEMS is used to demonstrate compliance, follow the procedures in paragraphs (h)(2)(i) through (iii) of this section to determine the 12-month rolling average.

(i) Calculate the total mass of Hg emissions over a month (M), in lb, using either Equation 6 in paragraph (h)(2)(i)(A) of this section or Equation 7 in paragraph (h)(2)(i)(B) of this section, in conjunction with Equation 8 in paragraph (h)(2)(i)(C) of this section.

(A) If the Hg CEMS measures Hg concentration on a wet basis, use Equation 6 below to calculate the Hg mass emissions for each valid hour:

$$E = KC_hQ_ht_h \qquad \text{(Eq. 6)}$$

Where:

$E_h$ = Hg mass emissions for the hour, (lb);

K = Units conversion constant, $6.24 \times 10^{-11}$ lb-scm/μgm-scf;

$C_h$ = Hourly Hg concentration, wet basis, (μgm/scm);

$Q_h$ = Hourly stack gas volumetric flow rate, (scfh); and

$t_h$ = Unit operating time, i.e., the fraction of the hour for which the unit operated. For example, $t_h$ = 0.50 for a half-hour of unit operation and 1.00 for a full hour of operation.

(B) If the Hg CEMS measures Hg concentration on a dry basis, use

Equation 7 below to calculate the Hg mass emissions for each valid hour:

$$E = KC_hQ_ht_h\ (1-B_{ws}) \qquad \text{(Eq. 7)}$$

Where:

$E_h$ = Hg mass emissions for the hour, (lb);
K = Units conversion constant, $6.24 \times 10^{-11}$ lb-scm/µgm-scf;
$C_h$ = Hourly Hg concentration, dry basis, (µgm/dscm);
$Q_h$ = Hourly stack gas volumetric flow rate, (scfh);
$t_h$ = Unit operating time, i.e., the fraction of the hour for which the unit operated; and
$B_{ws}$ = Stack gas moisture content, expressed as a decimal fraction (e.g., for 8 percent $H_2O$, $B_{ws} = 0.08$).

(C) Use Equation 8, below, to calculate M, the total mass of Hg emitted for the month, by summing the hourly masses derived from Equation 6 or 7 (as applicable):

$$M = \sum_{h=1}^{n} E_h \qquad \text{(Eq. 8)}$$

Where:

M = Total Hg mass emissions for the month, (lb);
$E_h$ = Hg mass emissions for hour "h", from Equation 6 or 7 of this section, (lb); and
n = Number of unit operating hours in the month with valid CE and electrical output data, excluding hours of unit startup, shutdown and malfunction.

(ii) Calculate the monthly Hg emission rate on an output basis (lb/MWh) using Equation 9, below. For a cogeneration unit, use Equation 5 in paragraph (g) of this section instead.

$$ER = \frac{M}{P} \qquad \text{(Eq. 9)}$$

Where:

ER = Monthly Hg emission rate, (lb/MWh);
M = Total mass of Hg emissions for the month, from Equation 8, above, (lb); and
P = Total electrical output for the month, for the hours used to calculate M, (MWh).

(iii) Until 12 monthly Hg emission rates have been accumulated, calculate and report only the monthly averages. Then, for each subsequent calendar month, use Equation 10 below to calculate the 12-month rolling average as a weighted average of the Hg emission rate for the current month and the Hg emission rates for the previous 11 months, with one exception. Calendar months in which the unit does not operate (zero unit operating hours) shall not be included in the 12-month rolling average.

$$E_{ave} = \frac{\sum_{i=1}^{12}(ER_i \times n_i)}{\sum_{i=1}^{12} n_1} \qquad \text{(Eq. 10)}$$

Where:

$E_{avg}$ = Weighted 12-month rolling average Hg emission rate, (lb/MWh);
$ER_i$ = Monthly Hg emission rate, for month "i", (lb/MWh); and
n = Number of unit operating hours in month "i" with valid CEM and electrical output data, excluding hours of unit startup, shutdown, and malfunction.

(3) If a sorbent trap monitoring system is used in lieu of a Hg CEMS, as described in § 75.15 of this chapter and in appendix K to part 75 of this chapter, calculate the monthly Hg emission rates using Equations 7 through 9 of this section, except that for a particular pair of sorbent traps, $C_h$ in Equation 7 shall be the flow-proportional average Hg concentration measured over the data collection period.

(i) Daily calibration drift (CD) tests and quarterly accuracy determinations shall be performed for Hg CEMS in accordance with Procedure 1 of appendix F to this part. For the CD assessments, you may use either elemental mercury or mercuric chloride ($Hg^0$ or $HgCl_2$) standards. The four quarterly accuracy determinations shall consist of one RATA and three measurement error (ME) tests using $HgCl_2$ standards, as described in section 8.3 of Performance Specification 12–A in appendix B to this part (note: $Hg^0$ standards may be used if the Hg monitor does not have a converter). Alternatively, the owner or operator may implement the applicable daily, weekly, quarterly, and annual quality assurance (QA) requirements for Hg CEMS in appendix B to part 75 of this chapter, in lieu of the QA procedures in appendices B and F to this part. Annual RATA of sorbent trap monitoring systems shall be performed in accordance with appendices A and B to part 75 of this chapter, and all other quality assurance requirements specified in appendix K to part 75 of this chapter shall be met for sorbent trap monitoring systems.

**§ 60.51Da Reporting requirements.**

(a) For $SO_2$, $NO_X$, PM, and Hg emissions, the performance test data from the initial and subsequent performance test and from the performance evaluation of the continuous monitors (including the transmissometer) are submitted to the Administrator.

(b) For $SO_2$ and $NO_X$ the following information is reported to the Administrator for each 24-hour period.

(1) Calendar date.

(2) The average $SO_2$ and $NO_X$ emission rates (ng/J or lb/MMBtu) for each 30 successive boiler operating days, ending with the last 30-day period in the quarter; reasons for non-compliance with the emission standards; and, description of corrective actions taken.

(3) Percent reduction of the potential combustion concentration of $SO_2$ for each 30 successive boiler operating days, ending with the last 30-day period in the quarter; reasons for non-compliance with the standard; and, description of corrective actions taken.

(4) Identification of the boiler operating days for which pollutant or diluent data have not been obtained by an approved method for at least 75 percent of the hours of operation of the facility; justification for not obtaining sufficient data; and description of corrective actions taken.

(5) Identification of the times when emissions data have been excluded from the calculation of average emission rates because of startup, shutdown, malfunction ($NO_X$ only), emergency conditions ($SO_2$ only), or other reasons, and justification for excluding data for reasons other than startup, shutdown, malfunction, or emergency conditions.

(6) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted.

(7) Identification of times when hourly averages have been obtained based on manual sampling methods.

(8) Identification of the times when the pollutant concentration exceeded full span of the CEMS.

(9) Description of any modifications to CEMS which could affect the ability of the CEMS to comply with Performance Specifications 2 or 3.

(c) If the minimum quantity of emission data as required by § 60.49Da is not obtained for any 30 successive boiler operating days, the following information obtained under the requirements of § 60.48Da(h) is reported to the Administrator for that 30-day period:

(1) The number of hourly averages available for outlet emission rates ($n_o$) and inlet emission rates ($n_i$) as applicable.

(2) The standard deviation of hourly averages for outlet emission rates ($s_o$) and inlet emission rates ($s_i$) as applicable.

(3) The lower confidence limit for the mean outlet emission rate ($E_o$*) and the

upper confidence limit for the mean inlet emission rate ($E_i$*) as applicable.

(4) The applicable potential combustion concentration.

(5) The ratio of the upper confidence limit for the mean outlet emission rate ($E_o$*) and the allowable emission rate ($E_{std}$) as applicable.

(d) If any standards under § 60.43Da are exceeded during emergency conditions because of control system malfunction, the owner or operator of the affected facility shall submit a signed statement:

(1) Indicating if emergency conditions existed and requirements under § 60.48Da(d) were met during each period, and

(2) Listing the following information:

(i) Time periods the emergency condition existed;

(ii) Electrical output and demand on the owner or operator's electric utility system and the affected facility;

(iii) Amount of power purchased from interconnected neighboring utility companies during the emergency period;

(iv) Percent reduction in emissions achieved;

(v) Atmospheric emission rate (ng/J) of the pollutant discharged; and

(vi) Actions taken to correct control system malfunction.

(e) If fuel pretreatment credit toward the $SO_2$ emission standard under § 60.43Da is claimed, the owner or operator of the affected facility shall submit a signed statement:

(1) Indicating what percentage cleaning credit was taken for the calendar quarter, and whether the credit was determined in accordance with the provisions of § 60.50Da and Method 19 of appendix A of this part; and

(2) Listing the quantity, heat content, and date each pretreated fuel shipment was received during the previous quarter; the name and location of the fuel pretreatment facility; and the total quantity and total heat content of all fuels received at the affected facility during the previous quarter.

(f) For any periods for which opacity, $SO_2$ or $NO_X$ emissions data are not available, the owner or operator of the affected facility shall submit a signed statement indicating if any changes were made in operation of the emission control system during the period of data unavailability. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability.

(g) For Hg, the following information shall be reported to the Administrator:

(1) Company name and address;

(2) Date of report and beginning and ending dates of the reporting period;

(3) The applicable Hg emission limit (lb/MWh); and

(4) For each month in the reporting period:

(i) The number of unit operating hours;

(ii) The number of unit operating hours with valid data for Hg concentration, stack gas flow rate, moisture (if required), and electrical output;

(iii) The monthly Hg emission rate (lb/MWh);

(iv) The number of hours of valid data excluded from the calculation of the monthly Hg emission rate, due to unit startup, shutdown and malfunction; and

(v) The 12-month rolling average Hg emission rate (lb/MWh); and

(5) The data assessment report (DAR) required by appendix F to this part, or an equivalent summary of QA test results if the QA of part 75 of this chapter are implemented.

(h) The owner or operator of the affected facility shall submit a signed statement indicating whether:

(1) The required CEMS calibration, span, and drift checks or other periodic audits have or have not been performed as specified.

(2) The data used to show compliance was or was not obtained in accordance with approved methods and procedures of this part and is representative of plant performance.

(3) The minimum data requirements have or have not been met; or, the minimum data requirements have not been met for errors that were unavoidable.

(4) Compliance with the standards has or has not been achieved during the reporting period.

(i) For the purposes of the reports required under § 60.7, periods of excess emissions are defined as all 6-minute periods during which the average opacity exceeds the applicable opacity standards under § 60.42Da(b). Opacity levels in excess of the applicable opacity standard and the date of such excesses are to be submitted to the Administrator each calendar quarter.

(j) The owner or operator of an affected facility shall submit the written reports required under this section and subpart A to the Administrator semiannually for each six-month period. All semiannual reports shall be postmarked by the 30th day following the end of each six-month period.

(k) The owner or operator of an affected facility may submit electronic quarterly reports for $SO_2$ and/or $NO_X$ and/or opacity and/or Hg in lieu of submitting the written reports required under paragraphs (b), (g), and (i) of this section. The format of each quarterly electronic report shall be coordinated with the permitting authority. The electronic report(s) shall be submitted no later than 30 days after the end of the calendar quarter and shall be accompanied by a certification statement from the owner or operator, indicating whether compliance with the applicable emission standards and minimum data requirements of this subpart was achieved during the reporting period. Before submitting reports in the electronic format, the owner or operator shall coordinate with the permitting authority to obtain their agreement to submit reports in this alternative format.

**§ 60.52Da Recordkeeping requirements.**

The owner or operator of an affected facility subject to the emissions limitations in § 60.45Da shall provide notifications in accordance with § 60.7(a) and shall maintain records of all information needed to demonstrate compliance including performance tests, monitoring data, fuel analyses, and calculations, consistent with the requirements of § 60.7(f).

## Subpart Db—[Amended]

5. Subpart Db is revised to read as follows:

## Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

Sec.

60.40b Applicability and delegation of authority.
60.41b Definitions.
60.42b Standard for sulfur dioxide ($SO_2$).
60.43b Standard for particulate matter (PM).
60.44b Standard for nitrogen oxides ($NO_X$).
60.45b Compliance and performance test methods and procedures for sulfur dioxide.
60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.
60.47b Emission monitoring for sulfur dioxide.
60.48b Emission monitoring for particulate matter and nitrogen oxides.
60.49b Reporting and recordkeeping requirements.

## Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

**§ 60.40b Applicability and delegation of authority.**

(a) The affected facility to which this subpart applies is each steam generating unit that commences construction, modification, or reconstruction after

June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 megawatts (MW) (100 million British thermal units per hour (MMBtu/hr)).

(b) Any affected facility meeting the applicability requirements under paragraph (a) of this section and commencing construction, modification, or reconstruction after June 19, 1984, but on or before June 19, 1986, is subject to the following standards:

(1) Coal-fired affected facilities having a heat input capacity between 29 and 73 MW (100 and 250 MMBtu/hr), inclusive, are subject to the particulate matter (PM) and nitrogen oxides ($NO_X$) standards under this subpart.

(2) Coal-fired affected facilities having a heat input capacity greater than 73 MW (250 MMBtu/hr) and meeting the applicability requirements under subpart D (Standards of performance for fossil-fuel-fired steam generators; § 60.40) are subject to the PM and $NO_X$ standards under this subpart and to the sulfur dioxide ($SO_2$) standards under subpart D (§ 60.43).

(3) Oil-fired affected facilities having a heat input capacity between 29 and 73 MW (100 and 250 MMBtu/hr), inclusive, are subject to the $NO_X$ standards under this subpart.

(4) Oil-fired affected facilities having a heat input capacity greater than 73 MW (250 MMBtu/hr) and meeting the applicability requirements under subpart D (Standards of performance for fossil-fuel-fired steam generators; § 60.40) are also subject to the $NO_X$ standards under this subpart and the PM and $SO_2$ standards under subpart D (§ 60.42 and § 60.43).

(c) Affected facilities that also meet the applicability requirements under subpart J (Standards of performance for petroleum refineries; § 60.104) are subject to the PM and $NO_X$ standards under this subpart and the $SO_2$ standards under subpart J (§ 60.104).

(d) Affected facilities that also meet the applicability requirements under subpart E (Standards of performance for incinerators; § 60.50) are subject to the $NO_X$ and PM standards under this subpart.

(e) Steam generating units meeting the applicability requirements under subpart Da (Standards of performance for electric utility steam generating units; § 60.40Da) are not subject to this subpart.

(f) Any change to an existing steam generating unit for the sole purpose of combusting gases containing total reduced sulfur (TRS) as defined under § 60.281 is not considered a modification under § 60.14 and the steam generating unit is not subject to this subpart.

(g) In delegating implementation and enforcement authority to a State under section 111(c) of the Clean Air Act, the following authorities shall be retained by the Administrator and not transferred to a State.

(1) Section 60.44b(f).

(2) Section 60.44b(g).

(3) Section 60.49b(a)(4).

(h) Any affected facility that meets the applicability requirements and is subject to subpart Ea, subpart Eb, or subpart AAAA of this part is not covered by this subpart.

(i) Heat recovery steam generators that are associated with combined cycle gas turbines and that meet the applicability requirements of subpart GG or KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators that are capable of combusting more than 29 MW (100 MMBtu/hr) heat input of fossil fuel. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to subpart GG or KKKK, as applicable, of this part.)

(j) Any affected facility meeting the applicability requirements under paragraph (a) of this section and commencing construction, modification, or reconstruction after June 19, 1986 is not subject to subpart D (Standards of Performance for Fossil-Fuel-Fired Steam Generators, § 60.40).

(k) Any affected facility that meets the applicability requirements and is subject to an EPA approved State or Federal section 111(d)/129 plan implementing subpart Cb or subpart BBBB of this part is not covered by this subpart.

**§ 60.41b Definitions.**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act and in subpart A of this part.

*Annual capacity factor* means the ratio between the actual heat input to a steam generating unit from the fuels listed in § 60.42b(a), § 60.43b(a), or § 60.44b(a), as applicable, during a calendar year and the potential heat input to the steam generating unit had it been operated for 8,760 hours during a calendar year at the maximum steady state design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility in a calendar year.

*Byproduct/waste* means any liquid or gaseous substance produced at chemical manufacturing plants, petroleum refineries, or pulp and paper mills (except natural gas, distillate oil, or residual oil) and combusted in a steam generating unit for heat recovery or for disposal. Gaseous substances with carbon dioxide ($CO_2$) levels greater than 50 percent or carbon monoxide levels greater than 10 percent are not byproduct/waste for the purpose of this subpart.

*Chemical manufacturing plants* mean industrial plants that are classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 28.

*Coal* means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures, coke oven gas, and coal-water mixtures, are also included in this definition for the purposes of this subpart.

*Coal refuse* means any byproduct of coal mining or coal cleaning operations with an ash content greater than 50 percent, by weight, and a heating value less than 13,900 kJ/kg (6,000 Btu/lb) on a dry basis.

*Cogeneration*, also known as combined heat and power, means a facility that simultaneously produces both electric (or mechanical) and useful thermal energy from the same primary energy source.

*Coke oven gas* means the volatile constituents generated in the gaseous exhaust during the carbonization of bituminous coal to form coke.

*Combined cycle system* means a system in which a separate source, such as a gas turbine, internal combustion engine, kiln, etc., provides exhaust gas to a steam generating unit.

*Conventional technology* means wet flue gas desulfurization (FGD) technology, dry FGD technology, atmospheric fluidized bed combustion technology, and oil hydrodesulfurization technology.

*Distillate oil* means fuel oils that contain 0.05 weight percent nitrogen or less and comply with the specifications for fuel oil numbers 1 and 2, as defined by the American Society of Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17).

*Dry flue gas desulfurization technology* means a $SO_2$ control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the

steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline slurries or solutions used in dry flue gas desulfurization technology include but are not limited to lime and sodium.

*Duct burner* means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a steam generating unit.

*Emerging technology* means any $SO_2$ control system that is not defined as a conventional technology under this section, and for which the owner or operator of the facility has applied to the Administrator and received approval to operate as an emerging technology under § 60.49b(a)(4).

*Federally enforceable* means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 51.24.

*Fluidized bed combustion technology* means combustion of fuel in a bed or series of beds (including but not limited to bubbling bed units and circulating bed units) of limestone aggregate (or other sorbent materials) in which these materials are forced upward by the flow of combustion air and the gaseous products of combustion.

*Fuel pretreatment* means a process that removes a portion of the sulfur in a fuel before combustion of the fuel in a steam generating unit.

*Full capacity* means operation of the steam generating unit at 90 percent or more of the maximum steady-state design heat input capacity.

*Gaseous fuel* means any fuel that is present as a gas at ISO conditions.

*Gross output* means the gross useful work performed by the steam generated. For units generating only electricity, the gross useful work performed is the gross electrical output from the turbine/generator set. For cogeneration units, the gross useful work performed is the gross electrical or mechanical output plus 75 percent of the useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output (*i.e.*, steam delivered to an industrial process).

*Heat input* means heat derived from combustion of fuel in a steam generating unit and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

*Heat release rate* means the steam generating unit design heat input capacity (in MW or Btu/hr) divided by the furnace volume (in cubic meters or cubic feet); the furnace volume is that volume bounded by the front furnace wall where the burner is located, the furnace side waterwall, and extending to the level just below or in front of the first row of convection pass tubes.

*Heat transfer medium* means any material that is used to transfer heat from one point to another point.

*High heat release rate* means a heat release rate greater than 730,000 J/sec–$m^3$ (70,000 Btu/hr–$ft^3$).

*ISO Conditions* means a temperature of 288 Kelvin, a relative humidity of 60 percent, and a pressure of 101.3 kilopascals.

*Lignite* means a type of coal classified as lignite A or lignite B by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

*Low heat release rate* means a heat release rate of 730,000 J/sec–$m^3$ (70,000 Btu/hr–$ft^3$) or less.

*Mass-feed stoker steam generating unit* means a steam generating unit where solid fuel is introduced directly into a retort or is fed directly onto a grate where it is combusted.

*Maximum heat input capacity* means the ability of a steam generating unit to combust a stated maximum amount of fuel on a steady state basis; as determined by the physical design and characteristics of the steam generating unit.

*Municipal-type solid waste* means refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as glass and rock.

*Natural gas* means: (1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or (2) liquefied petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835 (incorporated by reference, see § 60.17).

*Noncontinental area* means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

*Oil* means crude oil or petroleum or a liquid fuel derived from crude oil or petroleum, including distillate and residual oil.

*Petroleum refinery* means industrial plants as classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 29.

*Potential sulfur dioxide emission rate* means the theoretical $SO_2$ emissions (nanograms per joule (ng/J) or lb/MMBtu heat input) that would result from combusting fuel in an uncleaned state and without using emission control systems.

*Process heater* means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

*Pulp and paper mills* means industrial plants that are classified by the Department of Commerce under North American Industry Classification System (NAICS) Code 322 or Standard Industrial Classification (SIC) Code 26.

*Pulverized coal-fired steam generating unit* means a steam generating unit in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the steam generating unit where it is fired in suspension. This includes both conventional pulverized coal-fired and micropulverized coal-fired steam generating units.

Residual oil means crude oil, fuel oil numbers 1 and 2 that have a nitrogen content greater than 0.05 weight percent, and all fuel oil numbers 4, 5 and 6, as defined by the American Society of Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17).

*Spreader stoker steam generating unit* means a steam generating unit in which solid fuel is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

*Steam generating unit* means a device that combusts any fuel or byproduct/waste and produces steam or heats water or any other heat transfer medium. This term includes any municipal-type solid waste incinerator with a heat recovery steam generating unit or any steam generating unit that combusts fuel and is part of a cogeneration system or a combined cycle system. This term does not include process heaters as they are defined in this subpart.

*Steam generating unit operating day* means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit.

It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

*Very low sulfur oil* means for units constructed, reconstructed, or modified on or before February 28, 2005, an oil that contains no more than 0.5 weight percent sulfur or that, when combusted without $SO_2$ emission control, has a $SO_2$ emission rate equal to or less than 215 ng/J (0.5 lb/MMBtu) heat input. For units constructed, reconstructed, or modified after February 28, 2005, *very low sulfur oil* means an oil that contains no more than 0.3 weight percent sulfur or that, when combusted without $SO_2$ emission control, has a $SO_2$ emission rate equal to or less than 140 ng/J (0.32 lb/MMBtu) heat input.

*Wet flue gas desulfurization technology* means a $SO_2$ control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gas with an alkaline slurry or solution and forming a liquid material. This definition applies to devices where the aqueous liquid material product of this contact is subsequently converted to other forms. Alkaline reagents used in wet flue gas desulfurization technology include, but are not limited to, lime, limestone, and sodium.

*Wet scrubber system* means any emission control device that mixes an aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of PM or $SO_2$.

*Wood* means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including, but not limited to, sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

**§ 60.42b Standard for sulfur dioxide ($SO_2$).**

(a) Except as provided in paragraphs (b), (c), (d), or (k) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts coal or oil shall cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) or 10 percent (0.10) of the potential $SO_2$ emission rate (90 percent reduction) and the emission limit determined according to the following formula:

$$E_s = \frac{(K_a H_a + K_b H_b)}{(K_a H_b)}$$

Where:

$E_s$ = $SO_2$ emission limit, in ng/J or lb/MM Btu heat input;
$K_a$ = 520 ng/J (or 1.2 lb/MMBtu);
$K_b$ = 340 ng/J (or 0.80 lb/MMBtu);
$H_a$ = Heat input from the combustion of coal, in J (MMBtu); and
$H_b$ = Heat input from the combustion of oil, in J (MMBtu).

Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from the combustion of natural gas, wood, municipal-type solid waste, or other fuels or heat derived from exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

(b) On and after the date on which the performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts coal refuse alone in a fluidized bed combustion steam generating unit shall cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) or 20 percent (0.20) of the potential $SO_2$ emission rate (80 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input. If coal or oil is fired with coal refuse, the affected facility is subject to paragraph (a) or (d) of this section, as applicable.

(c) On and after the date on which the performance test is completed or is required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that combusts coal or oil, either alone or in combination with any other fuel, and that uses an emerging technology for the control of $SO_2$ emissions, shall cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 50 percent of the potential $SO_2$ emission rate (50 percent reduction) and that contain $SO_2$ in excess of the emission limit determined according to the following formula:

$$E_s = \frac{(K_c H_c + K_d H_d)}{(K_c + H_d)}$$

Where:

$E_s$ = $SO_2$ emission limit, in ng/J or lb/MMBtu heat input;
$K_c$ = 260 ng/J (or 1.2 lb/MMBtu);
$K_d$ = 170 ng/J (or 0.80 lb/MMBtu);
$H_c$ = Heat input from the combustion of coal, in J (MMBtu); and
$H_d$ = Heat input from the combustion of oil, in J (MMBtu).

Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from the combustion of natural gas, wood, municipal-type solid waste, or other fuels, or from the heat input derived from exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

(d) On and after the date on which the performance test is completed or required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005 and listed in paragraphs (d)(1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 520 ng/J (1.2 lb/MMBtu) heat input if the affected facility combusts coal, or 215 ng/J (0.5 lb/MMBtu) heat input if the affected facility combusts oil other than very low sulfur oil. Percent reduction requirements are not applicable to affected facilities under paragraphs (d)(1), (2), (3) or (4) of this section.

(1) Affected facilities that have an annual capacity factor for coal and oil of 30 percent (0.30) or less and are subject to a federally enforceable permit limiting the operation of the affected facility to an annual capacity factor for coal and oil of 30 percent (0.30) or less;

(2) Affected facilities located in a noncontinental area; or

(3) Affected facilities combusting coal or oil, alone or in combination with any fuel, in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat entering the steam generating unit is from combustion of coal and oil in the duct burner and 70 percent (0.70) or more of the heat entering the steam generating unit is from the exhaust gases entering the duct burner; or

(4) The affected facility burns coke oven gas alone or in combination with natural gas or very low sulfur distillate oil.

(e) Except as provided in paragraph (f) of this section, compliance with the emission limits, fuel oil sulfur limits, and/or percent reduction requirements under this section are determined on a 30-day rolling average basis.

(f) Except as provided in paragraph (j)(2) of this section, compliance with the emission limits or fuel oil sulfur limits under this section is determined on a 24-hour average basis for affected

facilities that (1) have a federally enforceable permit limiting the annual capacity factor for oil to 10 percent or less, (2) combust only very low sulfur oil, and (3) do not combust any other fuel.

(g) Except as provided in paragraph (i) of this section, the $SO_2$ emission limits and percent reduction requirements under this section apply at all times, including periods of startup, shutdown, and malfunction.

(h) Reductions in the potential $SO_2$ emission rate through fuel pretreatment are not credited toward the percent reduction requirement under paragraph (c) of this section unless:

(1) Fuel pretreatment results in a 50 percent or greater reduction in potential $SO_2$ emissions and

(2) Emissions from the pretreated fuel (without combustion or post combustion $SO_2$ control) are equal to or less than the emission limits specified in paragraph (c) of this section.

(i) An affected facility subject to paragraph (a), (b), or (c) of this section may combust very low sulfur oil or natural gas when the $SO_2$ control system is not being operated because of malfunction or maintenance of the $SO_2$ control system.

(j) Percent reduction requirements are not applicable to affected facilities combusting only very low sulfur oil. The owner or operator of an affected facility combusting very low sulfur oil shall demonstrate that the oil meets the definition of very low sulfur oil by: (1) Following the performance testing procedures as described in § 60.45b(c) or § 60.45b(d), and following the monitoring procedures as described in § 60.47b(a) or § 60.47b(b) to determine $SO_2$ emission rate or fuel oil sulfur content; or (2) maintaining fuel records as described in § 60.49b(r).

(k)(1) Except as provided in paragraphs (k)(2), (k)(3), and (k)(4) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, natural gas, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 8 percent (0.08) of the potential $SO_2$ emission rate (92 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input.

(2) Units firing only very low sulfur oil and/or a mixture of gaseous fuels with a potential $SO_2$ emission rate of 140 ng/J (0.32 lb/MMBtu) heat input or less are exempt from the $SO_2$ emissions limit in paragraph 60.42b(k)(1).

(3) Units that are located in a noncontinental area and that combust coal or oil shall not discharge any gases that contain $SO_2$ in excess of 520 ng/J (1.2 lb/MMBtu) heat input if the affected facility combusts coal, or 215 ng/J (0.50 lb/MMBtu) heat input if the affected facility combusts oil.

(4) As an alternative to meeting the requirements under paragraph (k)(1) of this section, modified facilities that combust coal or a mixture of coal with other fuels shall not cause to be discharged into the atmosphere any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 10 percent (0.10) of the potential $SO_2$ emission rate (90 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input.

**§ 60.43b Standard for particulate matter (PM).**

(a) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005 that combusts coal or combusts mixtures of coal with other fuels, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emission limits:

(1) 22 ng/J (0.051 lb/MMBtu) heat input,

(i) If the affected facility combusts only coal, or

(ii) If the affected facility combusts coal and other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 43 ng/J (0.10 lb/MMBtu) heat input if the affected facility combusts coal and other fuels and has an annual capacity factor for the other fuels greater than 10 percent (0.10) and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.

(3) 86 ng/J (0.20 lb/MMBtu) heat input if the affected facility combusts coal or coal and other fuels and

(i) Has an annual capacity factor for coal or coal and other fuels of 30 percent (0.30) or less,

(ii) Has a maximum heat input capacity of 73 MW (250 MMBtu/hr) or less,

(iii) Has a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor of 30 percent (0.30) or less for coal or coal and other solid fuels, and

(iv) Construction of the affected facility commenced after June 19, 1984, and before November 25, 1986.

(4) An affected facility burning coke oven gas alone or in combination with other fuels not subject to a PM standard under § 60.43b and not using a post combustion technology (except a wet scrubber) for reducing PM or $SO_2$ emissions is not subject to the PM limits under § 60.43b(a).

(b) On and after the date on which the performance test is completed or required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, and that combusts oil (or mixtures of oil with other fuels) and uses a conventional or emerging technology to reduce $SO_2$ emissions shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 43 ng/J (0.10 lb/MMBtu) heat input.

(c) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, and that combusts wood, or wood with other fuels, except coal, shall cause to be discharged from that affected facility any gases that contain PM in excess of the following emission limits:

(1) 43 ng/J (0.10 lb/MMBtu) heat input if the affected facility has an annual capacity factor greater than 30 percent (0.30) for wood.

(2) 86 ng/J (0.20 lb/MMBtu) heat input if

(i) The affected facility has an annual capacity factor of 30 percent (0.30) or less for wood;

(ii) Is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor of 30 percent (0.30) or less for wood; and

(iii) Has a maximum heat input capacity of 73 MW (250 MMBtu/hr) or less.

(d) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts municipal-type solid waste or mixtures of municipal-type solid waste with other fuels, shall cause to be discharged into the atmosphere from that affected facility any gases that

contain PM in excess of the following emission limits:

(1) 43 ng/J (0.10 lb/MMBtu) heat input;

(i) If the affected facility combusts only municipal-type solid waste; or

(ii) If the affected facility combusts municipal-type solid waste and other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 86 ng/J (0.20 lb/MMBtu) heat input if the affected facility combusts municipal-type solid waste or municipal-type solid waste and other fuels; and

(i) Has an annual capacity factor for municipal-type solid waste and other fuels of 30 percent (0.30) or less;

(ii) Has a maximum heat input capacity of 73 MW (250 MMBtu/hr) or less;

(iii) Has a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor of 30 percent (0.30) or less for municipal-type solid waste, or municipal-type solid waste and other fuels; and

(iv) Construction of the affected facility commenced after June 19, 1984, but on or before November 25, 1986.

(e) For the purposes of this section, the annual capacity factor is determined by dividing the actual heat input to the steam generating unit during the calendar year from the combustion of coal, wood, or municipal-type solid waste, and other fuels, as applicable, by the potential heat input to the steam generating unit if the steam generating unit had been operated for 8,760 hours at the maximum heat input capacity.

(f) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, wood, or mixtures of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(g) The PM and opacity standards apply at all times, except during periods of startup, shutdown or malfunction.

(h)(1) Except as provided in paragraphs (h)(2), (h)(3), (h)(4), and (h)(5) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 13 ng/J (0.030 lb/MMBtu) heat input,

(2) As an alternative to meeting the requirements of paragraph (h)(1) of this section, the owner or operator of an affected facility for which modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the initial performance test is completed or required to be completed under § 60.8, no owner or operator of an affected facility that commences modification after February 28, 2005 shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of both:

(i) 22 ng/J (0.051 lb/MMBtu) heat input derived from the combustion of coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels; and

(ii) 0.2 percent of the combustion concentration (99.8 percent reduction) when combusting coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels.

(3) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a maximum heat input capacity of 73 MW (250 MMBtu/h) or less shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 43 ng/J (0.10 lb/MMBtu) heat input.

(4) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a maximum heat input capacity greater than 73 MW (250 MMBtu/h) shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 37 ng/J (0.085 lb/MMBtu) heat input.

(5) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts only oil that contains no more than 0.3 weight percent sulfur, coke oven gas, a mixture of these fuels, or either fuel (or a mixture of these fuels) in combination with other fuels not subject to a PM standard under § 60.43b and not using a post combustion technology (except a wet scrubber) to reduce $SO_2$ or PM emissions is subject to the PM limits under § 60.43b(h)(1).

**§ 60.44b Standard for nitrogen oxides ($NO_X$).**

(a) Except as provided under paragraphs (k) and (l) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that is subject to the provisions of this section and that combusts only coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases that contain $NO_X$ (expressed as $NO_2$) in excess of the following emission limits:

| Fuel/steam generating unit type | Nitrogen Oxide Emission Limits (expressed as $NO_2$) Heat Input | |
|---|---|---|
| | ng/J | lb/MMBtu |
| (1) Natural gas and distillate oil, except (4): | | |
| (i) Low heat release rate | 43 | 0.10 |
| (ii) High heat release rate | 86 | 0.20 |
| (2) Residual oil: | | |
| (i) Low heat release rate | 130 | 0.30 |
| (ii) High heat release rate | 170 | 0.40 |
| (3) Coal: | | |

| Fuel/steam generating unit type | Nitrogen Oxide Emission Limits (expressed as $NO_2$) Heat Input | |
|---|---|---|
| | ng/J | lb/MMBtu |
| (i) Mass-feed stoker | 210 | 0.50 |
| (ii) Spreader stoker and fluidized bed combustion | 260 | 0.60 |
| (iii) Pulverized coal | 300 | 0.70 |
| (iv) Lignite, except (v) | 260 | 0.60 |
| (v) Lignite mined in North Dakota, South Dakota, or Montana and combusted in a slag tap furnace | 340 | 0.80 |
| (vi) Coal-derived synthetic fuels | 210 | 0.50 |
| (4) Duct burner used in a combined cycle system: | | |
| (i) Low heat release rate | 86 | 0.20 |
| (ii) High heat release rate 43 | 170 | 0.40 |

(b) Except as provided under paragraphs (k) and (l) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that simultaneously combusts mixtures of coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases that contain $NO_X$ in excess of a limit determined by the use of the following formula:

$$E_n = \frac{(EL_{go}H_{go}) + (EL_{ro}H_{ro}) + (EL_cH_c)}{(H_{go} + H_{ro} + H_c)}$$

Where:

$E_n$ = $NO_X$ emission limit (expressed as $NO_2$), ng/J (lb/MMBtu);

$EL_{go}$ = Appropriate emission limit from paragraph (a)(1) for combustion of natural gas or distillate oil, ng/J (lb/MMBtu);

$H_{go}$ = Heat input from combustion of natural gas or distillate oil, J (MMBtu);

$EL_{ro}$ = Appropriate emission limit from paragraph (a)(2) for combustion of residual oil, ng/J (lb/MMBtu);

$H_{ro}$ = Heat input from combustion of residual oil, J (MMBtu);

$EL_c$ = Appropriate emission limit from paragraph (a)(3) for combustion of coal, ng/J (lb/MMBtu); and

$H_c$ = Heat input from combustion of coal, J (MMBtu).

(c) Except as provided under paragraph (l) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that simultaneously combusts coal or oil, or a mixture of these fuels with natural gas, and wood, municipal-type solid waste, or any other fuel shall cause to be discharged into the atmosphere any gases that contain $NO_X$ in excess of the emission limit for the coal or oil, or mixtures of these fuels with natural gas combusted in the affected facility, as determined pursuant to paragraph (a) or (b) of this section, unless the affected facility has an annual capacity factor for coal or oil, or mixture of these fuels with natural gas of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less for coal, oil, or a mixture of these fuels with natural gas.

(d) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that simultaneously combusts natural gas with wood, municipal-type solid waste, or other solid fuel, except coal, shall cause to be discharged into the atmosphere from that affected facility any gases that contain $NO_X$ in excess of 130 ng/J (0.30 lb/MMBtu) heat input unless the affected facility has an annual capacity factor for natural gas of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less for natural gas.

(e) Except as provided under paragraph (l) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that simultaneously combusts coal, oil, or natural gas with byproduct/waste shall cause to be discharged into the atmosphere any gases that contain $NO_X$ in excess of the emission limit determined by the following formula unless the affected facility has an annual capacity factor for coal, oil, and natural gas of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less:

$$E_n = \frac{(EL_{go}H_{go}) + (EL_{ro}H_{ro}) + (EL_cH_c)}{(H_{go} + H_{ro} + H_c)}$$

Where:

En = $NO_X$ emission limit (expressed as $NO_2$), ng/J (lb/MMBtu);

$EL_{go}$ = Appropriate emission limit from paragraph (a)(1) for combustion of natural gas or distillate oil, ng/J (lb/MMBtu);

$H_{go}$ = Heat input from combustion of natural gas, distillate oil and gaseous byproduct/waste, J (MMBtu);

$EL_{ro}$ = Appropriate emission limit from paragraph (a)(2) for combustion of residual oil and/or byproduct/waste, ng/J (lb/MMBtu);

$H_{ro}$ = Heat input from combustion of residual oil, J (MMBtu);

$EL_c$ = Appropriate emission limit from paragraph (a)(3) for combustion of coal, ng/J (lb/MMBtu); and

$H_c$ = Heat input from combustion of coal, J (MMBtu).

(f) Any owner or operator of an affected facility that combusts byproduct/waste with either natural gas or oil may petition the Administrator within 180 days of the initial startup of the affected facility to establish a $NO_X$ emission limit that shall apply specifically to that affected facility when the byproduct/waste is combusted. The petition shall include sufficient and appropriate data, as determined by the Administrator, such as $NO_X$ emissions from the affected facility, waste composition (including nitrogen content), and combustion conditions to allow the Administrator to confirm that the affected facility is unable to comply with the emission limits in paragraph (e) of this section and to determine the appropriate emission limit for the affected facility.

(1) Any owner or operator of an affected facility petitioning for a facility-specific $NO_X$ emission limit under this section shall:

(i) Demonstrate compliance with the emission limits for natural gas and distillate oil in paragraph (a)(1) of this section or for residual oil in paragraph (a)(2) or (l)(1) of this section, as appropriate, by conducting a 30-day performance test as provided in § 60.46b(e). During the performance test only natural gas, distillate oil, or

residual oil shall be combusted in the affected facility; and

(ii) Demonstrate that the affected facility is unable to comply with the emission limits for natural gas and distillate oil in paragraph (a)(1) of this section or for residual oil in paragraph (a)(2) or (l)(1) of this section, as appropriate, when gaseous or liquid byproduct/waste is combusted in the affected facility under the same conditions and using the same technological system of emission reduction applied when demonstrating compliance under paragraph (f)(1)(i) of this section.

(2) The $NO_X$ emission limits for natural gas or distillate oil in paragraph (a)(1) of this section or for residual oil in paragraph (a)(2) or (l)(1) of this section, as appropriate, shall be applicable to the affected facility until and unless the petition is approved by the Administrator. If the petition is approved by the Administrator, a facility-specific $NO_X$ emission limit will be established at the $NO_X$ emission level achievable when the affected facility is combusting oil or natural gas and byproduct/waste in a manner that the Administrator determines to be consistent with minimizing $NO_X$ emissions. In lieu of amending this subpart, a letter will be sent to the facility describing the facility-specific $NO_X$ limit. The facility shall use the compliance procedures detailed in the letter and make the letter available to the public. If the Administrator determines it is appropriate, the conditions and requirements of the letter can be reviewed and changed at any point.

(g) Any owner or operator of an affected facility that combusts hazardous waste (as defined by 40 CFR part 261 or 40 CFR part 761) with natural gas or oil may petition the Administrator within 180 days of the initial startup of the affected facility for a waiver from compliance with the $NO_X$ emission limit that applies specifically to that affected facility. The petition must include sufficient and appropriate data, as determined by the Administrator, on $NO_X$ emissions from the affected facility, waste destruction efficiencies, waste composition (including nitrogen content), the quantity of specific wastes to be combusted and combustion conditions to allow the Administrator to determine if the affected facility is able to comply with the $NO_X$ emission limits required by this section. The owner or operator of the affected facility shall demonstrate that when hazardous waste is combusted in the affected facility, thermal destruction efficiency requirements for hazardous waste specified in an applicable federally enforceable requirement preclude compliance with the $NO_X$ emission limits of this section. The $NO_X$ emission limits for natural gas or distillate oil in paragraph (a)(1) of this section or for residual oil in paragraph (a)(2) or (l)(1) of this section, as appropriate, are applicable to the affected facility until and unless the petition is approved by the Administrator. (See 40 CFR 761.70 for regulations applicable to the incineration of materials containing polychlorinated biphenyls (PCB's).) In lieu of amending this subpart, a letter will be sent to the facility describing the facility-specific $NO_X$ limit. The facility shall use the compliance procedures detailed in the letter and make the letter available to the public. If the Administrator determines it is appropriate, the conditions and requirements of the letter can be reviewed and changed at any point.

(h) For purposes of paragraph (i) of this section, the $NO_X$ standards under this section apply at all times including periods of startup, shutdown, or malfunction.

(i) Except as provided under paragraph (j) of this section, compliance with the emission limits under this section is determined on a 30-day rolling average basis.

(j) Compliance with the emission limits under this section is determined on a 24-hour average basis for the initial performance test and on a 3-hour average basis for subsequent performance tests for any affected facilities that:

(1) Combust, alone or in combination, only natural gas, distillate oil, or residual oil with a nitrogen content of 0.30 weight percent or less;

(2) Have a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less; and

(3) Are subject to a federally enforceable requirement limiting operation of the affected facility to the firing of natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less and limiting operation of the affected facility to a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less.

(k) Affected facilities that meet the criteria described in paragraphs (j)(1), (2), and (3) of this section, and that have a heat input capacity of 73 MW (250 MMBtu/hr) or less, are not subject to the $NO_X$ emission limits under this section.

(l) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction or reconstruction after July 9, 1997 shall cause to be discharged into the atmosphere from that affected facility any gases that contain $NO_X$ (expressed as $NO_2$) in excess of the following limits:

(1) If the affected facility combusts coal, oil, or natural gas, or a mixture of these fuels, or with any other fuels: A limit of 86 ng/JI (0.20 lb/MMBtu) heat input unless the affected facility has an annual capacity factor for coal, oil, and natural gas of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the facility to an annual capacity factor of 10 percent (0.10) or less for coal, oil, and natural gas; or

(2) If the affected facility has a low heat release rate and combusts natural gas or distillate oil in excess of 30 percent of the heat input on a 30-day rolling average from the combustion of all fuels, a limit determined by use of the following formula:

$$E_n = \frac{(0.10 \times H_{go}) + (0.20 \times H_r)}{(H_{go} + H_r)}$$

Where:

$E_n$ = $NO_X$ emission limit (lb/MMBtu);
$H_{go}$ = 30-day heat input from combustion of natural gas or distillate oil; and
$H_r$ = 30-day heat input from combustion of any other fuel.

(3) After February 27, 2006, units where more than 33 percent of total annual output is electrical or mechanical may comply with an optional limit of 270 ng/J (2.1 lb/MWh) gross energy output, based on a 30-day rolling average. Units complying with this output-based limit must demonstrate compliance according to the procedures of § 60.48Da(i) of subpart Da of this part, and must monitor emissions according to § 60.49Da(c), (k), through (n) of subpart Da of this part.

**§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.**

(a) The $SO_2$ emission standards under § 60.42b apply at all times. Facilities burning coke oven gas alone or in combination with any other gaseous fuels or distillate oil and complying with the fuel based limit under § 60.42b(k)(2) are allowed to exceed the limit 30 operating days per calendar year for by-product plant maintenance.

(b) In conducting the performance tests required under § 60.8, the owner or operator shall use the methods and

procedures in appendix A (including fuel certification and sampling) of this part or the methods and procedures as specified in this section, except as provided in § 60.8(b). Section 60.8(f) does not apply to this section. The 30-day notice required in § 60.8(d) applies only to the initial performance test unless otherwise specified by the Administrator.

(c) The owner or operator of an affected facility shall conduct performance tests to determine compliance with the percent of potential $SO_2$ emission rate (% Ps) and the $SO_2$ emission rate (Es) pursuant to § 60.42b following the procedures listed below, except as provided under paragraph (d) and (k) of this section.

(1) The initial performance test shall be conducted over 30 consecutive operating days of the steam generating unit. Compliance with the $SO_2$ standards shall be determined using a 30-day average. The first operating day included in the initial performance test shall be scheduled within 30 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of the facility.

(2) If only coal, only oil, or a mixture of coal and oil is combusted, the following procedures are used:

(i) The procedures in Method 19 of appendix A of this part are used to determine the hourly $SO_2$ emission rate ($E_{ho}$) and the 30-day average emission rate ($E_{ao}$). The hourly averages used to compute the 30-day averages are obtained from the continuous emission monitoring system (CEMS) of § 60.47b (a) or (b).

(ii) The percent of potential $SO_2$ emission rate ($\%P_s$) emitted to the atmosphere is computed using the following formula:

$$\%P_s = 100\left(1 - \frac{\%R_g}{100}\right)\left(1 - \frac{\%R_f}{100}\right)$$

Where:

$\%P_s$ = Potential $SO_2$ emission rate, percent;
$\%R_g$ = $SO_2$ removal efficiency of the control device as determined by Method 19 of appendix A of this part, in percent; and
$\%R_f$ = $SO_2$ removal efficiency of fuel pretreatment as determined by Method 19 of appendix A of this part, in percent.

(3) If coal or oil is combusted with other fuels, the same procedures required in paragraph (c)(2) of this section are used, except as provided in the following:

(i) An adjusted hourly $SO_2$ emission rate ($E_{ho}^o$) is used in Equation 19–19 of Method 19 of appendix A of this part to compute an adjusted 30-day average emission rate ($E_{ao}^o$). The $E_{ho}^o$ is computed using the following formula:

$$E_{ho}^o = \frac{E_{ho} - E_w\,(1 - X_k)}{X_k}$$

Where:

$E_{ho}^o$ = Adjusted hourly $SO_2$ emission rate, ng/J (lb/MMBtu);
$E_{ho}$ = Hourly $SO_2$ emission rate, ng/J (lb/MMBtu);
$E_w$ = $SO_2$ concentration in fuels other than coal and oil combusted in the affected facility, as determined by the fuel sampling and analysis procedures in Method 19 of appendix A of this part, ng/J (lb/MMBtu). The value $E_w$ for each fuel lot is used for each hourly average during the time that the lot is being combusted; and
$X_k$ = Fraction of total heat input from fuel combustion derived from coal, oil, or coal and oil, as determined by applicable procedures in Method 19 of appendix A of this part.

(ii) To compute the percent of potential $SO_2$ emission rate ($\%P_s$), an adjusted $\%R_g$ ($\%R_g^o$) is computed from the adjusted $E_{ao}^o$ from paragraph (b)(3)(i) of this section and an adjusted average $SO_2$ inlet rate ($E_{ai}^o$) using the following formula:

$$\%R_g^o = 100\left(1.0 - \frac{E_{ao}^o}{E_{ai}^o}\right)$$

To compute $E_{ai}^o$, an adjusted hourly $SO_2$ inlet rate ($E_{hi}^o$) is used. The $E_{hi}^o$ is computed using the following formula:

$$E_{hi}^o = \frac{E_{hi} - E_w\,(1 - X_k)}{X_k}$$

Where:

$E_{hi}^o$ = Adjusted hourly $SO_2$ inlet rate, ng/J (lb/MMBtu); and
$E_{hi}$ = Hourly $SO_2$ inlet rate, ng/J (lb/MMBtu).

(4) The owner or operator of an affected facility subject to paragraph (b)(3) of this section does not have to measure parameters $E_w$ or $X_k$ if the owner or operator elects to assume that $X_k = 1.0$. Owners or operators of affected facilities who assume $X_k = 1.0$ shall:

(i) Determine $\%P_s$ following the procedures in paragraph (c)(2) of this section; and

(ii) Sulfur dioxide emissions ($E_s$) are considered to be in compliance with $SO_2$ emission limits under § 60.42b.

(5) The owner or operator of an affected facility that qualifies under the provisions of § 60.42b(d) does not have to measure parameters $E_w$ or $X_k$ under paragraph (b)(3) of this section if the owner or operator of the affected facility elects to measure $SO_2$ emission rates of the coal or oil following the fuel sampling and analysis procedures under Method 19 of appendix A of this part.

(d) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility that combusts only very low sulfur oil, has an annual capacity factor for oil of 10 percent (0.10) or less, and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for oil of 10 percent (0.10) or less shall:

(1) Conduct the initial performance test over 24 consecutive steam generating unit operating hours at full load;

(2) Determine compliance with the standards after the initial performance test based on the arithmetic average of the hourly emissions data during each steam generating unit operating day if a CEMS is used, or based on a daily average if Method 6B of appendix A of this part or fuel sampling and analysis procedures under Method 19 of appendix A of this part are used.

(e) The owner or operator of an affected facility subject to § 60.42b(d)(1) shall demonstrate the maximum design capacity of the steam generating unit by operating the facility at maximum capacity for 24 hours. This demonstration will be made during the initial performance test and a subsequent demonstration may be requested at any other time. If the 24-hour average firing rate for the affected facility is less than the maximum design capacity provided by the manufacturer of the affected facility, the 24-hour average firing rate shall be used to determine the capacity utilization rate for the affected facility, otherwise the maximum design capacity provided by the manufacturer is used.

(f) For the initial performance test required under § 60.8, compliance with the $SO_2$ emission limits and percent reduction requirements under § 60.42b is based on the average emission rates and the average percent reduction for $SO_2$ for the first 30 consecutive steam generating unit operating days, except as provided under paragraph (d) of this section. The initial performance test is the only test for which at least 30 days prior notice is required unless otherwise specified by the Administrator. The initial performance test is to be scheduled so that the first steam generating unit operating day of the 30 successive steam generating unit operating days is completed within 30 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of the facility. The boiler load during the 30-day period does not have to be the

maximum design load, but must be representative of future operating conditions and include at least one 24-hour period at full load.

(g) After the initial performance test required under § 60.8, compliance with the $SO_2$ emission limits and percent reduction requirements under § 60.42b is based on the average emission rates and the average percent reduction for $SO_2$ for 30 successive steam generating unit operating days, except as provided under paragraph (d). A separate performance test is completed at the end of each steam generating unit operating day after the initial performance test, and a new 30-day average emission rate and percent reduction for $SO_2$ are calculated to show compliance with the standard.

(h) Except as provided under paragraph (i) of this section, the owner or operator of an affected facility shall use all valid $SO_2$ emissions data in calculating $\%P_s$ and $E_{ho}$ under paragraph (c), of this section whether or not the minimum emissions data requirements under § 60.46b are achieved. All valid emissions data, including valid $SO_2$ emission data collected during periods of startup, shutdown and malfunction, shall be used in calculating $\%P_s$ and $E_{ho}$ pursuant to paragraph (c) of this section.

(i) During periods of malfunction or maintenance of the $SO_2$ control systems when oil is combusted as provided under § 60.42b(i), emission data are not used to calculate $\%P_s$ or $E_s$ under § 60.42b (a), (b) or (c), however, the emissions data are used to determine compliance with the emission limit under § 60.42b(i).

(j) The owner or operator of an affected facility that combusts very low sulfur oil is not subject to the compliance and performance testing requirements of this section if the owner or operator obtains fuel receipts as described in § 60.49b(r).

(k) The owner or operator of an affected facility seeking to demonstrate compliance under §§ 60.42b(d)(4), 60.42b(j), and 60.42b(k)(2) shall follow the applicable procedures under § 60.49b(r).

**§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.**

(a) The PM emission standards and opacity limits under § 60.43b apply at all times except during periods of startup, shutdown, or malfunction. The $NO_X$ emission standards under § 60.44b apply at all times.

(b) Compliance with the PM emission standards under § 60.43b shall be determined through performance testing as described in paragraph (d) of this section, except as provided in paragraph (i) of this section.

(c) Compliance with the $NO_X$ emission standards under § 60.44b shall be determined through performance testing under paragraph (e) or (f), or under paragraphs (g) and (h) of this section, as applicable.

(d) To determine compliance with the PM emission limits and opacity limits under § 60.43b, the owner or operator of an affected facility shall conduct an initial performance test as required under § 60.8, and shall conduct subsequent performance tests as requested by the Administrator, using the following procedures and reference methods:

(1) Method 3B of appendix A of this part is used for gas analysis when applying Method 5 or 17 of appendix A of this part.

(2) Method 5, 5B, or 17 of appendix A of this part shall be used to measure the concentration of PM as follows:

(i) Method 5 of appendix A of this part shall be used at affected facilities without wet flue gas desulfurization (FGD) systems; and

(ii) Method 17 of appendix A of this part may be used at facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160 °C (32 °F). The procedures of sections 2.1 and 2.3 of Method 5B of appendix A of this part may be used in Method 17 of appendix A of this part only if it is used after a wet FGD system. Do not use Method 17 of appendix A of this part after wet FGD systems if the effluent is saturated or laden with water droplets.

(iii) Method 5B of appendix A of this part is to be used only after wet FGD systems.

(3) Method 1 of appendix A of this part is used to select the sampling site and the number of traverse sampling points. The sampling time for each run is at least 120 minutes and the minimum sampling volume is 1.7 dscm (60 dscf) except that smaller sampling times or volumes may be approved by the Administrator when necessitated by process variables or other factors.

(4) For Method 5 of appendix A of this part, the temperature of the sample gas in the probe and filter holder is monitored and is maintained at 160±14 °C (320±25 °F).

(5) For determination of PM emissions, the oxygen ($O_2$) or $CO_2$ sample is obtained simultaneously with each run of Method 5, 5B, or 17 of appendix A of this part by traversing the duct at the same sampling location.

(6) For each run using Method 5, 5B, or 17 of appendix A of this part, the emission rate expressed in ng/J heat input is determined using:

(i) The $O_2$ or $CO_2$ measurements and PM measurements obtained under this section;

(ii) The dry basis F factor; and

(iii) The dry basis emission rate calculation procedure contained in Method 19 of appendix A of this part.

(7) Method 9 of appendix A of this part is used for determining the opacity of stack emissions.

(e) To determine compliance with the emission limits for $NO_X$ required under § 60.44b, the owner or operator of an affected facility shall conduct the performance test as required under § 60.8 using the continuous system for monitoring $NO_X$ under § 60.48(b).

(1) For the initial compliance test, $NO_X$ from the steam generating unit are monitored for 30 successive steam generating unit operating days and the 30-day average emission rate is used to determine compliance with the $NO_X$ emission standards under § 60.44b. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) Following the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility which combusts coal or which combusts residual oil having a nitrogen content greater than 0.30 weight percent shall determine compliance with the $NO_X$ emission standards under § 60.44b on a continuous basis through the use of a 30-day rolling average emission rate. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly $NO_X$ emission data for the preceding 30 steam generating unit operating days.

(3) Following the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility that has a heat input capacity greater than 73 MW (250 MMBtu/hr) and that combusts natural gas, distillate oil, or residual oil having a nitrogen content of 0.30 weight percent or less shall determine compliance with the $NO_X$ standards under § 60.44b on a continuous basis through the use of a 30-day rolling average emission rate. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly $NO_X$ emission data for the preceding 30 steam generating unit operating days.

(4) Following the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility that has a heat input capacity of 73 MW (250 MMBtu/hr) or less and that combusts natural gas, distillate oil, or residual oil having a nitrogen content of 0.30 weight percent or less shall upon request determine compliance with the $NO_X$ standards under § 60.44b through the use of a 30-day performance test. During periods when performance tests are not requested, $NO_X$ emissions data collected pursuant to § 60.48b(g)(1) or § 60.48b(g)(2) are used to calculate a 30-day rolling average emission rate on a daily basis and used to prepare excess emission reports, but will not be used to determine compliance with the $NO_X$ emission standards. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly $NO_X$ emission data for the preceding 30 steam generating unit operating days.

(5) If the owner or operator of an affected facility that combusts residual oil does not sample and analyze the residual oil for nitrogen content, as specified in § 60.49b(e), the requirements of § 60.48b(g)(1) apply and the provisions of § 60.48b(g)(2) are inapplicable.

(f) To determine compliance with the emissions limits for $NO_X$ required by § 60.44b(a)(4) or § 60.44b(l) for duct burners used in combined cycle systems, either of the procedures described in paragraph (f)(1) or (2) of this section may be used:

(1) The owner or operator of an affected facility shall conduct the performance test required under § 60.8 as follows:

(i) The emissions rate (E) of $NO_X$ shall be computed using Equation 1 in this section:

$$E = E_{sg} + \left(\frac{H_g}{H_b}\right)\left(E_{sg} - E_g\right) \qquad \text{(Eq. 1)}$$

Where:

E = Emissions rate of $NO_X$ from the duct burner, ng/J (lb/MMBtu) heat input;

$E_{sg}$ = Combined effluent emissions rate, in ng/J (lb/MMBtu) heat input using appropriate F factor as described in Method 19 of appendix A of this part;

$H_g$ = Heat input rate to the combustion turbine, in J/hr (MMBtu/hr);

$H_b$ = Heat input rate to the duct burner, in J/hr (MMBtu/hr); and

$E_g$ = Emissions rate from the combustion turbine, in ng/J (lb/MMBtu) heat input calculated using appropriate F factor as described in Method 19 of appendix A of this part.

(ii) Method 7E of appendix A of this part shall be used to determine the $NO_X$ concentrations. Method 3A or 3B of appendix A of this part shall be used to determine $O_2$ concentration.

(iii) The owner or operator shall identify and demonstrate to the Administrator's satisfaction suitable methods to determine the average hourly heat input rate to the combustion turbine and the average hourly heat input rate to the affected duct burner.

(iv) Compliance with the emissions limits under § 60.44b (a)(4) or § 60.44b(l) is determined by the three-run average (nominal 1-hour runs) for the initial and subsequent performance tests; or

(2) The owner or operator of an affected facility may elect to determine compliance on a 30-day rolling average basis by using the CEMS specified under § 60.48b for measuring $NO_X$ and $O_2$ and meet the requirements of § 60.48b. The sampling site shall be located at the outlet from the steam generating unit. The $NO_X$ emissions rate at the outlet from the steam generating unit shall constitute the $NO_X$ emissions rate from the duct burner of the combined cycle system.

(g) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall demonstrate the maximum heat input capacity of the steam generating unit by operating the facility at maximum capacity for 24 hours. The owner or operator of an affected facility shall determine the maximum heat input capacity using the heat loss method described in sections 5 and 7.3 of the ASME *Power Test Codes* 4.1 (incorporated by reference, see § 60.17). This demonstration of maximum heat input capacity shall be made during the initial performance test for affected facilities that meet the criteria of § 60.44b(j). It shall be made within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of each facility, for affected facilities meeting the criteria of § 60.44b(k). Subsequent demonstrations may be required by the Administrator at any other time. If this demonstration indicates that the maximum heat input capacity of the affected facility is less than that stated by the manufacturer of the affected facility, the maximum heat input capacity determined during this demonstration shall be used to determine the capacity utilization rate for the affected facility. Otherwise, the maximum heat input capacity provided by the manufacturer is used.

(h) The owner or operator of an affected facility described in § 60.44b(j) that has a heat input capacity greater than 73 MW (250 MMBtu/hr) shall:

(1) Conduct an initial performance test as required under § 60.8 over a minimum of 24 consecutive steam generating unit operating hours at maximum heat input capacity to demonstrate compliance with the $NO_X$ emission standards under § 60.44b using Method 7, 7A, 7E of appendix A of this part, or other approved reference methods; and

(2) Conduct subsequent performance tests once per calendar year or every 400 hours of operation (whichever comes first) to demonstrate compliance with the $NO_X$ emission standards under § 60.44b over a minimum of 3 consecutive steam generating unit operating hours at maximum heat input capacity using Method 7, 7A, 7E of appendix A of this part, or other approved reference methods.

(i) The owner or operator of an affected facility seeking to demonstrate compliance under paragraph § 60.43b(h)(5) shall follow the applicable procedures under § 60.49b(r).

(j) In place of PM testing with EPA Reference Method 5, 5B, or 17 of appendix A of this part, an owner or operator may elect to install, calibrate, maintain, and operate a CEMS for monitoring PM emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor PM emissions instead of conducting performance testing using EPA Method 5, 5B, or 17 of appendix A of this part shall comply with the requirements specified in paragraphs (j)(1) through (j)(13) of this section.

(1) Notify the Administrator one month before starting use of the system.

(2) Notify the Administrator one month before stopping use of the system.

(3) The monitor shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(4) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of notification to the Administrator of use of the CEMS if the owner or operator was previously determining compliance by Method 5, 5B, or 17 of appendix A of this part performance tests, whichever is later.

(5) The owner or operator of an affected facility shall conduct an initial performance test for PM emissions as required under § 60.8 of subpart A of this part. Compliance with the PM emission limit shall be determined by

using the CEMS specified in paragraph (j) of this section to measure PM and calculating a 24-hour block arithmetic average emission concentration using EPA Reference Method 19 of appendix A of this part, section 4.1.

(6) Compliance with the PM emission limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emission concentrations using CEMS outlet data.

(7) At a minimum, valid CEMS hourly averages shall be obtained as specified in paragraphs (j)(7)(i) of this section for 75 percent of the total operating hours per 30-day rolling average.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(8) The 1-hour arithmetic averages required under paragraph (j)(7) of this section shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(9) All valid CEMS data shall be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (j)(7) of this section are not met.

(10) The CEMS shall be operated according to Performance Specification 11 in appendix B of this part.

(11) During the correlation testing runs of the CEMS required by Performance Specification 11 in appendix B of this part, PM and $O_2$ (or $CO_2$) data shall be collected concurrently (or within a 30-to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraph (j)(7)(i) of this section.

(i) For PM, EPA Reference Method 5, 5B, or 17 of appendix A of this part shall be used.

(ii) For $O_2$ (or $CO_2$), EPA reference Method 3, 3A, or 3B of appendix A of this part, as applicable shall be used.

(12) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audits must be performed annually and Response Correlation Audits must be performed every 3 years.

(13) When PM emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 of appendix A of this part to provide, as necessary, valid emissions data for a minimum of 75 percent of total operating hours per 30-day rolling average.

**§ 60.47b Emission monitoring for sulfur dioxide.**

(a) Except as provided in paragraphs (b) and (g) of this section, the owner or operator of an affected facility subject to the $SO_2$ standards under § 60.42b shall install, calibrate, maintain, and operate CEMS for measuring $SO_2$ concentrations and either $O_2$ or $CO_2$ concentrations and shall record the output of the systems. For units complying with the percent reduction standard, the $SO_2$ and either $O_2$ or $CO_2$ concentrations shall both be monitored at the inlet and outlet of the $SO_2$ control device.

(b) As an alternative to operating CEMS as required under paragraph (a) of this section, an owner or operator may elect to determine the average $SO_2$ emissions and percent reduction by:

(1) Collecting coal or oil samples in an as-fired condition at the inlet to the steam generating unit and analyzing them for sulfur and heat content according to Method 19 of appendix A of this part. Method 19 of appendix A of this part provides procedures for converting these measurements into the format to be used in calculating the average $SO_2$ input rate, or

(2) Measuring $SO_2$ according to Method 6B of appendix A of this part at the inlet or outlet to the $SO_2$ control system. An initial stratification test is required to verify the adequacy of the Method 6B of appendix A of this part sampling location. The stratification test shall consist of three paired runs of a suitable $SO_2$ and $CO_2$ measurement train operated at the candidate location and a second similar train operated according to the procedures in section 3.2 and the applicable procedures in section 7 of Performance Specification 2. Method 6B of appendix A of this part, Method 6A of appendix A of this part, or a combination of Methods 6 and 3 or 3B of appendix A of this part or Methods 6C and 3A of appendix A of this part are suitable measurement techniques. If Method 6B of appendix A of this part is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B of appendix A of this part 24-hour tests, the mean of the absolute difference between the three paired runs must be less than 10 percent.

(3) A daily $SO_2$ emission rate, ED, shall be determined using the procedure described in Method 6A of appendix A of this part, section 7.6.2 (Equation 6A–8) and stated in ng/J (lb/MMBtu) heat input.

(4) The mean 30-day emission rate is calculated using the daily measured values in ng/J (lb/MMBtu) for 30 successive steam generating unit operating days using equation 19–20 of Method 19 of appendix A of this part.

(c) The owner or operator of an affected facility shall obtain emission data for at least 75 percent of the operating hours in at least 22 out of 30 successive boiler operating days. If this minimum data requirement is not met with a single monitoring system, the owner or operator of the affected facility shall supplement the emission data with data collected with other monitoring systems as approved by the Administrator or the reference methods and procedures as described in paragraph (b) of this section.

(d) The 1-hour average $SO_2$ emission rates measured by the CEMS required by paragraph (a) of this section and required under § 60.13(h) is expressed in ng/J or lb/MMBtu heat input and is used to calculate the average emission rates under § 60.42(b). Each 1-hour average $SO_2$ emission rate must be based on 30 or more minutes of steam generating unit operation. The hourly averages shall be calculated according to § 60.13(h)(2). Hourly $SO_2$ emission rates are not calculated if the affected facility is operated less than 30 minutes in a given clock hour and are not counted toward determination of a steam generating unit operating day.

(e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(1) All CEMS shall be operated in accordance with the applicable procedures under Performance Specifications 1, 2, and 3 of appendix B of this part.

(2) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 of appendix F of this part.

(3) For affected facilities combusting coal or oil, alone or in combination with other fuels, the span value of the $SO_2$ CEMS at the inlet to the $SO_2$ control device is 125 percent of the maximum estimated hourly potential $SO_2$ emissions of the fuel combusted, and the span value of the CEMS at the outlet to the $SO_2$ control device is 50 percent of the maximum estimated hourly potential $SO_2$ emissions of the fuel combusted.

(f) The owner or operator of an affected facility that combusts very low sulfur oil or is demonstrating compliance under § 60.45b(k) is not

subject to the emission monitoring requirements under paragraph (a) of this section if the owner or operator maintains fuel records as described in § 60.49b(r).

**§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.**

(a) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility subject to the opacity standard under § 60.43b shall install, calibrate, maintain, and operate a CEMS for measuring the opacity of emissions discharged to the atmosphere and record the output of the system.

(b) Except as provided under paragraphs (g), (h), and (i) of this section, the owner or operator of an affected facility subject to a $NO_X$ standard under § 60.44b shall comply with either paragraphs (b)(1) or (b)(2) of this section.

(1) Install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring $NO_X$ emissions discharged to the atmosphere; or

(2) If the owner or operator has installed a $NO_X$ emission rate CEMS to meet the requirements of part 75 of this chapter and is continuing to meet the ongoing requirements of part 75 of this chapter, that CEMS may be used to meet the requirements of this section, except that the owner or operator shall also meet the requirements of § 60.49b. Data reported to meet the requirements of § 60.49b shall not include data substituted using the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

(c) The CEMS required under paragraph (b) of this section shall be operated and data recorded during all periods of operation of the affected facility except for CEMS breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

(d) The 1-hour average $NO_X$ emission rates measured by the continuous $NO_X$ monitor required by paragraph (b) of this section and required under § 60.13(h) shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the average emission rates under § 60.44b. The 1-hour averages shall be calculated using the data points required under § 60.13(h)(2).

(e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(1) For affected facilities combusting coal, wood or municipal-type solid waste, the span value for a continuous monitoring system for measuring opacity shall be between 60 and 80 percent.

(2) For affected facilities combusting coal, oil, or natural gas, the span value for $NO_X$ is determined as follows:

| Fuel | Span values for $NO_X$ (ppm) |
|---|---|
| Natural gas | 500 |
| Oil | 500 |
| Coal | 1,000 |
| Mixtures | 500(x + y) + 1,000z |

Where:

x = Fraction of total heat input derived from natural gas;

y = Fraction of total heat input derived from oil; and

z = Fraction of total heat input derived from coal.

(3) All span values computed under paragraph (e)(2) of this section for combusting mixtures of regulated fuels are rounded to the nearest 500 ppm.

(f) When $NO_X$ emission data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emission data will be obtained by using standby monitoring systems, Method 7 of appendix A of this part, Method 7A of appendix A of this part, or other approved reference methods to provide emission data for a minimum of 75 percent of the operating hours in each steam generating unit operating day, in at least 22 out of 30 successive steam generating unit operating days.

(g) The owner or operator of an affected facility that has a heat input capacity of 73 MW (250 MMBtu/hr) or less, and that has an annual capacity factor for residual oil having a nitrogen content of 0.30 weight percent or less, natural gas, distillate oil, or any mixture of these fuels, greater than 10 percent (0.10) shall:

(1) Comply with the provisions of paragraphs (b), (c), (d), (e)(2), (e)(3), and (f) of this section; or

(2) Monitor steam generating unit operating conditions and predict $NO_X$ emission rates as specified in a plan submitted pursuant to § 60.49b(c).

(h) The owner or operator of a duct burner, as described in § 60.41b, that is subject to the $NO_X$ standards of § 60.44b(a)(4) or § 60.44b(l) is not required to install or operate a continuous emissions monitoring system to measure $NO_X$ emissions.

(i) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) is not required to install or operate a CEMS for measuring $NO_X$ emissions.

(j) Units are not required to operate COMS for measuring opacity if:

(1) The affected facility uses a PM CEMS to monitor PM emissions; or

(2) The affected facility burns only liquid (excluding residual oil) or gaseous fuels with potential $SO_2$ emissions rates of 26 ng/J (0.060 lb/MMBtu) or less and does not use a post combustion technology to reduce $SO_2$ or PM emissions. The owner or operator must maintain fuel records of the sulfur content of the fuels burned, as described under § 60.49b(r); or

(3) The affected facility burns coke oven gas alone or in combination with fuels meeting the criteria in paragraph (j)(2) of this section and does not use a post combustion technology to reduce $SO_2$ or PM emissions.

(k) Owners or operators complying with the PM emission limit by using a PM CEMS monitor instead of monitoring opacity must calibrate, maintain, and operate a CEMS, and record the output of the system, for PM emissions discharged to the atmosphere as specified in § 60.46b(j). The CEMS specified in paragraph § 60.46b(j) shall be operated and data recorded during all periods of operation of the affected facility except for CEMS breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

**§ 60.49b Reporting and recordkeeping requirements.**

(a) The owner or operator of each affected facility shall submit notification of the date of initial startup, as provided by § 60.7. This notification shall include:

(1) The design heat input capacity of the affected facility and identification of the fuels to be combusted in the affected facility;

(2) If applicable, a copy of any federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under §§ 60.42b(d)(1), 60.43b(a)(2), (a)(3)(iii), (c)(2)(ii), (d)(2)(iii), 60.44b(c), (d), (e), (i), (j), (k), 60.45b(d), (g), 60.46b(h), or 60.48b(i);

(3) The annual capacity factor at which the owner or operator anticipates operating the facility based on all fuels fired and based on each individual fuel fired; and

(4) Notification that an emerging technology will be used for controlling emissions of $SO_2$. The Administrator will examine the description of the emerging technology and will determine whether the technology qualifies as an emerging technology. In making this determination, the Administrator may require the owner or operator of the

affected facility to submit additional information concerning the control device. The affected facility is subject to the provisions of § 60.42b(a) unless and until this determination is made by the Administrator.

(b) The owner or operator of each affected facility subject to the $SO_2$, PM, and/or $NO_X$ emission limits under §§ 60.42b, 60.43b, and 60.44b shall submit to the Administrator the performance test data from the initial performance test and the performance evaluation of the CEMS using the applicable performance specifications in appendix B of this part. The owner or operator of each affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator the maximum heat input capacity data from the demonstration of the maximum heat input capacity of the affected facility.

(c) The owner or operator of each affected facility subject to the $NO_X$ standard of § 60.44b who seeks to demonstrate compliance with those standards through the monitoring of steam generating unit operating conditions under the provisions of § 60.48b(g)(2) shall submit to the Administrator for approval a plan that identifies the operating conditions to be monitored under § 60.48b(g)(2) and the records to be maintained under § 60.49b(j). This plan shall be submitted to the Administrator for approval within 360 days of the initial startup of the affected facility. If the plan is approved, the owner or operator shall maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam generating unit load, identified in the plan. The plan shall:

(1) Identify the specific operating conditions to be monitored and the relationship between these operating conditions and $NO_X$ emission rates (i.e., ng/J or lbs/MMBtu heat input). Steam generating unit operating conditions include, but are not limited to, the degree of staged combustion (i.e., the ratio of primary air to secondary and/or tertiary air) and the level of excess air (i.e., flue gas $O_2$ level);

(2) Include the data and information that the owner or operator used to identify the relationship between $NO_X$ emission rates and these operating conditions; and

(3) Identify how these operating conditions, including steam generating unit load, will be monitored under § 60.48b(g) on an hourly basis by the owner or operator during the period of operation of the affected facility; the quality assurance procedures or practices that will be employed to ensure that the data generated by monitoring these operating conditions will be representative and accurate; and the type and format of the records of these operating conditions, including steam generating unit load, that will be maintained by the owner or operator under § 60.49b(j).

(d) The owner or operator of an affected facility shall record and maintain records of the amounts of each fuel combusted during each day and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal-type solid waste for the reporting period. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of each calendar month.

(e) For an affected facility that combusts residual oil and meets the criteria under §§ 60.46b(e)(4), 60.44b (j), or (k), the owner or operator shall maintain records of the nitrogen content of the residual oil combusted in the affected facility and calculate the average fuel nitrogen content for the reporting period. The nitrogen content shall be determined using ASTM Method D4629 (incorporated by reference, see § 60.17), or fuel suppliers. If residual oil blends are being combusted, fuel nitrogen specifications may be prorated based on the ratio of residual oils of different nitrogen content in the fuel blend.

(f) For facilities subject to the opacity standard under § 60.43b, the owner or operator shall maintain records of opacity.

(g) Except as provided under paragraph (p) of this section, the owner or operator of an affected facility subject to the $NO_X$ standards under § 60.44b shall maintain records of the following information for each steam generating unit operating day:

(1) Calendar date;

(2) The average hourly $NO_X$ emission rates (expressed as $NO_2$) (ng/J or lb/MMBtu heat input) measured or predicted;

(3) The 30-day average $NO_X$ emission rates (ng/J or lb/MMBtu heat input) calculated at the end of each steam generating unit operating day from the measured or predicted hourly nitrogen oxide emission rates for the preceding 30 steam generating unit operating days;

(4) Identification of the steam generating unit operating days when the calculated 30-day average $NO_X$ emission rates are in excess of the $NO_X$ emissions standards under § 60.44b, with the reasons for such excess emissions as well as a description of corrective actions taken;

(5) Identification of the steam generating unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(6) Identification of the times when emission data have been excluded from the calculation of average emission rates and the reasons for excluding data;

(7) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted;

(8) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(9) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3; and

(10) Results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1 of this part.

(h) The owner or operator of any affected facility in any category listed in paragraphs (h) (1) or (2) of this section is required to submit excess emission reports for any excess emissions that occurred during the reporting period.

(1) Any affected facility subject to the opacity standards under § 60.43b(e) or to the operating parameter monitoring requirements under § 60.13(i)(1).

(2) Any affected facility that is subject to the $NO_X$ standard of § 60.44b, and that:

(i) Combusts natural gas, distillate oil, or residual oil with a nitrogen content of 0.3 weight percent or less; or

(ii) Has a heat input capacity of 73 MW (250 MMBtu/hr) or less and is required to monitor $NO_X$ emissions on a continuous basis under § 60.48b(g)(1) or steam generating unit operating conditions under § 60.48b(g)(2).

(3) For the purpose of § 60.43b, excess emissions are defined as all 6-minute periods during which the average opacity exceeds the opacity standards under § 60.43b(f).

(4) For purposes of § 60.48b(g)(1), excess emissions are defined as any calculated 30-day rolling average $NO_X$ emission rate, as determined under § 60.46b(e), that exceeds the applicable emission limits in § 60.44b.

(i) The owner or operator of any affected facility subject to the continuous monitoring requirements for $NO_X$ under § 60.48(b) shall submit reports containing the information recorded under paragraph (g) of this section.

(j) The owner or operator of any affected facility subject to the $SO_2$ standards under § 60.42b shall submit reports.

(k) For each affected facility subject to the compliance and performance testing requirements of § 60.45b and the reporting requirement in paragraph (j) of this section, the following information shall be reported to the Administrator:

(1) Calendar dates covered in the reporting period;

(2) Each 30-day average $SO_2$ emission rate (ng/J or 1b/MMBtu heat input) measured during the reporting period, ending with the last 30-day period; reasons for noncompliance with the emission standards; and a description of corrective actions taken;

(3) Each 30-day average percent reduction in $SO_2$ emissions calculated during the reporting period, ending with the last 30-day period; reasons for noncompliance with the emission standards; and a description of corrective actions taken;

(4) Identification of the steam generating unit operating days that coal or oil was combusted and for which $SO_2$ or diluent ($O_2$ or $CO_2$) data have not been obtained by an approved method for at least 75 percent of the operating hours in the steam generating unit operating day; justification for not obtaining sufficient data; and description of corrective action taken;

(5) Identification of the times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and description of corrective action taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit;

(6) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted;

(7) Identification of times when hourly averages have been obtained based on manual sampling methods;

(8) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(9) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3;

(10) Results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1 of this part; and

(11) The annual capacity factor of each fired as provided under paragraph (d) of this section.

(l) For each affected facility subject to the compliance and performance testing requirements of § 60.45b(d) and the reporting requirements of paragraph (j) of this section, the following information shall be reported to the Administrator:

(1) Calendar dates when the facility was in operation during the reporting period;

(2) The 24-hour average $SO_2$ emission rate measured for each steam generating unit operating day during the reporting period that coal or oil was combusted, ending in the last 24-hour period in the quarter; reasons for noncompliance with the emission standards; and a description of corrective actions taken;

(3) Identification of the steam generating unit operating days that coal or oil was combusted for which $SO_2$ or diluent ($O_2$ or $CO_2$) data have not been obtained by an approved method for at least 75 percent of the operating hours; justification for not obtaining sufficient data; and description of corrective action taken;

(4) Identification of the times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and description of corrective action taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit;

(5) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted;

(6) Identification of times when hourly averages have been obtained based on manual sampling methods;

(7) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(8) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3; and

(9) Results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1 of this part.

(m) For each affected facility subject to the $SO_2$ standards under § 60.42(b) for which the minimum amount of data required under § 60.47b(f) were not obtained during the reporting period, the following information is reported to the Administrator in addition to that required under paragraph (k) of this section:

(1) The number of hourly averages available for outlet emission rates and inlet emission rates;

(2) The standard deviation of hourly averages for outlet emission rates and inlet emission rates, as determined in Method 19 of appendix A of this part, section 7;

(3) The lower confidence limit for the mean outlet emission rate and the upper confidence limit for the mean inlet emission rate, as calculated in Method 19 of appendix A of this part, section 7; and

(4) The ratio of the lower confidence limit for the mean outlet emission rate and the allowable emission rate, as determined in Method 19 of appendix A of this part, section 7.

(n) If a percent removal efficiency by fuel pretreatment (i.e., $\%R_f$) is used to determine the overall percent reduction (i.e., $\%R_o$) under § 60.45b, the owner or operator of the affected facility shall submit a signed statement with the report.

(1) Indicating what removal efficiency by fuel pretreatment (i.e., $\%R_f$) was credited during the reporting period;

(2) Listing the quantity, heat content, and date each pre-treated fuel shipment was received during the reporting period, the name and location of the fuel pretreatment facility; and the total quantity and total heat content of all fuels received at the affected facility during the reporting period;

(3) Documenting the transport of the fuel from the fuel pretreatment facility to the steam generating unit; and

(4) Including a signed statement from the owner or operator of the fuel pretreatment facility certifying that the percent removal efficiency achieved by fuel pretreatment was determined in accordance with the provisions of Method 19 of appendix A of this part and listing the heat content and sulfur content of each fuel before and after fuel pretreatment.

(o) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of 2 years following the date of such record.

(p) The owner or operator of an affected facility described in § 60.44b(j) or (k) shall maintain records of the following information for each steam generating unit operating day:

(1) Calendar date;

(2) The number of hours of operation; and

(3) A record of the hourly steam load.

(q) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator a report containing:

(1) The annual capacity factor over the previous 12 months;

(2) The average fuel nitrogen content during the reporting period, if residual oil was fired; and

(3) If the affected facility meets the criteria described in § 60.44b(j), the results of any $NO_X$ emission tests required during the reporting period, the hours of operation during the reporting period, and the hours of operation since the last $NO_X$ emission test.

(r) The owner or operator of an affected facility who elects to use the fuel based compliance alternatives in § 60.42b or § 60.43b shall either:

(1) The owner or operator of an affected facility who elects to demonstrate that the affected facility combusts only very low sulfur oil under § 60.42b(j)(2) or § 60.42b(k)(2) shall obtain and maintain at the affected facility fuel receipts from the fuel supplier that certify that the oil meets the definition of distillate oil as defined in § 60.41b and the applicable sulfur limit. For the purposes of this section, the distillate oil need not meet the fuel nitrogen content specification in the definition of distillate oil. Reports shall be submitted to the Administrator certifying that only very low sulfur oil meeting this definition and/or pipeline quality natural gas was combusted in the affected facility during the reporting period; or

(2) The owner or operator of an affected facility who elects to demonstrate compliance based on fuel analysis in § 60.42b or § 60.43b shall develop and submit a site-specific fuel analysis plan to the Administrator for review and approval no later than 60 days before the date you intend to demonstrate compliance. Each fuel analysis plan shall include a minimum initial requirement of weekly testing and each analysis report shall contain, at a minimum, the following information:

(i) The potential sulfur emissions rate of the representative fuel mixture in ng/J heat input;

(ii) The method used to determine the potential sulfur emissions rate of each constituent of the mixture. For distillate oil and natural gas a fuel receipt or tariff sheet is acceptable;

(iii) The ratio of different fuels in the mixture; and

(iv) The owner or operator can petition the Administrator to approve monthly or quarterly sampling in place of weekly sampling.

(s) Facility specific $NO_X$ standard for Cytec Industries Fortier Plant's C.AOG incinerator located in Westwego, Louisiana:

(1) *Definitions.*

*Oxidation zone* is defined as the portion of the C.AOG incinerator that extends from the inlet of the oxidizing zone combustion air to the outlet gas stack.

*Reducing zone* is defined as the portion of the C.AOG incinerator that extends from the burner section to the inlet of the oxidizing zone combustion air.

*Total inlet air* is defined as the total amount of air introduced into the C.AOG incinerator for combustion of natural gas and chemical by-product waste and is equal to the sum of the air flow into the reducing zone and the air flow into the oxidation zone.

(2) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the $NO_X$ emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When natural gas and chemical by-product waste are simultaneously combusted, the $NO_X$ emission limit is 289 ng/J (0.67 lb/MMBtu) and a maximum of 81 percent of the total inlet air provided for combustion shall be provided to the reducing zone of the C.AOG incinerator.

(3) *Emission monitoring.* (i) The percent of total inlet air provided to the reducing zone shall be determined at least every 15 minutes by measuring the air flow of all the air entering the reducing zone and the air flow of all the air entering the oxidation zone, and compliance with the percentage of total inlet air that is provided to the reducing zone shall be determined on a 3-hour average basis.

(ii) The $NO_X$ emission limit shall be determined by the compliance and performance test methods and procedures for $NO_X$ in § 60.46b(i).

(iii) The monitoring of the $NO_X$ emission limit shall be performed in accordance with § 60.48b.

(4) *Reporting and recordkeeping requirements.* (i) The owner or operator of the C.AOG incinerator shall submit a report on any excursions from the limits required by paragraph (a)(2) of this section to the Administrator with the quarterly report required by paragraph (i) of this section.

(ii) The owner or operator of the C.AOG incinerator shall keep records of the monitoring required by paragraph (a)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner of operator of the C.AOG incinerator shall perform all the applicable reporting and recordkeeping requirements of this section.

(t) Facility-specific $NO_X$ standard for Rohm and Haas Kentucky Incorporated's Boiler No. 100 located in Louisville, Kentucky:

(1) *Definitions.*

*Air ratio control damper* is defined as the part of the low $NO_X$ burner that is adjusted to control the split of total combustion air delivered to the reducing and oxidation portions of the combustion flame.

*Flue gas recirculation line* is defined as the part of Boiler No. 100 that recirculates a portion of the boiler flue gas back into the combustion air.

(2) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the $NO_X$ emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When fossil fuel and chemical by-product waste are simultaneously combusted, the $NO_X$ emission limit is 473 ng/J (1.1 lb/MMBtu), and the air ratio control damper tee handle shall be at a minimum of 5 inches (12.7 centimeters) out of the boiler, and the flue gas recirculation line shall be operated at a minimum of 10 percent open as indicated by its valve opening position indicator.

(3) *Emission monitoring for nitrogen oxides.* (i) The air ratio control damper tee handle setting and the flue gas recirculation line valve opening position indicator setting shall be recorded during each 8-hour operating shift.

(ii) The $NO_X$ emission limit shall be determined by the compliance and performance test methods and procedures for $NO_X$ in § 60.46b.

(iii) The monitoring of the $NO_X$ emission limit shall be performed in accordance with § 60.48b.

(4) *Reporting and recordkeeping requirements.* (i) The owner or operator of Boiler No. 100 shall submit a report on any excursions from the limits required by paragraph (b)(2) of this section to the Administrator with the quarterly report required by § 60.49b(i).

(ii) The owner or operator of Boiler No. 100 shall keep records of the monitoring required by paragraph (b)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner of operator of Boiler No. 100 shall perform all the applicable reporting and recordkeeping requirements of § 60.49b.

(u) *Site-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia.* (1) This paragraph (u) applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia ("site") and only to the natural gas-fired boilers installed as part of the powerhouse conversion required pursuant to 40 CFR 52.2454(g). The requirements of this paragraph shall apply, and the requirements of §§ 60.40b through 60.49b(t) shall not apply, to the natural gas-fired boilers installed pursuant to 40 CFR 52.2454(g).

(i) The site shall equip the natural gas-fired boilers with low $NO_X$ technology.

(ii) The site shall install, calibrate, maintain, and operate a continuous monitoring and recording system for measuring $NO_X$ emissions discharged to the atmosphere and opacity using a continuous emissions monitoring system or a predictive emissions monitoring system.

(iii) Within 180 days of the completion of the powerhouse conversion, as required by 40 CFR 52.2454, the site shall perform a performance test to quantify criteria pollutant emissions.

(2) [Reserved]

(v) The owner or operator of an affected facility may submit electronic quarterly reports for $SO_2$ and/or $NO_X$ and/or opacity in lieu of submitting the written reports required under paragraphs (h), (i), (j), (k) or (l) of this section. The format of each quarterly electronic report shall be coordinated with the permitting authority. The electronic report(s) shall be submitted no later than 30 days after the end of the calendar quarter and shall be accompanied by a certification statement from the owner or operator, indicating whether compliance with the applicable emission standards and minimum data requirements of this subpart was achieved during the reporting period. Before submitting reports in the electronic format, the owner or operator shall coordinate with the permitting authority to obtain their agreement to submit reports in this alternative format.

(w) The reporting period for the reports required under this subpart is each 6 month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

(x) Facility-specific $NO_X$ standard for Weyerhaeuser Company's No. 2 Power Boiler located in New Bern, North Carolina:

(1) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the $NO_X$ emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When fossil fuel and chemical by-product waste are simultaneously combusted, the $NO_X$ emission limit is 215 ng/J (0.5 lb/MMBtu).

(2) *Emission monitoring for nitrogen oxides.* (i) The $NO_X$ emissions shall be determined by the compliance and performance test methods and procedures for $NO_X$ in § 60.46b.

(ii) The monitoring of the $NO_X$ emissions shall be performed in accordance with § 60.48b.

(3) *Reporting and recordkeeping requirements.* (i) The owner or operator of the No. 2 Power Boiler shall submit a report on any excursions from the limits required by paragraph (x)(2) of this section to the Administrator with the quarterly report required by § 60.49b(i).

(ii) The owner or operator of the No. 2 Power Boiler shall keep records of the monitoring required by paragraph (x)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner or operator of the No. 2 Power Boiler shall perform all the applicable reporting and recordkeeping requirements of § 60.49b.

(y) Facility-specific $NO_X$ standard for INEOS USA's AOGI located in Lima, Ohio:

(1) *Standard for* $NO_X$. (i) When fossil fuel alone is combusted, the $NO_X$ emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When fossil fuel and chemical byproduct/waste are simultaneously combusted, the $NO_X$ emission limit is 645 ng/J (1.5 lb/MMBtu).

(2) *Emission monitoring for* $NO_X$. (i) The $NO_X$ emissions shall be determined by the compliance and performance test methods and procedures for $NO_X$ in § 60.46b.

(ii) The monitoring of the $NO_X$ emissions shall be performed in accordance with § 60.48b.

(3) *Reporting and recordkeeping requirements.* (i) The owner or operator of the AOGI shall submit a report on any excursions from the limits required by paragraph (y)(2) of this section to the Administrator with the quarterly report required by paragraph (i) of this section.

(ii) The owner or operator of the AOGI shall keep records of the monitoring required by paragraph (y)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner or operator of the AOGI shall perform all the applicable reporting and recordkeeping requirements of this section.

## Subpart Dc—[Amended]

6. Subpart Dc is revised to read as follows:

## Subpart Dc—Standards of Performance for Small Industrial—Commercial—Institutional Steam Generating Units

Sec.

60.40c Applicability and delegation of authority.
60.41c Definitions.
60.42c Standard for sulfur dioxide ($SO_2$).
60.43c Standard for particulate matter (PM).
60.44c Compliance and performance test methods and procedures for sulfur dioxide.
60.45c Compliance and performance test methods and procedures for particulate matter.
60.46c Emission monitoring for sulfur dioxide.
60.47c Emission monitoring for particulate matter.
60.48c Reporting and recordkeeping requirements.

### § 60.40c Applicability and delegation of authority.

(a) Except as provided in paragraph (d) of this section, the affected facility to which this subpart applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million British thermal units per hour (MMBtu/hr)) or less, but greater than or equal to 2.9 MW (10 MMBtu/hr).

(b) In delegating implementation and enforcement authority to a State under section 111(c) of the Clean Air Act, § 60.48c(a)(4) shall be retained by the Administrator and not transferred to a State.

(c) Steam generating units that meet the applicability requirements in paragraph (a) of this section are not subject to the sulfur dioxide ($SO_2$) or particulate matter (PM) emission limits, performance testing requirements, or monitoring requirements under this subpart (§§ 60.42c, 60.43c, 60.44c, 60.45c, 60.46c, or 60.47c) during periods of combustion research, as defined in § 60.41c.

(d) Any temporary change to an existing steam generating unit for the purpose of conducting combustion research is not considered a modification under § 60.14.

(e) Heat recovery steam generators that are associated with combined cycle gas turbines and meet the applicability requirements of subpart GG or KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators that are capable of combusting more than or equal to 2.9 MW (10 MMBtu/hr) heat input of fossil fuel but less than or equal to 29 MW (100 MMBtu/hr) heat input of fossil fuel. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

(f) Any facility covered by subpart AAAA of this part is not covered by this subpart.

(g) Any facility covered by an EPA approved State or Federal section 111(d)/129 plan implementing subpart BBBB of this part is not covered by this subpart.

**§ 60.41c Definitions.**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act and in subpart A of this part.

*Annual capacity factor* means the ratio between the actual heat input to a steam generating unit from an individual fuel or combination of fuels during a period of 12 consecutive calendar months and the potential heat input to the steam generating unit from all fuels had the steam generating unit been operated for 8,760 hours during that 12-month period at the maximum design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility during a period of 12 consecutive calendar months.

*Coal* means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels derived from coal for the purposes of creating useful heat, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are also included in this definition for the purposes of this subpart.

*Coal refuse* means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (kJ/kg) (6,000 Btu per pound (Btu/lb) on a dry basis.

*Cogeneration steam generating unit* means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

*Combined cycle system* means a system in which a separate source (such as a stationary gas turbine, internal combustion engine, or kiln) provides exhaust gas to a steam generating unit.

*Combustion research* means the experimental firing of any fuel or combination of fuels in a steam generating unit for the purpose of conducting research and development of more efficient combustion or more effective prevention or control of air pollutant emissions from combustion, provided that, during these periods of research and development, the heat generated is not used for any purpose other than preheating combustion air for use by that steam generating unit (i.e., the heat generated is released to the atmosphere without being used for space heating, process heating, driving pumps, preheating combustion air for other units, generating electricity, or any other purpose).

*Conventional technology* means wet flue gas desulfurization technology, dry flue gas desulfurization technology, atmospheric fluidized bed combustion technology, and oil hydrodesulfurization technology.

*Distillate oil* means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17).

*Dry flue gas desulfurization technology* means a $SO_2$ control system that is located between the steam generating unit and the exhaust vent or stack, and that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline reagents used in dry flue gas desulfurization systems include, but are not limited to, lime and sodium compounds.

*Duct burner* means a device that combusts fuel and that is placed in the exhaust duct from another source (such as a stationary gas turbine, internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a steam generating unit.

*Emerging technology* means any $SO_2$ control system that is not defined as a conventional technology under this section, and for which the owner or operator of the affected facility has received approval from the Administrator to operate as an emerging technology under § 60.48c(a)(4).

*Federally enforceable* means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 51.24.

*Fluidized bed combustion technology* means a device wherein fuel is distributed onto a bed (or series of beds) of limestone aggregate (or other sorbent materials) for combustion; and these materials are forced upward in the device by the flow of combustion air and the gaseous products of combustion. Fluidized bed combustion technology includes, but is not limited to, bubbling bed units and circulating bed units.

*Fuel pretreatment* means a process that removes a portion of the sulfur in a fuel before combustion of the fuel in a steam generating unit.

*Heat input* means heat derived from combustion of fuel in a steam generating unit and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust gases from other sources (such as stationary gas turbines, internal combustion engines, and kilns).

*Heat transfer medium* means any material that is used to transfer heat from one point to another point.

*Maximum design heat input capacity* means the ability of a steam generating unit to combust a stated maximum amount of fuel (or combination of fuels) on a steady state basis as determined by the physical design and characteristics of the steam generating unit.

*Natural gas* means: (1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or (2) liquefied petroleum (LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835 (incorporated by reference, see § 60.17).

*Noncontinental area* means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

*Oil* means crude oil or petroleum, or a liquid fuel derived from crude oil or petroleum, including distillate oil and residual oil.

*Potential sulfur dioxide emission rate* means the theoretical $SO_2$ emissions (nanograms per joule (ng/J) or lb/MMBtu heat input) that would result from combusting fuel in an uncleaned state and without using emission control systems.

*Process heater* means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

*Residual oil* means crude oil, fuel oil that does not comply with the specifications under the definition of distillate oil, and all fuel oil numbers 4, 5, and 6, as defined by the American Society for Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17).

*Steam generating unit* means a device that combusts any fuel and produces steam or heats water or any other heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system. This term does not include process heaters as defined in this subpart.

*Steam generating unit operating day* means a 24-hour period between 12:00

midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

*Wet flue gas desulfurization technology* means an $SO_2$ control system that is located between the steam generating unit and the exhaust vent or stack, and that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a liquid material. This definition includes devices where the liquid material is subsequently converted to another form. Alkaline reagents used in wet flue gas desulfurization systems include, but are not limited to, lime, limestone, and sodium compounds.

*Wet scrubber system* means any emission control device that mixes an aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of PM or $SO_2$.

*Wood* means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

**§ 60.42c Standard for sulfur dioxide ($SO_2$).**

(a) Except as provided in paragraphs (b), (c), and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility that combusts only coal shall neither: Cause to be discharged into the atmosphere from the affected facility any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 10 percent (0.10) of the potential $SO_2$ emission rate (90 percent reduction), nor cause to be discharged into the atmosphere from the affected facility any gases that contain $SO_2$ in excess of 520 ng/J (1.2 lb/MMBtu) heat input. If coal is combusted with other fuels, the affected facility shall neither: Cause to be discharged into the atmosphere from the affected facility any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 10 percent (0.10) of the potential $SO_2$ emission rate (90 percent reduction), nor cause to be discharged into the atmosphere from the affected facility any gases that contain $SO_2$ in excess of the emission limit is determined pursuant to paragraph (e)(2) of this section.

(b) Except as provided in paragraphs (c) and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility that:

(1) Combusts only coal refuse alone in a fluidized bed combustion steam generating unit shall neither:

(i) Cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 20 percent (0.20) of the potential $SO_2$ emission rate (80 percent reduction); nor

(ii) Cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of 520 ng/J (1.2 lb/MMBtu) heat input. If coal is fired with coal refuse, the affected facility is subject to paragraph (a) of this section. If oil or any other fuel (except coal) is fired with coal refuse, the affected facility is subject to the 87 ng/J (0.20 lb/MMBtu) heat input $SO_2$ emissions limit or the 90 percent $SO_2$ reduction requirement specified in paragraph (a) of this section and the emission limit is determined pursuant to paragraph (e)(2) of this section.

(2) Combusts only coal and that uses an emerging technology for the control of $SO_2$ emissions shall neither:

(i) Cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of 50 percent (0.50) of the potential $SO_2$ emission rate (50 percent reduction); nor

(ii) Cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of 260 ng/J (0.60 lb/MMBtu) heat input. If coal is combusted with other fuels, the affected facility is subject to the 50 percent $SO_2$ reduction requirement specified in this paragraph and the emission limit determined pursuant to paragraph (e)(2) of this section.

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts coal, alone or in combination with any other fuel, and is listed in paragraphs (c)(1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of the emission limit determined pursuant to paragraph (e)(2) of this section. Percent reduction requirements are not applicable to affected facilities under paragraphs (c)(1), (2), (3), or (4).

(1) Affected facilities that have a heat input capacity of 22 MW (75 MMBtu/hr) or less.

(2) Affected facilities that have an annual capacity for coal of 55 percent (0.55) or less and are subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for coal of 55 percent (0.55) or less.

(3) Affected facilities located in a noncontinental area.

(4) Affected facilities that combust coal in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat entering the steam generating unit is from combustion of coal in the duct burner and 70 percent (0.70) or more of the heat entering the steam generating unit is from exhaust gases entering the duct burner.

(d) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts oil shall cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of 215 ng/J (0.50 lb/MMBtu) heat input; or, as an alternative, no owner or operator of an affected facility that combusts oil shall combust oil in the affected facility that contains greater than 0.5 weight percent sulfur. The percent reduction requirements are not applicable to affected facilities under this paragraph.

(e) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, or coal and oil with any other fuel shall cause to be discharged into the atmosphere from that affected facility any gases that contain $SO_2$ in excess of the following:

(1) The percent of potential $SO_2$ emission rate or numerical $SO_2$ emission rate required under paragraph (a) or (b)(2) of this section, as applicable, for any affected facility that

(i) Combusts coal in combination with any other fuel;

(ii) Has a heat input capacity greater than 22 MW (75 MMBtu/hr); and

(iii) Has an annual capacity factor for coal greater than 55 percent (0.55); and

(2) The emission limit determined according to the following formula for any affected facility that combusts coal, oil, or coal and oil with any other fuel:

$$E_s = \frac{(K_a H_a + K_b H_b + K_c H_c)}{(H_a + H_b + H_c)}$$

Where:

$E_s$ = $SO_2$ emission limit, expressed in ng/J or lb/MMBtu heat input;

$K_a$ = 520 ng/J (1.2 lb/MMBtu);
$K_b$ = 260 ng/J (0.60 lb/MMBtu);
$K_c$ = 215 ng/J (0.50 lb/MMBtu);
$H_a$ = Heat input from the combustion of coal, except coal combusted in an affected facility subject to paragraph (b)(2) of this section, in Joules (J) [MMBtu];
$H_b$ = Heat input from the combustion of coal in an affected facility subject to paragraph (b)(2) of this section, in J (MMBtu); and
$H_c$ $K_aH_b$ = Heat input from the combustion of oil, in J (MMBtu).

(f) Reduction in the potential $SO_2$ emission rate through fuel pretreatment is not credited toward the percent reduction requirement under paragraph (b)(2) of this section unless:

(1) Fuel pretreatment results in a 50 percent (0.50) or greater reduction in the potential $SO_2$ emission rate; and

(2) Emissions from the pretreated fuel (without either combustion or post-combustion $SO_2$ control) are equal to or less than the emission limits specified under paragraph (b)(2) of this section.

(g) Except as provided in paragraph (h) of this section, compliance with the percent reduction requirements, fuel oil sulfur limits, and emission limits of this section shall be determined on a 30-day rolling average basis.

(h) For affected facilities listed under paragraphs (h)(1), (2), or (3) of this section, compliance with the emission limits or fuel oil sulfur limits under this section may be determined based on a certification from the fuel supplier, as described under § 60.48c(f), as applicable.

(1) Distillate oil-fired affected facilities with heat input capacities between 2.9 and 29 MW (10 and 100 MMBtu/hr).

(2) Residual oil-fired affected facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 MMBtu/hr).

(3) Coal-fired facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 MMBtu/hr).

(i) The $SO_2$ emission limits, fuel oil sulfur limits, and percent reduction requirements under this section apply at all times, including periods of startup, shutdown, and malfunction.

(j) Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from wood or other fuels or for heat derived from exhaust gases from other sources, such as stationary gas turbines, internal combustion engines, and kilns.

**§ 60.43c Standard for particulate matter (PM).**

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts coal or combusts mixtures of coal with other fuels and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emission limits:

(1) 22 ng/J (0.051 lb/MMBtu) heat input if the affected facility combusts only coal, or combusts coal with other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 43 ng/J (0.10 lb/MMBtu) heat input if the affected facility combusts coal with other fuels, has an annual capacity factor for the other fuels greater than 10 percent (0.10), and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.

(b) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts wood or combusts mixtures of wood with other fuels (except coal) and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emissions limits:

(1) 43 ng/J (0.10 lb/MMBtu) heat input if the affected facility has an annual capacity factor for wood greater than 30 percent (0.30); or

(2) 130 ng/J (0.30 lb/MMBtu) heat input if the affected facility has an annual capacity factor for wood of 30 percent (0.30) or less and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for wood of 30 percent (0.30) or less.

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts coal, wood, or oil and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(d) The PM and opacity standards under this section apply at all times, except during periods of startup, shutdown, or malfunction.

(e)(1) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 13 ng/J (0.030 lb/MMBtu) heat input, except as provided in paragraphs (e)(2), (e)(3), and (e)(4) of this section.

(2) As an alternative to meeting the requirements of paragraph (e)(1) of this section, the owner or operator of an affected facility for which modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005 shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of both:

(i) 22 ng/J (0.051 lb/MMBtu) heat input derived from the combustion of coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels; and

(ii) 0.2 percent of the combustion concentration (99.8 percent reduction) when combusting coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels.

(3) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 43 ng/J (0.10 lb/MMBtu) heat input.

(4) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no

owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts only oil that contains no more than 0.50 weight percent sulfur or a mixture of 0.50 weight percent sulfur oil with other fuels not subject to a PM standard under § 60.43c and not using a post combustion technology (except a wet scrubber) to reduce PM or $SO_2$ emissions is subject to the PM limit in this section.

**§ 60.44c Compliance and performance test methods and procedures for sulfur dioxide.**

(a) Except as provided in paragraphs (g) and (h) of this section and § 60.8(b), performance tests required under § 60.8 shall be conducted following the procedures specified in paragraphs (b), (c), (d), (e), and (f) of this section, as applicable. Section 60.8(f) does not apply to this section. The 30-day notice required in § 60.8(d) applies only to the initial performance test unless otherwise specified by the Administrator.

(b) The initial performance test required under § 60.8 shall be conducted over 30 consecutive operating days of the steam generating unit. Compliance with the percent reduction requirements and $SO_2$ emission limits under § 60.42c shall be determined using a 30-day average. The first operating day included in the initial performance test shall be scheduled within 30 days after achieving the maximum production rate at which the affect facility will be operated, but not later than 180 days after the initial startup of the facility. The steam generating unit load during the 30-day period does not have to be the maximum design heat input capacity, but must be representative of future operating conditions.

(c) After the initial performance test required under paragraph (b) of this section and § 60.8, compliance with the percent reduction requirements and $SO_2$ emission limits under § 60.42c is based on the average percent reduction and the average $SO_2$ emission rates for 30 consecutive steam generating unit operating days. A separate performance test is completed at the end of each steam generating unit operating day, and a new 30-day average percent reduction and $SO_2$ emission rate are calculated to show compliance with the standard.

(d) If only coal, only oil, or a mixture of coal and oil is combusted in an affected facility, the procedures in Method 19 of appendix A of this part are used to determine the hourly $SO_2$ emission rate ($E_{ho}$) and the 30-day average $SO_2$ emission rate ($E_{ao}$). The hourly averages used to compute the 30-day averages are obtained from the CEMS. Method 19 of appendix A of this part shall be used to calculate $E_{ao}$ when using daily fuel sampling or Method 6B of appendix A of this part.

(e) If coal, oil, or coal and oil are combusted with other fuels:

(1) An adjusted $E_{ho}$ ($E_{ho}$°) is used in Equation 19–19 of Method 19 of appendix A of this part to compute the adjusted $E_{ao}$ ($E_{ao}$°). The $E_{ho}$° is computed using the following formula:

$$E_{ho}^{o} = \frac{E_{ho} - E_w (1 + X_k)}{X_k}$$

Where:

$E_{ho}$° = Adjusted $E_{ho}$, ng/J (lb/MMBtu);

$E_{ho}$ = Hourly $SO_2$ emission rate, ng/J (lb/MMBtu);

$E_w$ = $SO_2$ concentration in fuels other than coal and oil combusted in the affected facility, as determined by fuel sampling and analysis procedures in Method 9 of appendix A of this part, ng/J (lb/MMBtu). The value $E_w$ for each fuel lot is used for each hourly average during the time that the lot is being combusted. The owner or operator does not have to measure $E_w$ if the owner or operator elects to assume $E_w$=0.

$X_k$ = Fraction of the total heat input from fuel combustion derived from coal and oil, as determined by applicable procedures in Method 19 of appendix A of this part.

(2) The owner or operator of an affected facility that qualifies under the provisions of § 60.42c(c) or (d) (where percent reduction is not required) does not have to measure the parameters $E_w$ or $X_k$ if the owner or operator of the affected facility elects to measure emission rates of the coal or oil using the fuel sampling and analysis procedures under Method 19 of appendix A of this part.

(f) Affected facilities subject to the percent reduction requirements under § 60.42c(a) or (b) shall determine compliance with the $SO_2$ emission limits under § 60.42c pursuant to paragraphs (d) or (e) of this section, and shall determine compliance with the percent reduction requirements using the following procedures:

(1) If only coal is combusted, the percent of potential $SO_2$ emission rate is computed using the following formula:

$$\%P_s = 100\left(1 - \frac{\%R_g}{100}\right)\left(1 - \frac{\%R_f}{100}\right)$$

Where:

$\%P_s$ = Potential $SO_2$ emission rate, in percent;

$\%R_g$ = $SO_2$ removal efficiency of the control device as determined by Method 19 of appendix A of this part, in percent; and

$\%R_f$ = $SO_2$ removal efficiency of fuel pretreatment as determined by Method 19 of appendix A of this part, in percent.

(2) If coal, oil, or coal and oil are combusted with other fuels, the same procedures required in paragraph (f)(1) of this section are used, except as provided for in the following:

(i) To compute the $\%P_s$, an adjusted $\%R_g$ ($\%R_{go}$) is computed from $E_{ao}$° from paragraph (e)(1) of this section and an adjusted average $SO_2$ inlet rate ($E_{ai}$°) using the following formula:

$$\%R_{go} = 100\left(1 - \frac{E_{ao}^{o}}{E_{ai}^{o}}\right)$$

Where:

$\%R_{go}$ = Adjusted %Rg, in percent;

$E_{ao}$° = Adjusted $E_{ao}$, ng/J (lb/MMBtu); and

$E_{ai}$° = Adjusted average $SO_2$ inlet rate, ng/J (lb/MMBtu).

(ii) To compute $E_{ai}$°, an adjusted hourly $SO_2$ inlet rate ($E_{hi}$°) is used. The $E_{hi}$° is computed using the following formula:

$$E_{hi}^{o} = \frac{E_{hi} - E_w (1 - X_k)}{X_k}$$

Where:

$E_{hi}$° = Adjusted $E_{hi}$, ng/J (lb/MMBtu);

$E_{hi}$ = Hourly $SO_2$ inlet rate, ng/J (lb/MMBtu);

$E_w$ = $SO_2$ concentration in fuels other than coal and oil combusted in the affected facility, as determined by fuel sampling and analysis procedures in Method 19 of appendix A of this part, ng/J (lb/MMBtu). The value $E_w$ for each fuel lot is used for each hourly average during the time that the lot is being combusted. The owner or operator does not have to measure $E_w$ if the owner or operator elects to assume $E_w$ = 0; and

$X_k$ = Fraction of the total heat input from fuel combustion derived from coal and oil, as determined by applicable procedures in Method 19 of appendix A of this part.

(g) For oil-fired affected facilities where the owner or operator seeks to demonstrate compliance with the fuel oil sulfur limits under § 60.42c based on shipment fuel sampling, the initial performance test shall consist of sampling and analyzing the oil in the initial tank of oil to be fired in the steam generating unit to demonstrate that the oil contains 0.5 weight percent sulfur or less. Thereafter, the owner or operator of the affected facility shall sample the oil in the fuel tank after each new shipment of oil is received, as described under § 60.46c(d)(2).

(h) For affected facilities subject to § 60.42c(h)(1), (2), or (3) where the owner or operator seeks to demonstrate

compliance with the $SO_2$ standards based on fuel supplier certification, the performance test shall consist of the certification, the certification from the fuel supplier, as described under § 60.48c(f), as applicable.

(i) The owner or operator of an affected facility seeking to demonstrate compliance with the $SO_2$ standards under § 60.42c(c)(2) shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the steam generating unit at this capacity for 24 hours. This demonstration shall be made during the initial performance test, and a subsequent demonstration may be requested at any other time. If the demonstrated 24-hour average firing rate for the affected facility is less than the maximum design heat input capacity stated by the manufacturer of the affected facility, the demonstrated 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility; otherwise, the maximum design heat input capacity provided by the manufacturer shall be used.

(j) The owner or operator of an affected facility shall use all valid $SO_2$ emissions data in calculating $\%P_s$ and $E_{ho}$ under paragraphs (d), (e), or (f) of this section, as applicable, whether or not the minimum emissions data requirements under § 60.46c(f) are achieved. All valid emissions data, including valid data collected during periods of startup, shutdown, and malfunction, shall be used in calculating $\%P_s$ or $E_{ho}$ pursuant to paragraphs (d), (e), or (f) of this section, as applicable.

**§ 60.45c Compliance and performance test methods and procedures for particulate matter.**

(a) The owner or operator of an affected facility subject to the PM and/or opacity standards under § 60.43c shall conduct an initial performance test as required under § 60.8, and shall conduct subsequent performance tests as requested by the Administrator, to determine compliance with the standards using the following procedures and reference methods, except as specified in paragraph (c) of this section.

(1) Method 1 of appendix A of this part shall be used to select the sampling site and the number of traverse sampling points.

(2) Method 3 of appendix A of this part shall be used for gas analysis when applying Method 5, 5B, or 17 of appendix A of this part.

(3) Method 5, 5B, or 17 of appendix A of this part shall be used to measure the concentration of PM as follows:

(i) Method 5 of appendix A of this part may be used only at affected facilities without wet scrubber systems.

(ii) Method 17 of appendix A of this part may be used at affected facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160 °C (320 °F). The procedures of Sections 8.1 and 11.1 of Method 5B of appendix A of this part may be used in Method 17 of appendix A of this part only if Method 17 of appendix A of this part is used in conjunction with a wet scrubber system. Method 17 of appendix A of this part shall not be used in conjunction with a wet scrubber system if the effluent is saturated or laden with water droplets.

(iii) Method 5B of appendix A of this part may be used in conjunction with a wet scrubber system.

(4) The sampling time for each run shall be at least 120 minutes and the minimum sampling volume shall be 1.7 dry standard cubic meters (dscm) [60 dry standard cubic feet (dscf)] except that smaller sampling times or volumes may be approved by the Administrator when necessitated by process variables or other factors.

(5) For Method 5 or 5B of appendix A of this part, the temperature of the sample gas in the probe and filter holder shall be monitored and maintained at 160±14 °C (320±25 °F).

(6) For determination of PM emissions, an oxygen ($O_2$) or carbon dioxide ($CO_2$) measurement shall be obtained simultaneously with each run of Method 5, 5B, or 17 of appendix A of this part by traversing the duct at the same sampling location.

(7) For each run using Method 5, 5B, or 17 of appendix A of this part, the emission rates expressed in ng/J (lb/MMBtu) heat input shall be determined using:

(i) The $O_2$ or $CO_2$ measurements and PM measurements obtained under this section,

(ii) The dry basis F factor, and

(iii) The dry basis emission rate calculation procedure contained in Method 19 of appendix A of this part.

(8) Method 9 of appendix A of this part (6-minute average of 24 observations) shall be used for determining the opacity of stack emissions.

(b) The owner or operator of an affected facility seeking to demonstrate compliance with the PM standards under § 60.43c(b)(2) shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the steam generating unit at this capacity for 24 hours. This demonstration shall be made during the initial performance test, and a subsequent demonstration may be requested at any other time. If the demonstrated 24-hour average firing rate for the affected facility is less than the maximum design heat input capacity stated by the manufacturer of the affected facility, the demonstrated 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility; otherwise, the maximum design heat input capacity provided by the manufacturer shall be used.

(c) In place of PM testing with EPA Reference Method 5, 5B, or 17 of appendix A of this part, an owner or operator may elect to install, calibrate, maintain, and operate a CEMS for monitoring PM emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor PM emissions instead of conducting performance testing using EPA Method 5, 5B, or 17 of appendix A of this part shall install, calibrate, maintain, and operate a CEMS and shall comply with the requirements specified in paragraphs (c)(1) through (c)(13) of this section.

(1) Notify the Administrator 1 month before starting use of the system.

(2) Notify the Administrator 1 month before stopping use of the system.

(3) The monitor shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(4) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of notification to the Administrator of use of CEMS if the owner or operator was previously determining compliance by Method 5, 5B, or 17 of appendix A of this part performance tests, whichever is later.

(5) The owner or operator of an affected facility shall conduct an initial performance test for PM emissions as required under § 60.8 of subpart A of this part. Compliance with the PM emission limit shall be determined by using the CEMS specified in paragraph (d) of this section to measure PM and calculating a 24-hour block arithmetic average emission concentration using EPA Reference Method 19 of appendix A of this part, section 4.1.

(6) Compliance with the PM emission limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emission concentrations using CEMS outlet data.

(7) At a minimum, valid CEMS hourly averages shall be obtained as specified in paragraph (d)(7)(i) of this section for 75 percent of the total operating hours per 30-day rolling average.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) [Reserved]

(8) The 1-hour arithmetic averages required under paragraph (d)(7) of this section shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(9) All valid CEMS data shall be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (d)(7) of this section are not met.

(10) The CEMS shall be operated according to Performance Specification 11 in appendix B of this part.

(11) During the correlation testing runs of the CEMS required by Performance Specification 11 in appendix B of this part, PM and $O_2$ (or $CO_2$) data shall be collected concurrently (or within a 30-to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraph (d)(7)(i) of this section.

(i) For PM, EPA Reference Method 5, 5B, or 17 of appendix A of this part shall be used.

(ii) For $O_2$ (or $CO_2$), EPA reference Method 3, 3A, or 3B of appendix A of this part, as applicable shall be used.

(12) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audit's must be performed annually and Response Correlation Audits must be performed every 3 years.

(13) When PM emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 of appendix A of this part to provide, as necessary, valid emissions data for a minimum of 75 percent of total operating hours on a 30-day rolling average.

(d) The owner or operator of an affected facility seeking to demonstrate compliance under § 60.43c(e)(4) shall follow the applicable procedures under § 60.48c(f). For residual oil-fired affected facilities, fuel supplier certifications are only allowed for facilities with heat input capacities between 2.9 and 8.7 MW (10 to 30 MMBtu/hr).

**§ 60.46c Emission monitoring for sulfur dioxide**

(a) Except as provided in paragraphs (d) and (e) of this section, the owner or operator of an affected facility subject to the $SO_2$ emission limits under § 60.42c shall install, calibrate, maintain, and operate a CEMS for measuring $SO_2$ concentrations and either $O_2$ or $CO_2$ concentrations at the outlet of the $SO_2$ control device (or the outlet of the steam generating unit if no $SO_2$ control device is used), and shall record the output of the system. The owner or operator of an affected facility subject to the percent reduction requirements under § 60.42c shall measure $SO_2$ concentrations and either $O_2$ or $CO_2$ concentrations at both the inlet and outlet of the $SO_2$ control device.

(b) The 1-hour average $SO_2$ emission rates measured by a CEMS shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the average emission rates under § 60.42c. Each 1-hour average $SO_2$ emission rate must be based on at least 30 minutes of operation and include at least 2 data points representing two 15-minute periods. Hourly $SO_2$ emission rates are not calculated if the affected facility is operated less than 30 minutes in a 1-hour period and are not counted toward determination of a steam generating unit operating day.

(c) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(1) All CEMS shall be operated in accordance with the applicable procedures under Performance Specifications 1, 2, and 3 of appendix B of this part.

(2) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 of appendix F of this part.

(3) For affected facilities subject to the percent reduction requirements under § 60.42c, the span value of the $SO_2$ CEMS at the inlet to the $SO_2$ control device shall be 125 percent of the maximum estimated hourly potential $SO_2$ emission rate of the fuel combusted, and the span value of the $SO_2$ CEMS at the outlet from the $SO_2$ control device shall be 50 percent of the maximum estimated hourly potential $SO_2$ emission rate of the fuel combusted.

(4) For affected facilities that are not subject to the percent reduction requirements of § 60.42c, the span value of the $SO_2$ CEMS at the outlet from the $SO_2$ control device (or outlet of the steam generating unit if no $SO_2$ control device is used) shall be 125 percent of the maximum estimated hourly potential $SO_2$ emission rate of the fuel combusted.

(d) As an alternative to operating a CEMS at the inlet to the $SO_2$ control device (or outlet of the steam generating unit if no $SO_2$ control device is used) as required under paragraph (a) of this section, an owner or operator may elect to determine the average $SO_2$ emission rate by sampling the fuel prior to combustion. As an alternative to operating a CEMS at the outlet from the $SO_2$ control device (or outlet of the steam generating unit if no $SO_2$ control device is used) as required under paragraph (a) of this section, an owner or operator may elect to determine the average $SO_2$ emission rate by using Method 6B of appendix A of this part. Fuel sampling shall be conducted pursuant to either paragraph (d)(1) or (d)(2) of this section. Method 6B of appendix A of this part shall be conducted pursuant to paragraph (d)(3) of this section.

(1) For affected facilities combusting coal or oil, coal or oil samples shall be collected daily in an as-fired condition at the inlet to the steam generating unit and analyzed for sulfur content and heat content according to Method 19 of appendix A of this part. Method 19 of appendix A of this part provides procedures for converting these measurements into the format to be used in calculating the average $SO_2$ input rate.

(2) As an alternative fuel sampling procedure for affected facilities combusting oil, oil samples may be collected from the fuel tank for each steam generating unit immediately after the fuel tank is filled and before any oil is combusted. The owner or operator of the affected facility shall analyze the oil sample to determine the sulfur content of the oil. If a partially empty fuel tank is refilled, a new sample and analysis of the fuel in the tank would be required upon filling. Results of the fuel analysis taken after each new shipment of oil is received shall be used as the daily value when calculating the 30-day rolling average until the next shipment is received. If the fuel analysis shows that the sulfur content in the fuel tank is greater than 0.5 weight percent sulfur, the owner or operator shall ensure that the sulfur content of subsequent oil shipments is low enough to cause the 30-day rolling average sulfur content to be 0.5 weight percent sulfur or less.

(3) Method 6B of appendix A of this part may be used in lieu of CEMS to measure $SO_2$ at the inlet or outlet of the $SO_2$ control system. An initial

stratification test is required to verify the adequacy of the Method 6B of appendix A of this part sampling location. The stratification test shall consist of three paired runs of a suitable $SO_2$ and $CO_2$ measurement train operated at the candidate location and a second similar train operated according to the procedures in § 3.2 and the applicable procedures in section 7 of Performance Specification 2 of appendix B of this part. Method 6B of appendix A of this part, Method 6A of appendix A of this part, or a combination of Methods 6 and 3 of appendix A of this part or Methods 6C and 3A of appendix A of this part are suitable measurement techniques. If Method 6B of appendix A of this part is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B of appendix A of this part 24-hour tests, the mean of the absolute difference between the three paired runs must be less than 10 percent (0.10).

(e) The monitoring requirements of paragraphs (a) and (d) of this section shall not apply to affected facilities subject to § 60.42c(h)(1), (2), or (3) where the owner or operator of the affected facility seeks to demonstrate compliance with the $SO_2$ standards based on fuel supplier certification, as described under § 60.48c(f), as applicable.

(f) The owner or operator of an affected facility operating a CEMS pursuant to paragraph (a) of this section, or conducting as-fired fuel sampling pursuant to paragraph (d)(1) of this section, shall obtain emission data for at least 75 percent of the operating hours in at least 22 out of 30 successive steam generating unit operating days. If this minimum data requirement is not met with a single monitoring system, the owner or operator of the affected facility shall supplement the emission data with data collected with other monitoring systems as approved by the Administrator.

**§ 60.47c Emission monitoring for particulate matter.**

(a) Except as provided in paragraphs (c) and (d) of this section, the owner or operator of an affected facility combusting coal, oil, or wood that is subject to the opacity standards under § 60.43c shall install, calibrate, maintain, and operate a COMS for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system.

(b) All COMS for measuring opacity shall be operated in accordance with the applicable procedures under Performance Specification 1 of appendix B of this part. The span value of the opacity COMS shall be between 60 and 80 percent.

(c) Affected facilities that burn only distillate oil that contains no more than 0.5 weight percent sulfur and/or liquid or gaseous fuels with potential sulfur dioxide emission rates of 26 ng/J (0.06 lb/MMBtu) heat input or less and that do not use a post combustion technology to reduce $SO_2$ or PM emissions are not required to operate a CEMS for measuring opacity if they follow the applicable procedures under § 60.48c(f).

(d) Owners or operators complying with the PM emission limit by using a PM CEMS monitor instead of monitoring opacity must calibrate, maintain, and operate a CEMS, and record the output of the system, for PM emissions discharged to the atmosphere as specified in § 60.45c(d). The CEMS specified in paragraph § 60.45c(d) shall be operated and data recorded during all periods of operation of the affected facility except for CEMS breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

**§ 60.48c Reporting and recordkeeping requirements.**

(a) The owner or operator of each affected facility shall submit notification of the date of construction or reconstruction and actual startup, as provided by § 60.7 of this part. This notification shall include:

(1) The design heat input capacity of the affected facility and identification of fuels to be combusted in the affected facility.

(2) If applicable, a copy of any federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under § 60.42c, or § 60.43c.

(3) The annual capacity factor at which the owner or operator anticipates operating the affected facility based on all fuels fired and based on each individual fuel fired.

(4) Notification if an emerging technology will be used for controlling $SO_2$ emissions. The Administrator will examine the description of the control device and will determine whether the technology qualifies as an emerging technology. In making this determination, the Administrator may require the owner or operator of the affected facility to submit additional information concerning the control device. The affected facility is subject to the provisions of § 60.42c(a) or (b)(1), unless and until this determination is made by the Administrator.

(b) The owner or operator of each affected facility subject to the $SO_2$ emission limits of § 60.42c, or the PM or opacity limits of § 60.43c, shall submit to the Administrator the performance test data from the initial and any subsequent performance tests and, if applicable, the performance evaluation of the CEMS and/or COMS using the applicable performance specifications in appendix B of this part.

(c) The owner or operator of each coal-fired, oil-fired, or wood-fired affected facility subject to the opacity limits under § 60.43c(c) shall submit excess emission reports for any excess emissions from the affected facility that occur during the reporting period.

(d) The owner or operator of each affected facility subject to the $SO_2$ emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.42c shall submit reports to the Administrator.

(e) The owner or operator of each affected facility subject to the $SO_2$ emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.42c shall keep records and submit reports as required under paragraph (d) of this section, including the following information, as applicable.

(1) Calendar dates covered in the reporting period.

(2) Each 30-day average $SO_2$ emission rate (ng/J or lb/MMBtu), or 30-day average sulfur content (weight percent), calculated during the reporting period, ending with the last 30-day period; reasons for any noncompliance with the emission standards; and a description of corrective actions taken.

(3) Each 30-day average percent of potential $SO_2$ emission rate calculated during the reporting period, ending with the last 30-day period; reasons for any noncompliance with the emission standards; and a description of the corrective actions taken.

(4) Identification of any steam generating unit operating days for which $SO_2$ or diluent ($O_2$ or $CO_2$) data have not been obtained by an approved method for at least 75 percent of the operating hours; justification for not obtaining sufficient data; and a description of corrective actions taken.

(5) Identification of any times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and a description of corrective actions taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit.

(6) Identification of the F factor used in calculations, method of determination, and type of fuel combusted.

(7) Identification of whether averages have been obtained based on CEMS rather than manual sampling methods.

(8) If a CEMS is used, identification of any times when the pollutant concentration exceeded the full span of the CEMS.

(9) If a CEMS is used, description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specifications 2 or 3 of appendix B of this part.

(10) If a CEMS is used, results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1 of this part.

(11) If fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification as described under paragraph (f)(1), (2), (3), or (4) of this section, as applicable. In addition to records of fuel supplier certifications, the report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the reporting period.

(f) Fuel supplier certification shall include the following information:

(1) For distillate oil:

(i) The name of the oil supplier;

(ii) A statement from the oil supplier that the oil complies with the specifications under the definition of distillate oil in § 60.41c; and

(iii) The sulfur content of the oil.

(2) For residual oil:

(i) The name of the oil supplier;

(ii) The location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the affected facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location;

(iii) The sulfur content of the oil from which the shipment came (or of the shipment itself); and

(iv) The method used to determine the sulfur content of the oil.

(3) For coal:

(i) The name of the coal supplier;

(ii) The location of the coal when the sample was collected for analysis to determine the properties of the coal, specifically including whether the coal was sampled as delivered to the affected facility or whether the sample was collected from coal in storage at the mine, at a coal preparation plant, at a coal supplier's facility, or at another location. The certification shall include the name of the coal mine (and coal seam), coal storage facility, or coal preparation plant (where the sample was collected);

(iii) The results of the analysis of the coal from which the shipment came (or of the shipment itself) including the sulfur content, moisture content, ash content, and heat content; and

(iv) The methods used to determine the properties of the coal.

(4) For other fuels:

(i) The name of the supplier of the fuel;

(ii) The potential sulfur emissions rate of the fuel in ng/J heat input; and

(iii) The method used to determine the potential sulfur emissions rate of the fuel.

(g)(1) Except as provided under paragraph (g)(2) of this section, the owner or operator of each affected facility shall record and maintain records of the amount of each fuel combusted during each operating day.

(2) As an alternative to meeting the requirements of paragraph (g)(1) of this section, the owner or operator of an affected facility that combusts only natural gas, wood, fuels using fuel certification in § 60.48c(f) to demonstrate compliance with the $SO_2$ standard, fuels not subject to an emissions standard (excluding opacity), or a mixture of these fuels may elect to record and maintain records of the amount of each fuel combusted during each calendar month.

(h) The owner or operator of each affected facility subject to a federally enforceable requirement limiting the annual capacity factor for any fuel or mixture of fuels under § 60.42c or § 60.43c shall calculate the annual capacity factor individually for each fuel combusted. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of the calendar month.

(i) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of two years following the date of such record.

(j) The reporting period for the reports required under this subpart is each six-month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

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Part III

# Securities and Exchange Commission

**17 CFR Parts 240 and 249b**
**Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations; Proposed Rule**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 240 and 249b

[Release No. 34–55231; File No. S7–04–07]

RIN 3235–AJ78

## Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing for comment rules to implement provisions of the Credit Rating Agency Reform Act of 2006 (the "Act"), enacted on September 29, 2006. The Act defines the term "nationally recognized statistical rating organization," provides authority for the Commission to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies, and directs the Commission to issue final implementing rules no later than 270 days after its enactment (or by June 26, 2007).

**DATES:** Comments should be received on or before March 12, 2007.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–04–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*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 S7–04–07. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Assistant Director, at (202) 551–5521; Randall W. Roy, Branch Chief, at (202) 551–5522; Rose Russo Wells, Attorney, at (202) 551–5527; Sheila Swartz, Attorney, at (202) 551–5545, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The credit rating business has expanded significantly over the last 100 years. Credit rating agencies now issue credit ratings for debt securities of public companies, sovereign governments, and municipalities, and for structured products such as asset backed securities. They also issue ratings on money market instruments such as commercial paper and with respect to obligors (that is, a credit assessment of an entity as opposed to the entity's securities). Obligor ratings are issued on, among other entities, public companies, sovereign governments, and non-public companies such as banks and insurance companies.

The scope of the credit rating business reflects the importance of credit ratings to securities market participants and other creditors. Investors use credit ratings to make investment decisions. Large public institutions, such as pension funds, also use credit ratings to prescribe the types of securities the institution is permitted to hold. Creditors, such as commercial and investment banks, use credit ratings to manage credit risk and govern transactional agreements. For example, credit agreements frequently contain trigger provisions requiring more collateral if the creditor's credit rating drops.

In addition, regulatory bodies have come to rely on credit ratings. In 1975, the Commission adopted the term "nationally recognized statistical rating organization" or "NRSRO" as part of amendments to its broker-dealer net capital rule [1] under the Securities Exchange Act of 1934 ("Exchange Act").[2] The net capital rule requires a broker-dealer to maintain a level of net capital generally defined as net worth plus subordinated debt less illiquid assets and less percentage deductions on proprietary securities.[3] The net capital rule prescribes specific percentage deductions for various classes of securities based on the liquidity and volatility of the type of security.[4] These deductions, known as "haircuts," are intended to provide a financial buffer against risks arising from the broker-dealer's business activities, including potential losses arising from market fluctuations in the prices of, or lack of liquidity in, the securities.

The Commission's incorporation of the term "nationally recognized statistical rating organization" into the net capital rule provided a means to distinguish between different classes of debt securities for the purpose of prescribing applicable haircuts.[5] Thus, the net capital rule permits a broker-dealer to apply lower haircuts to certain types of debt securities that are rated in one of the four highest categories (known as the "investment grade" categories) by at least two NRSROs.[6]

Although the Commission used the term "nationally recognized statistical rating organization" in the net capital rule, it did not provide a definition. The Commission staff has identified NRSROs through no-action letters.[7] In response to a request for a no-action letter from a credit rating agency, the Commission staff would review information and documents submitted by the credit rating agency concerning its financial and managerial resources, methodologies for determining ratings, policies for managing activities that could impact the impartiality of the credit ratings, and recognition in the marketplace. Based on this review, the Commission staff would determine whether the credit rating agency had the financial and managerial resources and appropriate policies and procedures to consistently issue credible and reliable credit ratings. The Commission staff also would determine whether the predominant users of credit ratings considered the credit rating agency to be credible and reliable.

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[1] *See* Adoption of Amendments to Rule 15c3–1 and Adoption of Alternative Net Capital Requirement for Certain Brokers and Dealers, Exchange Act Release No. 11497 (June 26, 1975), 40 FR 29795 (July 16, 1975) and 17 CFR 240.15c3–1.

[2] 15 U.S.C. 78a *et seq.*

[3] *See* 17 CFR 240.15c3–1(c)(2).

[4] *See* 17 CFR 240.15c3–1(c)(2)(vi).

[5] *See, e.g.*, 17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H).

[6] *See Id.*

[7] *See, e.g.*, Letter from Gregory C. Yadley, Staff Attorney, Division of Market Regulation, SEC, to Ralph L. Gosselin, Treasurer, Coughlin & Co., Inc. (November 24, 1975).

If these assessments were both positive, the Commission staff, after seeking the advice of the Commission, would issue a no-action letter informing broker-dealers that they could treat the credit rating agency as an NRSRO for purposes of the net capital rule.[8] Since 1975, the Commission staff has identified nine credit rating agencies as NRSROs. However, as a result of consolidation, only five credit rating agencies currently are identified as NRSROs—Moody's Investors Service, Inc., Fitch, Inc., the Standard and Poor's Division of the McGraw-Hill Companies Inc., A.M. Best Company, Inc., and Dominion Bond Rating Service Limited.[9]

Over time, the Commission has imported the NRSRO concept into a number of other rules.[10] For example, definitions in Commission Rule 2a–7 under the Investment Company Act of 1940 include the term NRSRO to prescribe the type of securities a money market fund can hold.[11] In addition, regulations adopted by the Commission under the Securities Act of 1933 permit offerings of certain nonconvertible debt, preferred, and asset-backed securities that are rated investment grade by at least one NRSRO to be registered on Form S–3—the Commission's "short-form" registration statement—without the issuer satisfying a minimum public float test.[12]

The term "NRSRO" also has been incorporated into a wide range of federal legislation.[13] For example, when Congress defined the term "mortgage related security" in Section 3(a)(41) of the Exchange Act as part of the Secondary Mortgage Market Enhancement Act of 1984,[14] it required, among other things, that such securities be rated in one of the two highest rating categories by at least one NRSRO.[15]

Further, a number of other federal, state, and foreign laws and regulations have incorporated the term "NRSRO." For example, the U.S. Department of Education uses ratings from NRSROs to set standards of financial responsibility for institutions seeking to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended.[16] Several state insurance codes rely, directly or indirectly, on NRSRO ratings in determining appropriate investments for insurance companies.[17] Canada and El Salvador also have employed the concept.[18]

## II. The Credit Rating Agency Reform Act of 2006

The Act[19] seeks to address two important issues that have arisen with respect to credit rating agencies.[20] First, the practice of identifying NRSROs through staff no-action letters has been criticized as a process that lacks transparency and creates a barrier to entry for credit rating agencies seeking wider recognition and market share.[21] Second, the importance of credit ratings to the financial markets has raised the question of whether greater supervision of credit rating agencies is warranted.[22] The failures of Enron and WorldCom—which led to new laws and regulations governing a host of market participants including public companies, securities analysts, and accountants[23]—increased concerns that credit rating agencies were operating outside the scope of any meaningful regulatory supervision.[24]

Over the years, the Commission has made attempts to address these issues[25] and has participated in international initiatives to address similar issues.[26]

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[8] *See* Letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation, Commission, to John T. Anderson, Esquire, of Lord, Bissell & Brook, on behalf of Duff & Phelps, Inc. (February 24, 1982); Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Paul McCarthy, President, McCarthy, Crisanti & Maffei, Inc. (September 13, 1983); Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Robin Monro-Davies, President, IBCA Limited (November 27, 1990) and Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to David L. Lloyd, Jr., Dewey Ballentine, Bushby, Palmer & Wood (October 1, 1990); Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Gregory A. Root, President, Thomson BankWatch, Inc. (August 6, 1991) and Letter from Michael A. Macchiaroli Assistant Director, Division of Market Regulation, Commission, to Lee Pickard, Pickard and Djinis LLP (January 25, 1999); Letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to Mari-Anne Pisarri, Pickard and Djinis LLP (February 24, 2003); and Letter from Mark M. Attar, Special Counsel, Division of Market Regulation, Commission, to Arthur Snyder, President, A.M. Best Company, Inc. (March 3, 2005).

[9] Moody's and Standard and Poors represent over 80% of the industry market share as measured by revenues according to the *Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850*, Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) ("Senate Report").

[10] *See* Commission rules 17 CFR 228.10(e), 229.10(c), 230.134(a)(14), 230.436(g), 239.13, 239.32, 239.33, 240.3a1–1(b)(3), 240.10b–10(a)(8), 240.15c3–1(c)(2)(vi)(E), (F), and (H), 240.15c3–1a(b)(1)(i)(C), 240.15c3–1f(d), 240.15c3–3a, Item 14, Note G, 242.101(c)(2), 242.102(d), 242.300(k)(3) and (l)(3), 270.2a–7(a)(10), 270.3a–7(a)(2), 270.5b–3(c), and 270.10f–3(a)(3).

[11] 17 CFR 270.2a–7.

[12] Form S–3 (17 CFR 239.13).

[13] *See, e.g.*, 15 U.S.C. 78c(a)(41) (defining the term "mortgage related security"); 15 U.S.C. 78c(a)(53)(A) (defining the term "small business related security"); and 15 U.S.C. 80a–6(a)(5)(A)(iv)(I) (exempting certain companies from the provisions of the Investment Company Act of 1940"); Gramm-Leach-Bliley Act, Pub. L. No. 106–102 (1999); Transportation Equity Act for the 21st Century, Pub. L. No. 105–178 (1998); Reigle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103–325 (1994); Department of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, FY2001, Pub. L. No. 106–553 (2000); Higher Education Amendments of 1992, Pub. L. No. 102–325 (1992); Housing and Community Development Act of 1992, Pub. L. No. 102–550 (1992); Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102–242 (1991); and Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101–72 (1989).

[14] Pub. L. No. 98–440, § 101, 98 Stat. 1689 (1984).

[15] 15 U.S.C. 78c(a)(41).

[16] 20 U.S.C. 1070 *et seq.* and 42 U.S.C. 2751 *et seq.*, 34 CFR 668.15(b)(7)(ii) and (8)(ii).

[17] For example, the California Insurance Code relies on NRSRO ratings in allowing California-incorporated insurers to invest excess funds in certain types of investments. *See* Cal. Ins. Code 1192.10.

[18] *See, e.g.*, National Instrument 71–101, The Multi-jurisdictional Disclosure System (Oct. 1, 1998) (Can.) and Law of the Securities Market, El Salvador, Title VI, Chapter II, Section 88(a). D.L. Not. 374, Published in the Official Newspaper No. 149, Volume 340 of August 14, 1998.

[19] Pub. L. No. 109–291 (2006).

[20] *See* Section 2 of the Act and the Senate Report.

[21] *See* Senate Report.

[22] *Id.*

[23] *See e.g.*, Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002).

[24] *See* Senate Report.

[25] *See e.g., Nationally Recognized Statistical Rating Organizations*, Exchange Act Release No. 34616 (August 31, 1994), 59 FR 46314 (September 7, 1994); *Capital Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934*, Exchange Act Release No. 39457 (December 17, 1997), 62 FR 68018 (December 30, 1997); *Order In the Matter of the Role of Rating Agencies in the U.S. Securities Markets Directing Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934, and Designating Officers for Such Designation* (March 19, 2002); *The Current Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, Hearings Before the U.S. Securities and Exchange Commission* (Nov. 15 and 21, 2002) ("Commission 2002 CRA Hearings") (Transcripts available on the Commission's Web site at *http://www.sec.gov/spotlight/ratingagency.htm);* Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, As Required by Section 702(b) of the Sarbanes-Oxley Act of 2002, U.S. Securities and Exchange Commission, January 2003 ("Commission CRA Report"); *Concept Release: Rating Agencies and the Use of Credit Ratings Under the Federal Securities Laws*, Securities Act Release No. 8236, 68 FR 35258 (June 12, 2003) ("Commission CRA Concept Release"); and *Proposed Rule: Definition of Nationally Recognized Statistical Rating Organization*, Securities Act Release No. 8570 (April 22, 2005), 70 FR 21306 (April 25, 2005).

[26] *See Statement of Principles Regarding the Activities of Credit Rating Agencies*, Technical Committee, International Organization of Securities Commissions ("IOSCO") (September 25, 2003); *Report on the Activities of Credit Rating Agencies*, The Technical Committee, IOSCO (September 2003); and *Code of Conduct Fundamentals for Credit Rating Agencies*, Technical Committee of IOSCO (December 2004).

However, the Commission's efforts have been hindered by limitations to its authority.[27] Congress ultimately found that legislation was necessary and enacted the Act to provide for voluntary registration and oversight of NRSROs.[28]

In overview, the Act adds definitions to Section 3 of the Exchange Act,[29] creates a new Section 15E of the Exchange Act,[30] and amends Section 17 of the Exchange Act.[31] These new statutory provisions, and the grants of Commission rulemaking authority under these provisions, establish a registration and regulatory program for credit rating agencies opting to have their credit ratings qualify for purposes of laws and rules using the term "nationally recognized statistical rating organization." These credit rating agencies would be required to register with the Commission, make public certain information to help persons assess their credibility, make and retain certain records, furnish the Commission with certain financial reports, implement policies to manage the handling of material non-public information and conflicts of interest, and abide by certain prohibitions against unfair, coercive, or abusive practices. The Commission notes that international standards, such as those promulgated by the Technical Committee of the International Organization of Securities Commissions ("IOSCO"), are generally consistent with the Act and the rules the Commission is proposing.[32]

The statutory provisions of the Act prohibit reliance on Commission staff no-action letters identifying NRSROs.[33] These statutory provisions become effective on the earlier of June 26, 2007 (270 days after the date of enactment of the Act) or the date the Commission issues final rules under the Act.[34] However, as a transitional measure, no-action letters issued before the effective date may continue to be relied upon by regulatory users of credit ratings after the effective date if the credit rating agency identified in the letter has a pending application for registration before the Commission.[35] In this case, the letter becomes void after the Commission has acted on the application.[36]

## III. Description of the Proposed Rules

### *A. Overview*

The Act mandates that the rules adopted to implement its provisions be "narrowly tailored" to meet the Act's requirements.[37] Moreover, it provides that the rules adopted by the Commission may not "regulate the substance of credit ratings or the procedures or methodologies by which an NRSRO determines credit ratings."[38]

Under the proposed rules,[39] in conjunction with the statutory provisions of the Act, a credit rating agency seeking to register as an NRSRO would need to apply to the Commission using Form NRSRO.[40] The information furnished to the Commission in the form would fall broadly into two categories. First, the form would elicit information the credit rating agency would need to make public upon registration and thereafter update to keep the information current.[41] As the Senate Report noted, making this information public would "facilitate informed decisions by giving investors the ratings quality of different firms."[42] The second category of information would be submitted on a confidential basis to the extent permitted by law and the credit rating agency would not need to make it public or update it on the form (but would have to keep it current through proposed financial reporting requirements).[43]

After registration, the credit rating agency (now an NRSRO under the Act) would need to promptly update the information on its Form NRSRO to the extent an item or exhibit becomes materially inaccurate, with certain exceptions.[44] In addition, on a calendar year basis, the credit rating agency would need to furnish the Commission with an annual certification on Form NRSRO that the information and documents in the form continues to be accurate and listing any material changes that occurred during the year.[45] The most recently furnished Form NRSRO (initial, amended, or annual certification) and public exhibits would be the operative registration application and would need to be made public by the NRSRO (with exceptions for certain confidential information).

After registration, the NRSRO would be subject to several substantive rules. First, the NRSRO would be subject to a recordkeeping rule, under which the NRSRO would be required to make and retain certain records relating to the business of issuing credit ratings.[46] These records would assist the Commission, through its examination process, in monitoring whether the NRSRO complies with the requirements of the Act. Other required records would assist the Commission in monitoring whether the NRSRO follows its established policies and procedures.

On an annual fiscal year basis, an NRSRO would be required to furnish the Commission with audited financial statements.[47] This requirement is designed to assist the Commission in monitoring whether the credit rating agency continues to maintain adequate financial resources to consistently produce credit ratings with integrity. The financial reports also would include a schedule of the NRSRO's largest customers. This would assist the Commission in monitoring for potential conflicts of interest arising from

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[27] *See* Testimony of Commissioner Annette L. Nazareth, then Director, Division of Market Regulation, Commission, Before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Regarding Credit Rating Agencies (April 12, 2005) (Available on the Commission's Web site at *http://www.sec.gov/news/testimony/ts041205oln.htm*).

[28] *See* Section 2 of the Act and Senate Report.

[29] 15 U.S.C. 78c.

[30] 15 U.S.C. 78o–7.

[31] 15 U.S.C. 78q.

[32] *See e.g., IOSCO Stotement of Principles Regarding the Activities of Credit Roting Agencies*, September 25, 2003; *Code of Conduct Fundamentols for Credit Rating Agencies* (IOSCO Technical Committee), December 2004.

[33] *See* Section 15E(*l*) of the Exchange Act (15 U.S.C. 78o–7(*l*)). This provision of the Act renders moot the Commission's earlier proposals to define the term "NRSRO" by rule and, consequently, they are withdrawn. *See Capitol Requirements for Brokers or Deolers Under the Securities Exchonge Act of 1934*, Exchange Act Release No. 39457 (December 17, 1997), 62 FR 68018 (December 30, 1997); *Proposed Rule: Definition of Notionolly Recognized Stotisticol Roting Organizotion*, Securities Act Release No. 8570, (April 22, 2005), 70 FR 21306 (April 25, 2005).

[34] Section 15E(p) of the Exchange Act (15 U.S.C. 78o–7(p)). The Act was enacted on September 29, 2006 and June 26, 2007 is 270 days after that date.

[35] Section 15E(*l*)(2) of the Exchange Act (15 U.S.C. 78o–7(*l*)(2)).

[36] *Id.*

[37] Section 15E(c)(2) of the Exchange Act (15 U.S.C. 78o–7(c)(2)).

[38] *Id.*

[39] The proposed rules would be codified respectively at 17 CFR 240.17g–1 ("Rule 17g–1"); 17 CFR 240.17g–2 ("Rule 17g–2"); 17 CFR 240.17g–3 ("Rule 17g–3"); 17 CFR 240.17g–4 ("Rule 17g–4"); 17 CFR 240.17g–5 ("Rule 17g–5"); and 17 CFR 240.17g–6 ("Rule 17g–6"). Further specifics of this proposed regulatory program—including citations to provisions in the proposed rules and statutory provisions of the Act—are provided in the following sections describing the proposed rules individually.

[40] Proposed Rule 17g–1.

[41] *See* Sections 15E(a)(1)(B) and (b)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B) and (b)(1)), Proposed Rule 17g–1, Form NRSRO, and instructions for the form.

[42] *See* Senate Report.

[43] *See* Sections 15E(a)(1)(B)(viii) and (ix) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(viii) and (ix)), proposed Rule 17g–3, Section 24 of the Exchange Act (15 U.S.C. 78x), 17 CFR 240.24b–2, 17 CFR 200.80, and 17 CFR 200.83.

[44] *See* Section 15E(b)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B) and (b)(1)), proposed Rule 17g–1, Form NRSRO, and instructions for the form.

[45] Section 15E(b)(2) of the Exchange Act (15 U.S.C. 78o–7(b)(2)), proposed Rule 17g–1, Form NRSRO, and instructions for the form.

[46] Proposed Rule 17g–2.

[47] Proposed Rule 17g–3.

dealings with the NRSRO's largest customers.

Finally, all NRSROs would be subject to requirements designed to protect their impartiality with respect to issuing credit ratings. First, they would be required to establish, maintain, and enforce specific written policies designed to prevent the misuse of material non-public information.[48] Second, they would be subject to requirements to avoid, manage, and disclose conflicts of interest.[49] Third, NRSROs would be prohibited from engaging in certain unfair, coercive, or abusive practices.[50]

*B. Proposed Rule 17g–1—Registration Requirements*

The provisions of proposed Rule 17g–1 would implement rulemaking authority under the Act with respect to how a credit rating agency must apply to be registered as an NRSRO, make the non-confidential information in its application public, apply to add an additional category of credit ratings to its registration, update its application, furnish the annual certification, and withdraw its registration.

1. Entities Eligible To Apply for Registration

The Act, by adding definitions to Section 3 of the Exchange Act,[51] identifies the types of entities that may apply for registration with the Commission as an NRSRO.[52] First, it defines a "nationally recognized statistical rating organization" as a credit rating agency that:

(A) Has been in business as a credit rating agency for at least the three consecutive years immediately preceding the date of its application for registration under section 15E [of the Exchange Act];

(B) Issues credit ratings certified by qualified institutional buyers, in accordance with section 15E(a)(1)(B)(ix) [of the Exchange Act], with respect to

(i) Financial institutions, brokers, or dealers;

(ii) Insurance companies;

(iii) Corporate issuers;

(iv) Issuers of asset-backed securities (as that term is defined in [17 CFR 229.1101(c)]);

(v) Issuers of government securities, municipal securities, or securities issued by a foreign government; or

(vi) A combination of one or more categories of obligors described in any of clauses (i) through (v); and

(C) Is registered under section 15E [of the Exchange Act].[53]

Section 3 of the Exchange Act also defines the term "credit rating agency" as any person:

(A) Engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

(B) Employing either a quantitative or qualitative model, or both, to determine credit ratings; and

(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.[54]

Finally, Section 3 of the Exchange Act defines the term "credit rating" to mean "an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments."[55]

Taken together, these three definitions limit the type of entity eligible to be registered with the Commission as an NRSRO. First, the entity must meet the definition of "credit rating agency" in Section 3 of the Exchange Act, which means, among other things, it must issue "credit ratings" as that term is defined in the act. Thus, an entity that issues "credit ratings" but does not receive compensation from issuers, investors, or other market participants would not be eligible for registration as an NRSRO because it would not meet the third prong of the definition of "credit rating agency."[56] Similarly, an entity would not be eligible for registration based solely on the fact that it has issued recommendations with respect to equity securities (for example, buy, sell, or hold) or ratings with respect to the quality of a company's management. In either case, the entity would not have been issuing "credit ratings" as the term is defined because the recommendations and ratings are not assessments of the creditworthiness of an obligor or of specific securities or money market instruments.[57]

Another component of the first prong in the definition of "credit rating agency" is that the entity must be engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee.[58] The statute does not define "reasonable fee." As a preliminary matter, the Commission believes that the fees contemplated by the definition are those charged by a credit rating agency, if any, for a customer to access or receive the credit ratings of the credit rating agency. The fees a credit rating agency charges for other services are not part of the definition, since regulatory users of credit ratings would not need access to these other services to comply with statutes and regulations using the term "NRSRO." These other fees would include fees charged to issuers, obligors, or underwriters to determine or maintain a credit rating, fees charged to subscribers for credit analysis reports, and fees charged for consulting or other services.

Additionally, the Commission preliminarily believes that the determination of whether a fee for accessing or obtaining credit ratings is reasonable would depend on the facts and circumstances. The Commission requests comment on the issue of determination of the reasonableness of fees charged by NRSROs for accessing or obtaining their credit ratings; in particular, the Commission requests comment on this issue in the context of users of credit ratings for regulatory purposes.

Finally, if an entity meets the definition of "credit rating agency," the entity must have been in the business of issuing credit ratings for the three years immediately preceding the date of its application for registration to be eligible to apply to register with the Commission as an NRSRO.

2. Description of Proposed Registration Rule (Rule 17g–1)

A credit rating agency that elects to be treated as an NRSRO must apply to the Commission to be registered as an NRSRO. Section 15E(a)(1)(A) of the Exchange Act provides that a credit rating agency applying for registration must furnish the Commission with an application in a form prescribed by Commission rule.[59] In addition, Section 15E(a)(1)(B) of the Exchange Act prescribes certain minimum information the credit rating agency must provide in

[48] Section 15E(g) of the Exchange Act (15 U.S.C. 78o–7(g)), proposed Rule 17g–4.

[49] Section 15E(h) of the Exchange Act (15 U.S.C. 78o–7(h)), proposed Rule 17g–5.

[50] Section 15E(i) of the Exchange Act (15 U.S.C. 78o–7(i)), proposed Rule 17g–6.

[51] 15 U.S.C. 78c.

[52] *See* Section 3 of the Act.

[53] Section 3(a)(62) of the Exchange Act (15 U.S.C. 78c(a)(62)). Section 3(a)(64) of the Exchange Act defines the "qualified institutional buyer" ("QIB") as having the "meaning given such term in [17 CFR 230.144A(a)] or any successor thereto." 15 U.S.C. 78c(a)(62).

[54] Section 3(a)(61) of the Exchange Act (15 U.S.C. 78c(a)(61)).

[55] Section 3(a)(60) of the Exchange Act (15 U.S.C. 78c(a)(60)).

[56] *See* Section 3(a)(61)(C) of the Exchange Act (15 U.S.C. 78c(a)(61)(C)).

[57] *See* Section 3(a)(60) of the Exchange Act (15 U.S.C. 78c(a)(60)).

[58] *See* Section 3(a)(61)(A) of the Exchange Act (15 U.S.C. 78c(a)(61)(A).

[59] 15 U.S.C. 78o–7(a)(1)(A).

the application.[60] This includes information regarding the categories of credit ratings set forth in the definition of "NRSRO" in Section 3(a)(62)(B) of the Exchange Act with respect to which the credit rating agency "intends to apply for registration."[61]

Paragraph (a) of proposed Rule 17g–1 would implement these provisions by providing that a credit rating agency applying to be registered with the Commission as an NRSRO would be required to furnish the Commission with an application on Form NRSRO. As discussed below, a credit rating agency would be able to apply to be registered for less than all five of the categories of credit ratings identified in Section 3(a)(62)(B) of the Exchange Act.[62] For example, the credit rating agency might not meet the definitional thresholds discussed above with respect to a particular category of credit rating because it has not issued credit ratings in that category for the three years preceding the date of its application.[63]

Paragraph (b)(1) of proposed Rule 17g–1 provides that an application would be considered furnished to the Commission on the date that the Commission receives a complete and properly executed Form NRSRO that follows all applicable instructions for the form.[64] The requirement that an application must be accurate and complete comports with the requirements imposed on other classes of registrants under the Exchange Act.[65] In addition, Section15E(a)(2)(A) of the Exchange Act requires the Commission to grant the application for registration or commence proceedings on whether to deny it within 90 days from the date the application is furnished to the Commission or a longer period if the applicant consents.[66] Moreover, if proceedings are commenced, Section 15E(a)(2)(B) of the Exchange Act[67] requires the Commission to conclude them within 120 days of the date the application was furnished to the Commission.[68] As a result, the Commission must have a complete application before the 90-day and 120-day periods begin to run.

Paragraph (b)(1) of proposed Rule 17g–1 also provides that information submitted with the application on a confidential basis would be accorded confidential treatment to the extent permitted by law. As discussed in detail below, the information proposed to be required in Form NRSRO includes information which an NRSRO would need to make public after registration and information that is submitted on a confidential basis to the extent permitted by law. Some of the confidential information is required by Section 15E(a)(1)(B) of the Exchange Act.[69] The Commission also would require certain additional information under authority conferred by Section 15E(a)(1)(B)(x) of the Exchange Act.[70] The Commission believes that it would be appropriate to provide confidential treatment to some of this information as well. Because the statute does not specifically grant confidential treatment to the additional information, the Commission would provide it through paragraph (b)(1) of proposed Rule 17g–1 to the extent permitted by law.

Paragraph (b)(2) of proposed Rule 17g–1 would provide a mechanism for a credit rating agency to withdraw its application before the Commission takes final action on it.[71] Specifically, it would require the credit rating agency to furnish the Commission with a written notice of withdrawal executed by a duly authorized person. The proposed requirement for execution by a duly authorized person is designed to ensure that the withdrawal notice reflects the intent of the credit rating agency.

Paragraph (c) of proposed Rule 17g–1 would provide that if information on the application becomes materially inaccurate before the Commission has granted or denied the application, the credit rating agency must promptly notify the Commission and amend the application with accurate and complete information by submitting an amended initial application on proposed Form NRSRO.[72] Because preparing and furnishing an amended form may take time, this proposed notification provision is designed to alert the Commission as soon as possible that the application before it is materially inaccurate or incomplete. The intent is to avoid situations where the Commission continues to review an application that is no longer materially accurate.

Section 15E(a)(3) of the Exchange Act provides that the Commission, by rule, shall require an NRSRO, after registration, to make the information submitted in its completed application and any amendments publicly available on its Web site or through another comparable, readily accessible means.[73] It also permits the Commission to determine by rule the information that shall be made publicly available.[74]

Paragraph (d) of proposed Rule 17g–1 would require that the information be made publicly available within five business days of the NRSRO being registered or furnishing an amendment or annual certification. The five business-day period is intended to provide the NRSRO with sufficient time to make the information public while also designed to ensure that users of credit ratings would have access to information within a reasonably short timeframe. Under the proposed rule, certain additional information submitted pursuant to Commission rulemaking authority also would not need to be made publicly available after registration.[75] In addition, an applicant could seek confidential treatment for information in the application under existing law and rules governing confidential treatment.[76] The Commission would accord this information confidential treatment to the extent permitted by law.

While Section 15E(a)(3) of the Exchange Act[77] does not require an applicant to make the public information in its application publicly available until after registration, this information typically would be made available by the Commission to

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[60] 15 U.S.C. 78o–7(a)(1)(B).

[61] *See* Section 15E(a)(1)(B)(vii) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(vii)).

[62] 15 U.S.C. 78c(a)(62)(B).

[63] *See* definition of "NRSRO" in Section 3(a)(62) of the Exchange Act (15 U.S.C. 78c(a)(62)).

[64] This provision would be implemented under the Commission's authority in Section 15E(a)(1)(A) of the Exchange Act to prescribe the form of the application (15 U.S.C. 78o–7(a)(1)(A)).

[65] *See e.g.*, 17 CFR 240.15b1–1 and 17 CFR 240.15b3–1 (broker-dealers); 17 CFR 240.15Ba2–1 (municipal securities dealers); 17 CFR 240.17Ab2–1 (clearing agencies); and 17 CFR 240.17Ac2–1 (transfer agents).

[66] 15 U.S.C. 78o–7(a)(2)(A).

[67] 15 U.S.C. 78o–7(a)(2)(B).

[68] Under Section 15E(a)(2)(B)(iii) of the Exchange Act, the Commission can extend this period for an additional 90 days for good cause or for such other period as the applicant consents (15 U.S.C. 78o–7(a)(2)(B)(iii)). Practically, an applicant would need to consent to extend both the period for the Commission to make the initial determination and the 120-day period to conclude proceedings, since the 120-day period begins when the application is furnished to the Commission, not when the Commission determines to commence proceedings.

[69] *See* Sections 15E(a)(1)(B)(viii) and (ix) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(viii) and (ix)).

[70] 15 U.S.C. 78o–7(a)(1)(B)(x).

[71] The withdrawal of a granted registration is discussed separately below.

[72] This provision would be implemented under the Commission's authority in Section 15E(a)(1)(A) of the Exchange Act to prescribe the form of the application (15 U.S.C. 78o–7(a)(1)(A)).

[73] 15 U.S.C. 78o–7(a)(3).

[74] Section 15E(a)(3) of the Exchange Act (15 U.S.C. 78o–7(a)(3)). As discussed below, the Commission proposes not to require an NRSRO to make public certain information required in the application, including the information about the applicant's 20 largest issuer and subscriber customers and the QIB certifications.

[75] *See* discussion below with respect to Exhibits 10 through 13 of proposed Form NRSRO.

[76] *See* 17 CFR 200.80 and 17 CFR 200.80a.

[77] 15 U.S.C. 78o–7(a)(3).

members of the public before the application is acted on by the Commission. As noted above, an applicant could seek confidential treatment for information in the application under existing laws and rules governing confidential treatment.[78] This would be consistent with how the Commission treats applications of other entities.

As noted, a credit rating agency may apply to be registered for fewer than all five categories of credit ratings described in Section 3(a)(62)(B) of the Exchange Act.[79] Paragraph (e) of proposed Rule 17g–1 would create a mechanism for an NRSRO registered for fewer than the five categories to apply to be registered with respect to an additional category.[80] The proposed rule provides that the NRSRO would need to furnish an amended Form NRSRO and indicate where appropriate on the form the additional category for which it is applying to be registered.[81] The proposed rule also provides that the application to register for an additional category would be subject to the requirements in proposed Rule 17g–1 and Section 15E of the Exchange Act[82] applicable to an initial application. For example, the provisions of paragraph (b)(1) of proposed Rule 17g–1 regarding when an application is deemed to have been furnished to the Commission would apply, as would the provisions of paragraph (c) with respect to amending the application prior to registration being granted. The time periods for the Commission to act on the application set forth in Sections 15E(a)(2)(A) and (B) of the Exchange Act also would apply to the amended form.[83]

Section 15E(b)(1) of the Exchange Act requires an NRSRO to promptly amend its application for registration if, after registration, any information or document provided as part of the application becomes materially inaccurate.[84] The statute further provides that the information on credit ratings performance statistics (discussed more fully below) need only be updated on an annual basis and that the QIB certifications need not be updated.[85] Paragraph (f) of proposed Rule 17g–1 provides that an NRSRO would need to meet the statutory requirement to amend an application if information becomes materially inaccurate by promptly furnishing the amendment to the Commission on Form NRSRO.[86] The Act does not define the term "promptly." The Commission believes the amendment should be furnished as soon as reasonably practicable after the NRSRO determines the information has become materially inaccurate. In most cases, the Commission believes that completing Form NRSRO, attaching any amended information and documents, and submitting the amendment package to the Commission should not take more than two days

Section 15E(b)(2) of the Exchange Act requires an NRSRO to furnish the Commission with an amendment to its registration not later than 90 days after the end of each calendar year in a form prescribed by Commission rule.[87] This section further provides that the amendment must (1) Certify that the information and documents provided in the application for registration (except the QIB certifications) continue to be accurate and (2) list any material change to the information and documents during the previous calendar year.[88] Paragraph (g) of proposed Rule 17g–1 would implement these statutory provisions by requiring an NRSRO to furnish the amendment on Form NRSRO.

Finally, Section 15E(e)(1) of the Exchange Act provides that an NRSRO may withdraw from registration, subject to terms and conditions the Commission may establish as necessary in the public interest or for the protection of investors, by furnishing the Commission with a written notice of withdrawal.[89] Paragraph (h) of proposed Rule 17g–1 would provide that the notice must be executed by a person duly authorized by the NRSRO. The proposed requirement for execution by a duly authorized person is designed to ensure that the registration withdrawal notice reflects the intent of the credit rating agency. Section 15E(e)(1) of the Exchange Act also provides the Commission with the authority to establish additional terms and conditions with respect to the withdrawal of a credit rating agency's NRSRO registration as necessary in the public interest or for the protection of investors.[90] Such conditions potentially could include a requirement that the NRSRO provide public notice that its credit ratings will cease to be eligible for regulatory use.

The Commission generally requests comment on all aspects of this proposed rule. The Commission also seeks comment on whether the five-day time limit for making the non-confidential information in the application publicly available should be longer or shorter. For example, the Commission seeks comment on whether five days is a sufficient amount of time to make an initial application public, given the volume of information that may need to be posted on a Web site or made public through another comparable means. Additionally, the Commission requests comment on ways other than the Internet that the information could be made public that would be comparable to posting the information on a Web site, particularly in terms of ensuring that users of credit ratings would have a comparable ease of access to the information. Further, the Commission seeks comment on whether it should define the term "promptly" in section 15E(b)(1) of the Exchange Act[91] to mean a specific time period such as two, five, or ten business days or some other period.

### *C. Proposed Form NRSRO*

#### 1. Overview of How the Form Would Be Used

The Commission is proposing a new form, "Form NRSRO," the "Application for Registration as a Nationally Recognized Statistical Rating Organization." The form is designed to serve four functions: To apply for initial registration, to amend the scope of registration, to amend public information required by the form, and to make an annual certification. Instructions for the form describe how an applicant, and after registration, an NRSRO, should complete the form in each of these circumstances. The Commission construes the Act's requirement that implementing rules be "narrowly tailored" to also apply to proposed Form NRSRO.[92]

The Commission believes that having just one form (and one set of instructions) would reduce the burden on applicants, NRSROs, and

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[78] *See* Section 24 of the Exchange Act (15 U.S.C. 78x), 17 CFR 240.24b–2, 17 CFR 200.80 and 17 CFR 200.83.

[79] Section 15E(a)(1)(B)(vii) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(vii)) provides that a credit rating agency must submit information with its application regarding the categories of credit ratings described in Section 3(a)(62)(B) of the Exchange Act (15 U.S.C. 78c(a)(62)(B)) for which it "intends to apply for registration."

[80] This provision further implements Section 15E(a)(1) of the Exchange Act, which requires the Commission, by rule, to prescribe the form of an application for registration (15 U.S.C. 78o–7(a)(1)).

[81] The specific requirements for completing the Form NRSRO in this circumstance are described in the next section.

[82] 15 U.S.C. 78o–7.

[83] 15 U.S.C. 78o–7(a)(2)(A) and (B).

[84] 15 U.S.C. 78o–7(b)(1).

[85] *Id.*

[86] This provision further implements Section 15E(a)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1)), which requires the Commission, by rule, to prescribe the form of an application for registration.

[87] 15 U.S.C. 78o–7(b)(2).

[88] *Id.*

[89] 15 U.S.C. 78o–7(e)(1).

[90] 15 U.S.C. 78o–7(e)(1).

[91] 15 U.S.C. 78o–7(b)(1).

[92] Section 15E(c)(2) of the Exchange Act (15 U.S.C. 78o–7(c)(2)).

Commission staff. For example, it would reduce the complexity of having different forms for the application, amendments, and annual certification. Using one form also would allow NRSROs to more quickly become familiar with the form and its instructions, which would reduce the potential for making mistakes in completing the form. It also would assist users of credit ratings in understanding the form and public exhibits and where to look on the form for specific information.

A credit rating agency applying for registration as an NRSRO would need to complete the form by providing the required information in all the items (except Item 7)[93] and attaching all exhibits. The credit rating agency also would need to attach a minimum of 10 certifications from QIBs (with at least two addressing each category for which registration is sought), and a non-resident credit rating agency would need to attach the undertaking required under proposed Rule 17g–2 (discussed below).

The Commission would use the information provided on the form to make the threshold determination whether the applicant is a "credit rating agency" as defined in section 3(a)(61) of the Exchange Act and would meet the definition of "NRSRO" in section 3(a)(62) of the Exchange Act.[94] The Commission also would use the information on the form to determine whether the applicant meets the statutory requirements for registration.[95] Specifically, the Commission would use the information to determine whether the applicant has adequate financial and managerial resources to consistently produce credit ratings with integrity and to comply with its established policies and methodologies (*e.g.*, policies for determining credit ratings, managing material non-public information and conflicts of interest, and complying with applicable laws and regulations).[96] The Commission also would use the information to determine whether the credit rating agency, if granted registration, would not be subject to having its registration suspended or revoked under section 15E(d) of the Exchange Act.[97]

After registration, an NRSRO would use Form NRSRO if it sought to apply for registration with respect to an additional category of credit ratings. In this case, the NRSRO would not need to update the non-public exhibits, and it also would not need to update the public exhibits to the extent that information or documents previously provided remained materially accurate. However, the fact that the NRSRO was seeking to expand the scope of its registration to an additional category of credit ratings likely would mean certain information provided in the public exhibits would no longer be materially accurate. For example, the NRSRO may have established new or additional methodologies to determine credit ratings in the category for which it was seeking registration. These would need to be provided as an update to Exhibit 2.[98] Finally, the NRSRO would need to provide two QIB certifications for each category of credit rating for which it is applying to be registered.[99]

An NRSRO also would use Form NRSRO to amend the information on the form and in the public exhibits after registration.[100] The need to amend the form would arise whenever there was a material change to information in one of the items on the form (except for Items 6 and 7)[101] or to information or a document provided in a public exhibit. For example, if the NRSRO materially changed its procedures for preventing the misuse of material non-public information, the NRSRO would be required to furnish the Commission with an amendment on Form NRSRO and include the new procedures as an update to Exhibit 3.[102] It would not need to update the other public exhibits if the information in them remained materially accurate.

Finally, an NRSRO would use Form NRSRO to furnish the annual certification required by Section 15E(b)(2) of the Exchange Act.[103] This section requires the NRSRO to certify on an annual calendar-year basis that the information and documents provided in its application continue to be materially accurate (other than the QIB certifications).[104] It also requires the NRSRO to identify any material change to the information or documents that occurred during the previous calendar year.[105] In addition, Section 15E(b)(1) of the Exchange Act provides that the performance statistics about the NRSRO's credit ratings need only be updated on a yearly basis with the annual certification.[106]

The proposed Form NRSRO is designed to meet these statutory requirements. First, the certification on the facing page would include the representations needed for the annual certification; namely, that the NRSRO's application on Form NRSRO, as amended, continues to be accurate.[107] Second, Exhibit 1 would require information on credit rating performance statistics. The instructions would require this information to be provided in the initial application and, thereafter, updated with the annual certification (as opposed to the other public exhibits that would need to be updated promptly whenever they become materially inaccurate). The instructions also would require the NRSRO to include with the annual certification a list of each material change made during the previous calendar year.[108]

2. Items on the Form

*Checkboxes indicating nature of submission.* The first entry an applicant or NRSRO would make on Form NRSRO

[93] As discussed below, an NRSRO would need to complete Item 7 when furnishing an amendment to the form or the annual certification required under Section 15E(b)(2) of the Exchange Act (15 U.S.C. 78o–7(b)(2)).

[94] *See* 15 U.S.C. 78c(a)(61) and 15 U.S.C. 78c(a)(62).

[95] *See* Section 15E(a)(2)(C) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C)).

[96] *See* Section 15E(a)(2)(C)(ii)(I) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C)(ii)(I)).

[97] Section 15E(a)(2)(C)(ii)(II) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C)(ii)(II)) directs the Commission to deny a credit rating agency's application for registration as an NRSRO if the Commission finds that the applicant, if granted registration, would be subject to suspension or revocation of its registration under Section 15E(d) of the Exchange Act (15 U.S.C. 78o–7(d)).

[98] As discussed below, Exhibit 2 would elicit the methodologies used by the credit rating agency to determine credit ratings.

[99] Section 15E(a)(1)(C)(ii) of the Exchange Act requires an applicant to provide at least 2 QIB certifications for each category of credit rating for which the credit rating agency seeks to be registered (78o–7(a)(1)(C)(iii)).

[100] *See* Section 15E(b)(1) of the Exchange Act, which requires an NRSRO to update certain information provided in its application for registration (15 U.S.C. 78o–7(b)(1)).

[101] As explained below, Item 6 only would be used to provide information relating to the categories of credit ratings for which a credit rating agency was applying for registration. Therefore, unless the amendment is furnished to apply for registration in an additional category, Item 6 would not need to be completed or updated after registration. Item 7 requires information relating to current credit ratings, including information that could change relatively often such as the number of credit ratings currently issued. Therefore, this item would not need to be updated when information in the item materially changed. Instead, an NRSRO would be required to update it when furnishing a Form NRSRO for another reason.

[102] As discussed below, Exhibit 3 requires policies and procedures implemented by the NRSRO to prevent the misuse of material non-public information.

[103] 15 U.S.C. 78o–7(b)(2).

[104] Section 15E(b)(2)(A) of the Exchange Act (15 U.S.C. 78o–7(b)(2)(A)).

[105] Section 15E(b)(2)(B) of the Exchange Act (15 U.S.C. 78o–7(b)(2)(B)).

[106] 15 U.S.C. 78o–7(b)(1)(A).

[107] *See* Section 15E(b)(2)(A) of the Exchange Act (15 U.S.C. 78o–7(b)(2)(A)).

[108] *See* Section 15E(b)(2)(B) of the Exchange Act (15 U.S.C. 78o–7(b)(2)(B)).

would be to indicate, by checking the appropriate box, the reason the form is being furnished: initial application, amendment, or annual certification. If an amendment, the NRSRO also would need to briefly describe the amendment on lines under the amendment check box. For example, if an NRSRO was filing the amendment because its address and organizational structure changed, the description of the amendments should be as brief as "Item 1C (address change)" and "Exhibit 4 (new organizational structure)."

*Item 1 (Identifying information).* Item 1 of proposed Form NRSRO would elicit the name and address of the credit rating agency, and the name and address of the contact person for the credit rating agency. The instructions for proposed Form NRSRO would provide that the individual listed as the contact person must be authorized to receive all communications and papers from the Commission and would be responsible for their dissemination within the credit rating agency.

*Item 2 (Legal status, place of formation, fiscal year end).* Item 2 of proposed Form NRSRO would elicit the legal status of the credit rating agency (for example, corporation or partnership), the place and date of formation of the entity, and the fiscal year end of the credit rating agency. The information with respect to the fiscal year end of the applicant or NRSRO is relevant because Form NRSRO would require applicants to submit audited financial statements with the application. Proposed Rule 17g–3 would require NRSROs to annually furnish the Commission with audited financial statements covering the previous fiscal year.

*Item 3 (Undertaking by non-resident NRSRO).* Paragraph (f) of proposed Rule 17g–2 would require an NRSRO that does not reside in the United States to execute a written undertaking, in substantially the form provided in the proposed rule, to promptly provide books and records to the Commission in a form requested by the Commission, including translation into English. The proposed undertaking is designed to provide a means for the Commission to promptly obtain records subject to its examination authority located outside the U.S. without requiring that Commission staff travel to the location. In addition, because some non-resident NRSROs may maintain original records in a language other than English, the proposed undertaking would require a translation if the Commission requested it.

Item 3 of proposed Form NRSRO would require a non-resident applicant to attach the required undertaking to its initial application. If the application is granted, the undertaking would be in place when the applicant becomes an NRSRO and is subject to the proposed recordkeeping requirements. The prescribed form of the undertaking would make it applicable only to books and records a credit rating agency is required to make, keep current, retain, or produce to the Commission pursuant to any provision of the Exchange Act [109] or any regulation under the Exchange Act.[110] An applicant becomes subject to these recordkeeping requirements only after registration is granted and the applicant becomes an NRSRO.

*Item 4 (Compliance officer).* Section 15E(j) of the Exchange Act requires every NRSRO to designate an individual responsible for administering the policies and procedures of the credit rating agency to prevent the misuse of nonpublic information, to manage conflicts of interest, and to ensure compliance with the securities laws and the rules and regulations under those laws.[111] Item 4 of proposed Form NRSRO would elicit the name of and contact information for this person.

*Item 5 (Method of making form and public exhibits readily accessible).* Section 15E(a)(3) of the Exchange Act provides that the Commission shall, by rule, require an NRSRO, upon the granting of registration, to make the non-confidential information and documents submitted to the Commission in the initial application, amendments, or annual certifications publicly available on the NRSRO's Web site or through another comparable, readily accessible means.[112] Item 5 of proposed Form NRSRO would elicit information on how the applicant would make the public information readily accessible. Providing this information on proposed Form NRSRO would assist the Commission in verifying that the NRSRO is complying with this requirement and assist the public in locating the information to assess the credibility and integrity of the NRSRO.

*Item 6 (Categories of credit ratings for which registration is sought and QIB certifications).* Item 6 of proposed Form NRSRO would only need to be completed when a credit rating agency was furnishing an initial application to be registered as an NRSRO and when an NRSRO was applying to expand the scope of its registration by adding an additional class of credit ratings. This item would elicit information about the categories of credit ratings for which the applicant was applying for registration. It also would require the applicant to attach the QIB certifications to the application (unless the applicant was exempt from this requirement under Section 15E(a)(1)(D) of the Exchange Act).[113]

Section 15E(a)(1)(B)(vii) of the Exchange Act requires an applicant for NRSRO registration to provide information with respect to the categories of credit ratings for which it is applying to be registered.[114] Item 6 of proposed Form NRSRO would require a credit rating agency applying for registration, and an NRSRO applying to add a category of credit ratings to its registration, to indicate the categories of credit ratings for which registration was being sought.

Item 6 also would elicit the approximate number of credit ratings issued in each category as of the date of the application, and the number of consecutive years preceding the date of the application that the credit rating agency has issued credit ratings with respect to each category indicated. This information would be used by the Commission in verifying that the credit rating agency meets the definitional thresholds for registration as NRSRO, including that the entity has been in business as a credit rating agency for the three consecutive years preceding the date of its application.[115]

Item 6 also would elicit a brief description of how the credit rating agency makes its credit ratings readily accessible. The Commission would use this information to verify that the applicant meets another definitional threshold for registration eligibility; namely, that the applicant issues credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee.[116] The Act does not define "readily accessible" other than to specify that the method must be comparable to the Internet in terms of accessibility.[117] Moreover, as discussed above, the Act does not define "reasonable fee." However, the Commission believes the "fee"

[109] 15 U.S.C. 78a *et seq.*

[110] This would include the records required to be retained in proposed Rule 17g–2.

[111] 15 U.S.C. 78o–7(j).

[112] 15 U.S.C. 78o–7(a)(3). Paragraph (d) of proposed Rule 17g–1 (discussed above) would implement this rulemaking authority.

[113] 15 U.S.C. 78o–7(a)(1)(D).

[114] 15 U.S.C. 78o–7(a)(1)(B)(vii).

[115] As discussed above, the definitions of "credit rating," "credit rating agency," and NRSRO in, respectively, Sections 3(a)(60), (61) and (62) of the Exchange Act prescribe the type of entity that is eligible for registration as an NRSRO (15 U.S.C. 78c(a)(60), (61) and (62)).

[116] Section 3(a)(61)(A) of the Exchange Act (15 U.S.C. 78c(a)(61)(A)).

[117] *Id.*

contemplated by the statute is the fee charged to access or receive the credit ratings of the credit rating agency (*i.e.*, not the fees charged for other services). This information elicited in Item 6 (and after registration in Item 7) would assist the Commission in monitoring the cost to regulatory users of credit ratings of accessing or obtaining NRSRO credit ratings.

Finally, Item 6 would require the applicant to provide QIB certifications. Section 15E(a)(1)(B)(ix) of the Exchange Act requires an applicant to submit a minimum of ten QIB certifications with the application.[118] Sections 15E(a)(1)(C)(i), (ii), and (iii) further provide, respectively, that: (1) The certifying QIB must not be affiliated with the applicant; (2) the certification may address more than one of the categories of credit ratings for which the applicant is seeking registration; and (3) at least two of the certifications must address each category of credit ratings for which the applicant is seeking registration.[119] Section 15E(a)(1)(C)(iv) provides that the QIB must state in the certification that it meets the definition of a "QIB" in Section 3(a)(64) of the Exchange Act [120] and that the QIB has used the credit ratings of the applicant for at least three years immediately preceding the date of the application in the subject category or categories of subscribers.[121] The Senate Report explained that the term "used" was intended to mean the QIB "seriously considered the ratings in some of [its] investment decisions." [122]

The proposed instructions to Item 6 would prescribe the form of the QIB certification. For example, consistent with Section 15E(a)(1)(C)(i)(I) of the Exchange Act [123] and the Senate Report explaining that section, the QIB certification would be required to include a representation that the QIB "has seriously considered the credit ratings of [the credit rating agency] in the course of making investment decisions for at least the three years immediately preceding the date of this certification, in the following classes of credit ratings." [124] The QIB certification also would be required to be executed by a person duly authorized by the QIB to make the certification on behalf of the QIB.[125] This is designed to ensure that the certification is that of the QIB and not an employee of the QIB who may have an interest (distinct from that of the QIB) in providing the certification to the applicant. In addition, as a measure designed to ensure the impartiality of the QIB's assessment, the QIB would need to certify that it had not received compensation for providing the certification.

Item 6 of proposed Form NRSRO also would require the applicant to indicate whether it was submitting the QIB certifications and, if so, how many certifications were being submitted or that the applicant was exempt from the requirement to provide the certifications. Under Section 15E(a)(1)(D) of the Exchange Act, a credit rating agency is not required to submit the QIB certifications if it was identified as an NRSRO in a Commission staff no-action letter issued before August 2, 2006.[126]

The Commission requests comment on whether there should be a requirement for an NRSRO to notify the Commission if a QIB withdraws its certification.

*Item 7 (Categories of credit ratings covered by current registration).* Item 7 would solicit information about the categories of credit ratings for which the NRSRO was currently registered, the approximate number of credit ratings currently outstanding in each category, and the number of years the NRSRO has issued credit ratings in that category. It also would elicit information about how the NRSRO makes its credit ratings readily accessible to users of credit ratings.

Because some of the information in Item 7 may change fairly regularly, this Item would need to be updated if it became materially inaccurate only when the NRSRO furnishes the next Form NRSRO either as an amendment or as an annual certification. Thus, if the information in Item 7 became materially inaccurate, it would be updated on an annual basis at a minimum.

The information requested in Item 7 would allow users of credit ratings to assess the NRSRO with respect to the number of credit ratings it has issued and the number of years it has issued credit ratings in each category for which it is registered.[127]

*Item 8 (Potential statutory disqualifications).* Section 15E(a)(2)(C)(ii)(II) of the Exchange Act [128] directs the Commission to deny a credit rating agency's application for registration as an NRSRO if the Commission finds that the applicant, if granted registration, would be subject to suspension or revocation of its registration under Section 15E(d) of the Exchange Act.[129] Section 15E(d) of the Exchange Act [130] provides that the Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of an NRSRO, if the Commission finds that the NRSRO or a person associated with the NRSRO has committed certain acts described in Sections 15(b)(4)(A), (D), (E), (G), or (H) of the Exchange Act,[131] been convicted of certain offenses described in Section 15(b)(4)(B) of the Exchange Act,[132] been convicted of certain other offenses, or if a person associated with the NRSRO is subject to a Commission order suspending or barring the person from being associated with an NRSRO. Item 8 of proposed Form NRSRO would ask whether the acts, convictions or orders described in Section 15E(d) of the Exchange Act [133] applied to the credit rating agency or any person associated with the credit rating agency.

If a question in Item 8 was answered "yes," the credit ratingagency would be required to provide additional information on a Disclosure Reporting Page (DRP) NRSRO as set forth in the instructions for Form NRSRO. The Commission would then need to evaluate whether an applicant's registration could be granted in light of the disclosure. After registration, an NRSRO would need to update the information in Item 8 if there was a change. The Commission would then evaluate whether it would be appropriate to issue an order censuring,

[118] 15 U.S.C. 78o–7(a)(1)(B)(ix).

[119] *See* 15 U.S.C. 78o–7(a)(1)(C)(i), (ii) and (iii), respectively.

[120] 15 U.S.C. 78c(a)(64).

[121] 15 U.S.C. 78o–7(a)(1)(C)(iv).

[122] The Senate Report further explained that "a QIB whose analysts regularly read and consider [a credit rating agency's] ratings in the course of making investment decisions would have "used" them under the meaning of the bill. A QIB whose employees subscribe to or regularly receive the ratings but do not read them or, if they read them, rarely or never consider them in making their investment decisions would not be deemed to have "used" the ratings."

[123] 15 U.S.C. 78o–7(a)(1)(C)(i)(I).

[124] Instructions to Item 6D of proposed Form NRSRO.

[125] *Id.*

[126] 15 U.S.C. 78o–7(a)(1)(D).

[127] Because Item 7 would not have been filled out when the NRSRO applied for registration, it would remain blank for a period of time between the granting of an initial registration and the time when the NRSRO furnishes a new Form NRSRO either as an amendment or annual certification. Item 6, however, would have been filled out as part of the application for registration. This item requires the same information as Item 7. Therefore, users of credit ratings would have the access to the information through Item 6 until the NRSRO furnished a new Form NRSRO. Thereafter, the information would be located in Item 7.

[128] 15 U.S.C. 78o–7(a)(2)(C)(ii)(II).

[129] 15 U.S.C. 78o–7(d).

[130] 15 U.S.C. 78o–7(d).

[131] 15 U.S.C. 78o–7(b)(4)(A), (D), (E), (G) and (H).

[132] 15 U.S.C. 78o(b)(4).

[133] 15 U.S.C. 78o–7(d)

placing limitations on the activities, functions, or operations of, suspending for a period not exceeding 12 months, or revoking the registration of the NRSRO as provided for under Section 15E(d) of the Exchange Act.[134]

*Certification.* Proposed Form NRSRO would require the signature of an authorized person of the credit rating agency representing that the information and statements contained in the form are current, accurate, and complete or, if the NRSRO is submitting an annual certification, that the application, as amended, is current, accurate, and complete.

3. Exhibits to the Form

Proposed Form NRSRO would have 13 exhibits. Sections 15E(a)(1)(B)(i), (ii), (iii), (iv), (v), (vi), and (viii) of the Exchange Act require the furnishing of some of this information.[135] The Commission is proposing to require the furnishing of the remainder of the information pursuant to its authority under Section 15E(a)(1)(B)(x) of the Exchange Act.[136] The proposed exhibits are an important part of the program for NRSRO oversight. Therefore, the information and documents proposed to be provided in the exhibits must be sufficiently detailed to allow the Commission to evaluate and verify the information and, with respect to the public exhibits, assist users of credit ratings in understanding how the NRSRO manages its activities.

Exhibits 1 through 9 would be public exhibits that the NRSRO would be required to keep current through furnishing updated information and make readily accessible to the public. The information in these public exhibits would be useful to the users of credit ratings in assessing the ratings quality of the NRSRO and in comparing the NRSRO to other NRSROs.

Exhibits 10 through 13 would be accorded confidential treatment by the Commission, to the extent permitted by law, under provisions of Section 15E of the Exchange Act[137] in conjunction with proposed Rule 17g–1.[138] The information in the public and confidential exhibits would be used by the Commission to make the determination whether the credit rating agency has adequate financial and managerial resources to consistently produce credit ratings with integrity and to materially comply with the methodologies, policies, and procedures it discloses in the public exhibits.[139]

The information in Exhibits 10 through 13 would not need to be updated by furnishing amendments on proposed Form NRSRO after registration is granted. Instead, this information would be updated through the proposed financial reporting rule (proposed Rule 17g–3). Section 15E(b)(1) of the Exchange Act[140] provides that information submitted with an application must be updated promptly when the information becomes materially inaccurate, except information submitted under Sections 15E(a)(1)(B)(i) and (ix) of the Exchange Act (respectively, the performance statistics, which must be updated annually, and the QIB certifications, which need not be updated).[141] Thus, under the statute, the information provided in Exhibits 10 through 13 would need to be updated promptly if it became materially inaccurate. However, the Commission is not proposing that an NRSRO update these exhibits by furnishing the information to the Commission in Form NRSRO amendments. Rather, the Commission is proposing that the NRSRO would update this information as part of the financial statements that would be required to be furnished under proposed Rule 17g–3.

*Exhibit 1 (Public).* Section 15E(a)(1)(B)(i) of the Exchange Act requires that an application for registration as an NRSRO contain credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable).[142] This information would be required as Exhibit 1 to proposed Form NRSRO. The Exchange Act does not otherwise define or identify the particular credit rating performance statistics to be provided with the application. The Commission believes credit rating agencies typically generate statistical reports showing historical default and downgrade rates within each credit rating notch or grade.[143] Further, the Commission believes these types of statistics are important indicators of the performance of a credit rating agency in terms of its ability to assess the creditworthiness of issuers and obligors and, consequently, would be useful to users of credit ratings in evaluating an NRSRO.

In addition to historical default and downgrade rates, the instructions to proposed Form NRSRO also would provide that an applicant or NRSRO include in the exhibit definitions of the credit ratings (*i.e.*, an explanation of each grade or notch) and explanations of the performance measurement statistics, including the metrics used to derive the statistics. The Commission believes that requiring this information would be necessary or appropriate in the public interest or for the protection of investors because it would assist users of credit ratings in understanding how the measurements were derived and in making comparisons with the measurement statistics of other NRSROs.[144]

The definitions of the notches and grades also would assist the Commission in assessing whether the NRSRO's ratings, as a practical matter, can be used for certain Commission rules. For example, paragraph(c)(2)(vi)(F) of Commission Rule 15c3–1 specifies lower haircuts for debt securities that are rated in one of the "four highest rating categories" (*i.e.*, notches) of at least two NRSROs.[145] The current NRSROs generally have at least eight notches for their debt securities with the top four commonly referred to as "investment grade." If an NRSRO decided to use less than eight notches, the Commission would need to evaluate whether, based on the NRSRO's definitions, securities that would be included in the top four notches would be suitable for the lower haircuts specified in paragraph(c)(2)(vi)(F) of Rule 15c3–1.[146]

The Commission generally requests comment on Exhibit 1. The Commission also requests comment on whether the performance measurement statistics should use standardized inputs, time horizons and metrics to allow for greater comparability. Commenters are requested to provide specific details as to how these statistical measures could

[134] 15 U.S.C. 78o–7(d).

[135] 15 U.S.C. 78o–7(a)(1)(B)(i), (ii), (iii), (iv), (v), (vi), and (viii).

[136] 15 U.S.C. 78o–7(a)(1)(B)(x).

[137] *See* Sections 15E(a)(1)(B)(viii), (a)(1)(B)(ix), and (k) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(viii), (a)(1)(B)(ix), and (k).

[138] *See also* Section 24 of the Exchange Act (15 U.S.C. 78x), 17 CFR 240.24b–2, 17 CFR 200.80 and 17 CFR 200.83.

[139] *See* Sections 15E(a)(2)(C) and (d) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C) and (d)).

[140] 15 U.S.C. 78o–7(b)(1).

[141] 15 U.S.C. 78o–7(a)(1)(B)(i) and (ix).

[142] 15 U.S.C. 78o–7(a)(1)(B)(i).

[143] The credit rating notches or grades of a credit rating agency generally are represented by symbols, numbers or other designations that are used to distinguish the creditworthiness of the obligors, securities and money market instruments the credit rating agency rates. For example, some credit rating agencies use symbols such as AAA, AA, A, BBB, BB, B, CCC, and CC to distinguish the creditworthiness of corporate debt securities. AAA would be the highest rating and CC would be the lowest rating above the default or regulatory supervision of the issuer.

[144] Section 15E(a)(1)(B)(x) of the Exchange Act provides that the Commission can require additional information that it finds is necessary or appropriate in the public interest or for the protection of investors (15 U.S.C. 78o–7(a)(1)(B)(x)).

[145] 17 CFR 240.15c3–1(c)(2)(vi)(F).

[146] *Id.*

be standardized. The Commission further requests comment on whether credit rating agencies or other persons currently use other performance measurement statistics or whether other performance measurement statistics would be appropriate as an alternative, or in addition, to historical default and downgrade rates. For example, the Commission requests comment on whether Exhibit 1 should require measurement of the performance of a given credit rating by comparing or mapping it to the market value of the rated security or to extreme declines in the market value of the security after the rating. The Commission additionally requests comment on whether the requirement to include definitions and explanations in Exhibit 1 would achieve its stated purpose.

*Exhibit 2 (Public).* Section 15E(a)(1)(B)(ii) of the Exchange Act requires that an application for registration as an NRSRO contain information regarding the procedures and methodologies used by the credit rating agency to determine credit ratings.[147] This information would be required as Exhibit 2 to proposed Form NRSRO. The Exchange Act does not otherwise define or identify the procedures and methodologies that must be provided under this section.[148] However, the definition of "credit rating agency" in Section 3(a)(61) of the Exchange Act provides that a "credit rating agency" is an entity that, among other things, "employ[s] either a quantitative or qualitative model, or both, to determine credit ratings."[149]

The Commission believes that entities meeting the definition of "credit rating agency" in Section 3(a)(61) of the Exchange Act[150] generally establish procedures and methodologies for determining credit ratings in the following areas: the determination of whether to initiate a credit rating; the use of public and non-public sources of information to perform credit rating analysis, including information and analysis provided by third-party vendors; the use of quantitative and qualitative models and metrics to determine credit ratings; the interaction with the management of a rated obligor or issuer of rated securities; the establishment of the structure and voting process of committees that review or approve credit ratings; the notification of rated obligors or issuers of rated securities about credit rating decisions and for appeals of final or pending credit rating decisions; monitoring, reviewing, and updating of credit ratings; and the withdrawal, or suspension of the maintenance, of a credit rating.

This list identifies areas where a credit rating agency could establish procedures and methodologies for determining credit ratings. The applicability of certain areas to a particular credit rating agency may depend on whether it uses subjective qualitative analysis, purely quantitative models or a combination of both.[151] Consequently, an applicant and NRSRO may not establish a procedure or methodology in a given area because doing so would not be relevant to how the credit rating agency determines credit ratings.

In addition, credit rating agencies that issue "unsolicited" credit ratings may establish procedures and methodologies in the areas described above that are unique to such ratings. An "unsolicited" credit rating is one the credit rating agency decides to initiate without being requested to do so by an issuer, obligor, underwriter, or other interested party. Credit rating agencies that use a subscription fee based business model may only issue unsolicited ratings because that business model does not rely on fees from issuers, obligors, and underwriters to determine specific credit ratings (issuers, obligors, and underwriters, however, may subscribe to receive the credit ratings of such credit rating agencies). The procedures and methodologies these credit rating agencies employ, in some respects, may be unique to this business model.

Credit rating agencies that are paid by issuers, obligors, and underwriters to determine specific credit ratings sometimes also issue unsolicited ratings. As discussed below with regard to proposed Rule 17g–6, this practice has led to concerns that unsolicited ratings may be used to coerce issuers and obligors into ultimately paying the credit rating agency to determine and maintain the credit rating. Consequently, the Commission believes that credit rating agencies that rely on fees from issuers, obligors, and underwriters to determine specific credit ratings, but also issue unsolicited ratings, often have established procedures and methodologies for determining unsolicited credit ratings that are designed to address this concern and the fact that the issuer or obligor may not have participated in the determination of the credit rating (as is frequently the case with a solicited credit rating).

The Commission believes that information regarding the procedures and methodologies established by an NRSRO in the areas described above, including those with respect to unsolicited credit ratings, as applicable, would be useful to users of credit ratings. The information would provide an understanding of the nature of the credit rating agency (*i.e.*, a user of quantitative models, qualitative analysis, or a combination of both) and how the credit rating agency produces credit ratings. This would provide a basis for comparing NRSROs. The disclosure also would provide the Commission with an understanding of the managerial and financial resources required to produce the credit ratings. This would assist the Commission in evaluating whether an applicant or NRSRO has adequate financial and managerial resources to consistently produce credit ratings with integrity and to materially comply with its procedures and methodologies.[152]

The Commission generally requests comment on Exhibit 2, as proposed. The Commission also requests comment on whether the areas identified above are the areas where credit rating agencies establish procedures and methodologies for determining credit ratings. A commenter that believes one or more of the areas identified above is not one where any type of credit rating agency establishes procedures and methodologies should identify each area and explain the reason for such conclusion. The Commission also requests comment on whether there are additional areas where credit rating agencies establish procedures and methodologies for determining credit ratings and, if so, requests that commenters identify them.

*Exhibit 3 (Public).* Section 15E(a)(1)(B)(iii) of the Exchange Act[153] requires that an application for registration as an NRSRO contain information regarding policies or procedures adopted and implemented by the credit rating agency to prevent the misuse, in violation of Exchange Act[154] provisions and rules, of material, non-public information. Exhibit 3 would require an applicant and NRSRO to furnish its policies and procedures to prevent the misuse of material, nonpublic information established

[147] 15 U.S.C. 78o–7(a)(1)(B)(ii).

[148] *See* 15 U.S.C. 78a *et seq.*

[149] *See* particularly, Section 3(a)(61)(B) of the Exchange Act (15 U.S.C. 78c(a)(61)(B)).

[150] 15 U.S.C. 78c(a)(61).

[151] *See* Section 3(a)(61) of the Exchange Act defining the term "credit rating agency" (15 U.S.C. 78c(a)(61)).

[152] *See* Sections 15E(a)(2)(C) and 15E(d) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C) and (d)).

[153] 15 U.S.C. 78o–7(a)(1)(B)(iii).

[154] 15 U.S.C. 78a *et seq.*

under Section 15E(g) of the Exchange Act [155] and proposed Rule 17g–4.

Section 15E(g)(1) of the Exchange Act [156] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act.[157] Section 15E(g)(2) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO to establish specific policies and procedures to prevent the misuse of material, non-public information.[158] As discussed below, proposed Rule 17g–4 would implement this statutory provision by requiring an NRSRO's policies and procedures established pursuant to Section 15E(g)(1) of the Exchange Act [159] to include certain specific types of procedures.

The Commission generally requests comment on Exhibit 3, as proposed.

*Exhibit 4 (Public).* Section 15E(a)(1)(B)(iv) of the Exchange Act requires that an application for registration as an NRSRO contain information regarding the organizational structure of the applicant.[160] This information would be required as Exhibit 4 to proposed Form NRSRO. The Exchange Act does not otherwise define or identify the specific type of organizational information that should be provided under Section 15E(a)(1)(B)(iv) of the Exchange Act.[161] The Commission believes that companies typically create, as applicable, an organizational chart showing ultimate and sub-holding companies, subsidiaries, and material affiliates; an organizational chart showing divisions, departments, and business units within the entity; and an organizational chart showing the management structure and senior management reporting lines within the entity.

The Commission believes that, if a credit rating agency is part of a holding company structure, users of credit ratings and the Commission would benefit from an organizational chart showing the entity's ultimate and sub-holding companies, subsidiaries, and material affiliates. This chart would provide an understanding of where potential conflicts of interest relating to the business activities of related companies might arise. Also, the fact that a credit rating agency has a holding company that potentially could provide financial support would be relevant to the Commission's evaluation of whether an applicant or NRSRO has adequate financial resources as required under the Exchange Act.[162]

The Commission further believes that, if a credit rating agency engages in business activities in addition to determining credit ratings, users of credit ratings and the Commission would benefit from an organizational chart showing the entity's divisions, departments, and business units. This chart would provide an understanding of where potential conflicts of interest relating to ancillary business activities might arise.

Finally, the Commission believes that users of credit ratings and the Commission would benefit from an organizational chart showing an NRSRO's management structure and senior management reporting lines. This chart would assist the Commission in evaluating whether an applicant and NRSRO has adequate managerial resources as required under the Exchange Act.[163] Users of credit ratings also would be able to use this information to compare the managerial resources of different NRSROs.

Additionally, the instructions to proposed Form NRSRO would provide that this managerial chart include the compliance officer designated by the NRSRO pursuant to Section 15E(j) of the Exchange Act.[164] The Commission believes that including the compliance officer in the chart would be necessary or appropriate in the public interest or for the protection of investors because it would assist the Commission and users of credit ratings in understanding the degree of the compliance officer's independence from the business managers.[165] The Commission believes users of credit ratings would find the compliance officer's reporting lines relevant in assessing the integrity of the credit rating process of a particular NRSRO, since the officer is responsible for administering the credit rating agency's policies and procedures required by Sections 15E(g) and (h) of the Exchange Act [166] and for ensuring the NRSRO's compliance with the securities laws and rules and regulations thereunder.[167] In carrying out these responsibilities, a compliance officer would need to review activities overseen by senior business managers. The ability of the compliance officer to objectively review an area could be impacted by whether the officer reported to the senior manager responsible for the area. Thus, the relative independence of the compliance officer would be relevant to assessing the NRSRO's ability to ensure compliance with its policies and procedures.

For these reasons, Exhibit 4 would provide that the information about the organizational structure of the applicant or NRSRO required to be furnished and made public under Section 15E(a)(1)(B)(iv) of the Exchange Act [168] consist of charts showing the managerial structure and senior management reporting lines, and, if applicable, the ultimate and sub-holding companies, subsidiaries, and material affiliates of the entity, and the divisions, departments, and business units within the entity. The exhibit also would require that the management chart include the designated compliance officer.

The Commission generally requests comment on Exhibit 4, as proposed. The Commission specifically also requests comment on whether including the compliance officer in the chart would achieve the stated purpose of the requirement. The Commission further requests comment on whether other organizational information should be provided, or whether some of the information proposed to be required should be eliminated or modified. Commenters who believe that other information should be provided are asked to describe the information and explain why it would be appropriate under Section 15E of the Exchange Act.[169]

*Exhibit 5 (Public).* Section 15E(a)(1)(B)(v) of the Exchange Act requires that an application for registration as an NRSRO contain information regarding whether the applicant has a code of ethics in effect or an explanation of why the applicant has not established a code of ethics.[170] Exhibit 5 to proposed Form NRSRO would elicit this information by requiring an applicant and NRSRO to attach its code of ethics or an explanation of why it does not have a code of ethics. The Exchange Act does not otherwise define or identify the "code of ethics" that should be provided under Section

[155] 15 U.S.C. 78o–7(g).
[156] 15 U.S.C. 78o–7(g)(1).
[157] 15 U.S.C. 78a *et seq.*
[158] 15 U.S.C. 78o–7(g)(2).
[159] 15 U.S.C. 78o–7(g)(1).
[160] 15 U.S.C. 78o–7(a)(1)(B)(iv).
[161] *Id, see also,* 15 U.S.C. 78a *et seq.*
[162] *See* Sections 15E(a)(2)(C) and 15E(d) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C) and (d)).
[163] *See* Sections 15E(a)(2)(C) and 15E(d) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C) and (d)).
[164] 15 U.S.C. 78o–7(j).
[165] *See* Section 15E(a)(1)(B)(x) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(x)).
[166] 15 U.S.C. 78o–7(g) and (h).
[167] Section 15E(j) of the Exchange Act (15 U.S.C. 78o–7(j)).
[168] *Id.*
[169] 15 U.S.C. 78o–7.
[170] 15 U.S.C. 78o–7(a)(1)(B)(v).

15E(a)(1)(B)(v).[171] The Commission believes credit rating agencies should have the flexibility to establish a code of ethics appropriate for their business model and organizational structure and, consequently, is not proposing any specific elements that should be in the code of ethics, if any, furnished in this exhibit.

The Commission generally requests comment on Exhibit 5, as proposed. The Commission also requests comment on whether it should propose specific elements to be included in the code of ethics provided in Exhibit 5. Commenters who believe the Commission should propose specific elements are asked to describe them. The Commission further seeks comment on whether it should require in Exhibit 5 that NRSROs disclose whether they comply with international principles and codes of conduct related to credit rating agencies.

*Exhibit 6 (Public).* Section 15E(a)(1)(B)(vi) of the Exchange Act requires that an application for registration as an NRSRO contain information regarding any conflict of interest relating to the issuance of credit ratings by the applicant and NRSRO.[172] Exhibit 6 to proposed Form NRSRO would require an applicant and NRSRO to identify, in general terms, the types of conflicts of interest that arise from its business as a credit rating agency.

The Exchange Act does not otherwise define or identify the types of conflicts of interest that should be disclosed under Section 15E(a)(1)(B)(vi) of the Exchange Act.[173] The Commission believes that credit rating agencies that rely on fees from issuers, obligors and underwriters to determine specific credit ratings are exposed to a unique set of conflicts, as are credit rating agencies that operate under a subscriber fee based business model. Moreover, certain conflicts, such as those arising from owning securities of a rated entity, can arise under either business model.

The Commission believes that the types of conflicts of interest arising from the activities of credit rating agencies include, as applicable: receiving compensation from rated obligors, issuers of rated securities and money market instruments, and underwriters of rated securities and money market instruments to determine or maintain a credit rating and for other services; owning securities of, or having any other form of ownership interest in, a rated obligor, issuer of rated securities and money market instruments, or underwriter of rated securities and money market instruments; receiving compensation for any service from subscribers that use credit ratings for regulatory purposes; owning securities of, or having any other form of ownership interest in, a subscriber that uses credit ratings for regulatory purposes; and having another material business relationship (*e.g.*, a loan) or affiliation (*e.g.*, being an officer or director) with a rated obligor, issuer of rated securities and money market instruments, underwriter of rated securities and money market instruments, or entity that uses credit ratings for regulatory purposes.

The Commission believes the above list covers the range of general conflicts of interest that arise from the activities of credit rating agencies.[174] However, as noted, based on a particular credit rating agency's business model, some of these conflicts would not be evident. The Commission further believes that an applicant and NRSRO subject to any of these types of conflicts would need to disclose that fact in a general manner in order to comply with Section 15E(a)(1)(B)(vi) of the Exchange Act.[175] Furthermore, the disclosure would assist the Commission in evaluating whether an applicant has sufficient financial and managerial resources to comply with the procedures for managing conflicts of interest required under Section 15E(h) of the Exchange Act,[176] given the conflicts of interest identified by the applicant.[177] The information also would be useful to users of credit ratings in assessing an NRSRO by, for example, comparing the types of conflicts disclosed by the entity in Exhibit 6 with the procedures for managing conflicts of interest disclosed by the entity in Exhibit 7 (discussed next). As noted above, the disclosure of the type of conflict only would need to be general in nature. For example, an NRSRO that receives compensation from issuers for rating their securities would only need to disclose that fact. It would not need to disclose separately each time it was compensated by an issuer or the identity of each such issuer.

The instructions to Form NRSRO also would provide that an applicant and NRSRO include in Exhibit 6 the identity of any affiliated entity that acts as an underwriter or uses credit ratings for regulatory purposes.[178] The Commission believes that requiring a credit rating agency to disclose this information would be necessary or appropriate in the public interest or for the protection of investors because it would apprise users of credit ratings to a potential conflict of interest arising from the fact that the affiliate could exercise undue influence on the credit rating agency to issue a credit rating that assists in the marketing of the security or that provides a regulatory benefit.[179] Users of credit ratings would be able to review the NRSRO's procedures made public in Exhibit 7 to understand how the credit rating agency addresses these potential conflicts.

The Commission generally requests comment on Exhibit 6, as proposed. The Commission also requests comment on whether there are conflicts of interest that should be disclosed in addition to those identified above, or whether some of the information proposed to be required should be eliminated or modified. Commenters who believe that other conflicts exist should describe how they arise from the business of credit rating agencies. The Commission further requests specific comment on whether requiring the identification of affiliates that are underwriters and regulatory users of credit ratings would achieve the stated purpose of the requirement.

*Exhibit 7 (Public).* Section 15E(h) of the Exchange Act requires an NRSRO to establish, maintain, and enforce written policies and procedures to address and manage conflicts of interest.[180] These policies and procedures would be required as Exhibit 7 to proposed Form NRSRO. The Commission believes that requiring these policies and procedures would be necessary or appropriate in the public interest or for the protection of investors.[181] First, their disclosure would assist the Commission in monitoring whether an NRSRO is complying with Section 15E(h) of the Exchange Act.[182] Second, the disclosure would assist the Commission in evaluating whether an applicant or NRSRO has sufficient financial and managerial resources to manage the conflicts of interest disclosed by the

[171] *Id.*

[172] 15 U.S.C. 78o–7(a)(1)(B)(vi).

[173] *Id, see also* 15 U.S.C. 78a *et seq.*

[174] The section below describing proposed Rule 17g–5 provides a further discussion of conflicts of interest generally and how the types of activities described in this list can give rise to conflicts of interest.

[175] 15 U.S.C. 78o–7(a)(1)(B)(vi).

[176] 15 U.S.C. 78o–7(h).

[177] *See* Section 15E(a)(2)(C) Exchange Act (15 U.S.C. 78o–7(a)(2)(C)).

[178] As discussed below, proposed Rule 17g–5 would prohibit an NRSRO from having a conflict with respect to issuing or maintaining a credit rating with respect to an affiliate. Thus, this type of conflict would need to be avoided rather than disclosed and managed.

[179] *See* Section 15E(a)(1)(B)(x) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(x)).

[180] 15 U.S.C. 78o–7(h).

[181] *See* Section 15E(a)(1)(B)(x) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(x)).

[182] 15 U.S.C. 78o–7(h).

credit rating agency in Exhibit 6. Third, the disclosure would allow users of credit ratings to compare an NRSRO's policies and procedures for managing conflicts of interest with the types of conflicts disclosed in Exhibit 7.

The Commission requests general comment on Exhibit 7, as proposed, including on whether including this information would achieve the stated purpose of the requirement.

*Exhibits 8 (Public).* The ability of a credit rating agency to assess the credit worthiness of an issuer and obligor depends on the competence of the personnel responsible for determining the entity's credit ratings ("credit analysts"). This is true regardless of whether the credit rating agency uses quantitative models or qualitative analysis or a combination of both. A credit rating agency that solely uses quantitative models would be relying on credit analysts to understand the model inputs and metrics and back test the model's results to judge whether the model is producing credible credit ratings. A credit rating agency that uses qualitative analysis would be relying on credit analysts to understand and interpret relevant information about an obligor or issuer and use the information to render a credible assessment of the issuer or obligor's creditworthiness.

The Commission believes that requiring an applicant and NRSRO to disclose information about the responsibilities, experience and employment history of its credit analysts and supervisors would be necessary or appropriate in the public interest or for the protection of investors.[183] First, it would assist users of credit ratings in assessing the competence of an NRSRO's credit analysts and, thereby, provide a means for users to compare NRSROs. Second, this information would assist the Commission in evaluating whether the applicant has adequate managerial resources to consistently produce credit ratings with integrity and to materially comply with its procedures and methodologies.[184]

The Commission requests comment on Exhibit 8, as proposed. Comment is specifically sought on whether the information would be helpful to users of credit ratings in comparing the NRSRO to other NRSROs. The Commission also requests comment on whether other information should be provided, or whether some of the information proposed to be required should be eliminated or modified. For example, comment is sought on whether Exhibit 8 should be limited to eliciting information about the supervisors of the credit analysts. Commenters who believe other information should be provided should describe the information and explain why it would be appropriate.

*Exhibit 9 (Public).* As discussed above, Section 15E(j) of the Exchange Act requires every NRSRO to designate an individual responsible for administering the policies and procedures of the credit rating agency to prevent the misuse of nonpublic information, to manage conflicts of interest, and to ensure compliance with the securities laws and the rules and regulations under those laws.[185] The ability of the compliance officer to carry out these statutorily mandated responsibilities would depend, in part, on the officer's experience and qualifications. Additionally, based on the size of the credit rating agency, it may depend also on the experience and qualifications of persons who assist the designated compliance officer in these responsibilities.

The Commission believes that requiring information about the experience and employment history of the designated compliance officer and persons assisting the officer would be necessary or appropriate in the public interest or for the protection of investors. It would assist the Commission in evaluating whether the applicant has adequate managerial resources to consistently produce credit ratings with integrity and to materially comply with its procedures and methodologies.[186] It also would be useful to users of credit ratings because it would provide information regarding the resources an NRSRO devotes to ensuring, among other things, that credit ratings are determined in accordance with the procedures and methodologies the NRSRO makes public in Exhibit 1.

The Commission requests comment on Exhibit 9, as proposed. The Commission also requests comment on whether other information should be provided, or whether some of the information proposed to be required should be eliminated or modified. Commenters should describe the additional information and why it would be appropriate.

*Exhibit 10 (Confidential).* Section 15E(a)(1)(B)(viii) of the Exchange Act requires that an application for registration as an NRSRO include, on a confidential basis, a list of the 20 largest issuers and subscribers that use the credit rating services provided by the credit rating agency by amount of net revenue received by the credit rating agency in the fiscal year immediately preceding the date of submission of the application.[187] This information would be required as Exhibit 10 to proposed Form NRSRO. An NRSRO would not be required to make this information public (to the extent permitted by law) or update the exhibit after registration. However, an NRSRO would be required to update this information in the audited financial statements provided to the Commission under proposed Rule 17g–3.

The statute refers to the "20 largest issuers and subscribers." The instructions to Exhibit 10 would provide that an applicant add certain large obligors (*i.e.*, persons who are rated as an entity as opposed to having their securities rated) and underwriters to the list. Specifically, these types of customers would need to be added to the list if they are determined to have provided at least as much net revenue as the 20th largest issuer or subscriber. Consequently, a credit rating agency would be required to identify the 20 largest issuers and subscribers as required by Section 15E(a)(1)(B)(viii) of the Exchange Act[188] and add any obligor and underwriter customers that met the above criteria.

The Commission believes that adding large obligor and underwriter customers to the list of the 20 largest issuer and subscriber customers would be necessary or appropriate in the public interest or for the protection of investors.[189] The Commission views the list as a means to identify customers that could potentially have undue influence on an NRSRO given the amount of revenue the customer provides the NRSRO. Obligors and securities underwriters would have as much of an interest in potentially influencing a credit rating as issuers and subscribers.

Section 15E(a)(1)(B)(viii) of the Exchange Act limits the customers required to be included in the list to users of the "credit rating services" of the applicant and NRSRO.[190] The Exchange Act[191] does not define the term "credit rating services." The Commission would interpret this term to mean any of the following: Rating an

[183] *See* Section 15E(a)(1)(B)(x) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(x)).

[184] *See* Sections 15E(a)(2)(C) and (d) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C) and (d)).

[185] 15 U.S.C. 78o–7(j).

[186] *See* Sections 15E(a)(2)(C) and (d) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C) and (d)).

[187] 15 U.S.C. 78o–7(a)(1)(B)(viii).

[188] *Id.*

[189] 15 U.S.C. 78o–7(a)(1)(B)(x).

[190] *See* 15 U.S.C. 78o–7(a)(1)(B)(viii).

[191] 15 U.S.C. 78a *et seq.*

obligor (regardless of whether the obligor or any other person paid for the credit rating); rating an issuer's securities or money market instruments (regardless of whether the issuer, underwriter, or any other person paid for the credit rating); and providing credit ratings to a subscriber. The intent of this interpretation is to include—along with customers that pay for credit ratings and subscriptions—customers that are rated, or whose securities or money market instruments are rated, but that did not pay for the credit rating. Even though these customers may not have paid for the credit rating, they potentially could have undue influence on the credit rating agency if they provide substantial net revenue for other services or products.

Section 15E(a)(1)(B)(viii) of the Exchange Act provides that the determination of the 20 largest issuers and subscribers is to be based on "net revenue" received from the issuer or subscriber.[192] The Exchange Act[193] does not define the term "net revenue." The Commission proposes to interpret the term "net revenue" for the purposes of Section 15E(a)(1)(B)(viii) of the Exchange Act[194] to mean all fees, sales proceeds, commissions, and other revenue received by the applicant and its affiliates for any type of service or product, regardless of whether related to credit ratings, and net of any fees, sales proceeds, rebates, commissions, and other monies paid to the customer by the credit rating agency and its affiliates. The risk is that a large customer may be in a position to influence the determination of the credit rating. Limiting the interpretation of net revenue to revenues relating to "credit rating services" may not capture the largest customers of the NRSRO or its affiliates as these customers may use credit rating services of the NRSRO and other services of the NRSRO and its affiliates. The instructions for proposed Form NRSRO would implement this proposed interpretation by providing that the calculation of net revenue should include all revenue received from the customer.

The Commission requests comment on Exhibit 10, as proposed. The Commission specifically requests comment on its proposal to include large obligor and underwriter customers in the list. The Commission further requests comment on the proposed interpretations of "credit rating services" and "net revenue." Specifically, the Commission requests comment on how these interpretations affect the determination of large customers. If a commenter believes they are not practicable, the commenter should provide alternative interpretations and explain how they would achieve the goal of identifying large customers that could potentially exercise undue influence on the NRSRO.

*Exhibit 11 (Confidential).* Exhibit 11 would require the applicant to furnish audited financial statements for the past three fiscal or calendar years immediately preceding the date of the application. An NRSRO would not need to make the information in Exhibit 11 public (to the extent permitted by law) or update the exhibit after registration. An NRSRO would, however, be required to provide audited financial statements to the Commission annually under proposed Rule 17g–3.

The Commission believes this financial information would be necessary or appropriate in the public interest or for the protection of investors because it would assist the Commission in making the finding required by Section 15E(a)(2)(C) of the Exchange Act.[195] This section directs the Commission to grant a credit rating agency's application for registration as an NRSRO unless, among other things, the Commission finds that the applicant does not have adequate financial and managerial resources to consistently issue ratings with integrity and to materially comply with its procedures and methodologies furnished in the public exhibits and with the requirements in Sections 15E(g), (h), (i) and (j) of the Exchange Act.[196] The financial statements would provide the Commission with information as to the applicant's net worth and income, which would assist it in determining whether the applicant has sufficient financial resources. Financial statements for three years would provide information that would assist the Commission in verifying that the applicant has been in the business of issuing credit ratings for the three years immediately preceding the date of its application for registration. An applicant must have been in the business of issuing credit ratings for the three years preceding the application to be eligible for registration with the Commission as an NRSRO.[197] The information also would alert the Commission to a significant downward trend in the applicant's financial condition, which could be relevant to whether it has adequate financial resources.

The proposed requirement that the financial statements be audited would provide the Commission with an independent verification of the information in the statements. However, the Commission anticipates that some applicants may not have been audited in the past. In this case, the applicant would only need to provide an audited financial statement for the fiscal year immediately preceding the date of the application. The other years could be covered by unaudited statements. The applicant would need to attach to the unaudited financial statements a statement by a duly authorized person of the applicant that the financial statements present fairly, in all respects, the financial condition, results of operations, and the cash flows of the applicant. This would provide a level of assurance that the information in the financial statements had been reviewed and verified by the applicant.

In addition, the Commission also anticipates that some applicants would be subsidiaries of holding companies. In this case, the applicant would be able to provide consolidated and consolidating financial statements of the parent company. This would diminish the burden on applicants that have a holding company audit but not an audit of the subsidiary credit rating agency. Consolidated and consolidating financial statements would provide sufficient information about the subsidiary credit rating agency for the Commission to evaluate whether its financial resources meet the requirements of Section 15E(a)(2)(C)(ii)(I) of the Exchange Act.[198]

The Commission requests comment on whether the furnishing of audited financial statements would achieve the stated purposes of the requirement.

*Exhibit 12 (Confidential).* Exhibit 12 would require an applicant to provide information as to the amount of revenue generated from various credit rating services and a separate computation of total revenue from all other services. The information would be for the most recently completed fiscal or calendar year and would not have to be audited. An NRSRO would not need to make the information in Exhibit 12 public (to the extent permitted by law) or update the exhibit after registration. An NRSRO would, however, be required to update this information with the annual audited financial statements provided to

[192] 15 U.S.C. 78o–7(a)(1)(B)(viii).

[193] 15 U.S.C. 78a *et seq.*

[194] 15 U.S.C. 78o–7(a)(1)(B)(viii).

[195] *See* 15 U.S.C. 78o–7(a)(2)(C).

[196] *See* 15 U.S.C. 78o–7(a)(2)(C)(ii)(I).

[197] *See* Section 3(a)(62)(A) of the Exchange Act (15 U.S.C. 78c(a)(62)(A)).

[198] *Id.*

the Commission under proposed Rule 17g–3.

As described in the instructions for proposed Form NRSRO, the specific revenue items would be, as applicable:

- Revenue from determining and maintaining credit ratings.
- Revenue from subscribers.
- Revenue from granting licenses or rights to publish credit ratings.
- Revenue from determining credit ratings that are not made readily accessible (private ratings).
- Revenue from all other services and products offered by the rating organization (include descriptions of any major sources of revenue).

The Commission believes this revenue information would be necessary or appropriate in the public interest or for the protection of investors because it would assist the Commission in making the finding with respect to adequate financial resources required by Section 15E(a)(2)(C) of the Exchange Act.[199] This information would augment the financial statements that would be required under proposed Exhibit 11 in that it would provide detail as to the revenues generated by different types of services.

The Commission requests comment on whether the furnishing of this revenue information would achieve the stated purposes of the requirement, or whether any additions, deletions or modifications should be made. The Commission also requests comment on any difficulties a credit rating agency may confront in determining its revenues from these various sources. If a commenter believes it would not be practicable to do so, the commenter should explain why.

*Exhibit 13 (Confidential).* Exhibit 13 would require an applicant to provide the amount of total aggregate annual compensation paid to its credit analysts and the median compensation. The information would be for the most recently completed fiscal or calendar year and would not have to be audited. An NRSRO would not need to make the information in Exhibit 13 public (to the extent permitted by law) or update the exhibit after registration. An NRSRO would, however, be required to update this information with the annual audited financial statements provided to the Commission under proposed Rule 17g–3.

The Commission believes this compensation information would be necessary or appropriate in the public interest or for the protection of investors because it would assist the Commission in making the finding with respect to adequate financial resources required by Section 15E(a)(2)(C) of the Exchange Act.[200] Similar to the revenue information, this information would augment the financial statements that would be required under Exhibit 11 because it provides detail on the expenses necessary to retain the credit rating agency's credit analysts.

The Commission requests comment on Exhibit 13, as proposed. The Commission also requests comment on any difficulties a credit rating agency would have in determining these compensation amounts. If a commenter believes it would not be practicable to do so, the commenter should explain why.

*Request for comment.* In addition to the specific requests for comment above, the Commission requests comment on all aspects of proposed Form NRSRO and the proposed instructions to the form, including whether the proposals could be more narrowly tailored and still meet the stated goals. Further, the Commission solicits comment about whether other requirements should be added, or whether items and exhibits proposed should be eliminated or modified. Commenters are asked to explain their conclusions.

### *D. Proposed Rule 17g–2—Recordkeeping*

The Act amends Section 17(a)(1) of the Exchange Act to add NRSROs to the list of entities required to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act.[201] The inclusion of NRSROs on the list also provides the Commission with authority under Section 17(b)(1) of the Exchange Act to examine all the records of an NRSRO.[202]

Proposed Rule 17g–2, "Records to be made and retained by nationally recognized statistical rating organizations," would implement the Commission's recordkeeping rulemaking authority under Section 17(a) of the Exchange Act.[203] The proposed rule would require an NRSRO to make and retain certain records relating to its business and to retain certain other business records, if such records are made. The rule also would prescribe the time periods and manner in which all these records must be retained.

With respect to other regulated entities, the Commission has made clear that books and records rules are "integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws." [204] Proposed Rule 17g–2 is designed to ensure that an NRSRO makes and retains records that would assist the Commission in monitoring, through its examination authority, whether an NRSRO was complying with the provisions of Section 15E of the Exchange Act [205] and the rules thereunder. For example, examiners would use the records to monitor whether an NRSRO was following its disclosed procedures and methodologies for determining credit ratings, its disclosed policies and procedures for preventing the misuse of material non-public information, and managing conflicts of interest, and whether it was complying with proposed Rules 17g–4, 17g–5 and 17g–6 discussed below.

#### 1. Paragraph (a): Records To Be Made and Retained

Paragraph (a) of proposed Rule 17g–2 would require an NRSRO to make and retain certain books and records. Under the proposed rule, the records required in paragraph (a) must be complete and current. Consequently, it would be a violation of the proposed rule to falsify a record or fail to update a record when the information on the record becomes stale or incomplete. The Commission believes the records required to be made and retained under paragraph (a) of proposed Rule 17g–2 would be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act because, as described below, they would assist the Commission in monitoring whether an NRSRO was complying with Section

[199] *See* 15 U.S.C. 78o–7(a)(2)(C).

[200] *See* 1 U.S.C. 78o–7(a)(2)(C).

[201] *See* Section 5 of the Act and 15 U.S.C. 78q(a)(1).

[202] *See* 15 U.S.C. 78q(b)(1).

[203] 203 15 U.S.C. 78q.

[204] *See Electronic Storage of Broker-Dealer Records*, Exchange Act Release No. 47806 (May 7, 2003), 68 FR 25281 (May 12, 2003); *see also* Commission order in *Matter of Deutsche Bank Securities, Inc. et al*, Exchange Act Release No. 46937 (December 3, 2002) ("The record keeping rules are 'a keystone of the surveillance of broker-dealers' ") (citations omitted); Commission order in *Matter of J.P. Morgan Securities Inc.*, Exchange Act Release No. 51200 (February 14, 2005); *Electronic Recordkeeping by Investment Companies and Investment Advisers*, Investment Company Act Release No. 24991 (May 24, 2001) ("The recordkeeping requirements are a key part of the Commission's regulatory program for funds and advisers, as they allow [the Commission] to monitor fund and adviser operations, and to evaluate their compliance with federal securities laws.").

[205] 15 U.S.C. 78o–7.

15E of the Exchange Act and the rules thereunder.[206] The Commission does not intend that these provisions of proposed Rule 17g–2 require a specific form of record. An NRSRO would have the flexibility to implement a recordkeeping system that captured the following information in a manner that conformed to the NRSRO's internal processes.

*Paragraph (a)(1).* Paragraph (a)(1) of proposed Rule 17g–2 would require an NRSRO to make records of original entry into the rating organization's accounting system, and records reflecting entries to and balances in all general ledger accounts of the rating organization for each fiscal year. These are fundamental business records and necessary for the preparation of the audited financial statements and schedules that would need to be prepared under proposed Rule 17g–3.

*Paragraph (a)(2).* Paragraph (a)(2) of proposed Rule 17g–2 would require an NRSRO to make and retain the following records with respect to each of the NRSRO's current credit ratings, as applicable: the identity of any credit analyst(s) that determined the credit rating; the identity of the person(s) who approved the credit rating before it was issued; the procedures and methodologies used to determine the credit rating; the method by which the credit rating was made readily accessible; whether the credit rating was solicited or unsolicited; and the date the credit rating action was taken. As noted above, the NRSRO would not be required to make a single record containing all this information for each current credit rating. Rather, the NRSRO would have the flexibility to implement a recordkeeping system that captured this information in different records in a manner that conformed to the NRSRO's internal processes.

The information in these records about the identity of the credit analysts, the persons who approved the credit rating, the methodology used to determine the credit rating, and whether the credit rating was solicited or unsolicited, collectively would assist the Commission in monitoring whether the NRSRO was following its procedures and methodologies for determining credit ratings. The information about the identity of the credit analysts, and the persons who approved the credit rating, also would assist the Commission in monitoring whether the NRSRO was complying with procedures designed to prevent the misuse of material nonpublic information.

[206] *See* 15 U.S.C. 78q(a)(1).

*Paragraph (a)(3).* Paragraph (a)(3) of proposed Rule 17g–2 would require a record identifying each person that solicits the NRSRO to determine or maintain a credit rating (*e.g.*, an obligor, issuer, or underwriter) and the credit ratings determined for the person. This information would assist the Commission in monitoring whether the NRSRO was complying with procedures for addressing and managing conflicts of interest as well as complying with the requirements in proposed Rule 17g–5 prohibiting certain conflicts of interest.

*Paragraph (a)(4).* Paragraph (a)(4) of proposed Rule 17g–2 would require a record for each person that subscribes to receive the credit ratings of the NRSRO. Similar to the records that would be required under paragraph (a)(3), this information would assist the Commission in monitoring whether the NRSRO was complying with procedures for addressing and managing conflicts of interest as well as complying with the requirements in proposed Rule 17g–5 prohibiting certain conflicts of interest.

*Paragraph (a)(5).* Paragraph (a)(5) of proposed Rule 17g–2 would require a record describing each type of service and product offered by the NRSRO. This record would provide the Commission with details of the ancillary business activities of the credit rating agency and, therefore, would be useful in identifying potential conflicts of interest that arise from such activities. Commission examiners would then be able to review whether the NRSRO had implemented procedures to manage these potential conflicts.

*Request for comment.* The Commission requests comment on whether the records that would be required to be made and retained under paragraph (a) of proposed Rule 17g–2 would achieve the stated purposes of the requirements. Commenters should explain any conclusions they reach on this question with respect to each type of record. The Commission also requests comment on whether there are other types of records that should be required, or whether any of the proposed requirements should be modified or omitted. Commenters that believe additional records should be required are asked to describe the record and explain why the Commission should require that it be made and retained.

2. Records To Be Retained if Made

There are certain records an NRSRO may make or receive as a matter of business practice. The Commission does not believe an NRSRO should be required, by rule, to make these records. However, the Commission believes an NRSRO should be required to retain these records for a period of time because the records would assist the Commission's oversight of NRSROs. Accordingly, paragraph (b) of proposed Rule 17g–2 would require that an NRSRO retain certain records, if they are made or received by the NRSRO. Since these are not records that are required to be made, they would not need to be updated under the requirements of proposed Rule 17g–2. Rather, the rule would require that the NRSRO retain the original record in an unaltered form or a true copy of the original record for the prescribed retention period. The Commission notes, however, that, under Section 15E(b)(1) of the Exchange Act,[207] an NRSRO must update, as provided in that section, the forms and exhibits (Form NRSRO) that would be required to be retained under paragraph (b)(9) of proposed Rule 17g–2 (discussed below).

The Commission believes the records required to be retained under paragraph (b) of proposed Rule 17g–2 would be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act because, as described below, they would assist the Commission in monitoring whether an NRSRO was complying with Section 15E of the Exchange Act [208] and the rules thereunder.[209]

*Paragraph (b)(1).* Paragraph (b)(1) of proposed Rule 17g–2 would require an NRSRO to retain all significant records underlying the information included in the credit rating agency's annual audited financial statements and schedules required under proposed Rule 17g–3. This would require the NRSRO to retain records such as bank statements, bills payable and receivable, trial balances and records relating to the determination of the largest customers for the list required under paragraph (b)(iii) of proposed Rule 17g–3. These records would assist Commission examiners in understanding and verifying the basis for information provided in the audited financial statements and schedules the NRSRO would be required to annually furnish to the Commission. For example, examiners could use the records relating to the list of the largest customers to verify that the NRSRO had identified such customers in accordance with proposed Rule 17g–3.

*Paragraph (b)(2).* Paragraph (b)(2) of proposed Rule 17g–2 would require an NRSRO to retain internal records, including non-public information and

[207] *See* 15 U.S.C. 78o–7(b)(1).

[208] 15 U.S.C. 78o–7.

[209] *See* 15 U.S.C 78q(a)(1).

work papers, used to determine a credit rating. These records would include, for example, notes of conversations with the management of an issuer or obligor that was the subject of the credit rating and the inputs and raw results of a quantitative model used to determine the credit rating. The retention of this information, and other internal records used to determine a credit rating, would assist the Commission in verifying whether an NRSRO was complying with its procedures and methodologies for determining credit ratings and for preventing the misuse of material nonpublic information.

*Paragraph (b)(3).* Paragraph (b)(3) of proposed Rule 17g–2 would require an NRSRO to retain credit analysis reports, credit assessment reports, and private credit rating reports and internal records, including nonpublic information and work papers, used to form the basis for the opinions expressed in these reports. These reports—which credit rating agencies commonly create and sell as an ancillary service to the issuance of credit ratings—generally provide a detailed analysis of the information and assumptions underlying a credit rating. In developing these reports, the credit analyst may receive material nonpublic information about an issuer or obligor. For example, an issuer may request a private credit rating report to understand how a contemplated transaction would impact the current publicly available credit rating of its debt securities. Consequently, the retention of these reports and internal records used to form the basis of the reports would assist the Commission in monitoring whether the NRSRO was complying with its policies and procedures for preventing the misuse of material nonpublic information.

*Paragraph (b)(4).* Paragraph (b)(4) of proposed Rule 17g–2 would require an NRSRO to retain all compliance reports and exception reports relating to the business of operating as credit rating agency. The retention of these reports would identify activities of the NRSRO that its designated compliance officer had determined raised, or did not raise, compliance and control issues. Examiners would then be able to review how the NRSRO addressed the compliance issues. This could lead to more focused examinations, which also would decrease the burden on the NRSRO. The reports also would provide information as to whether the NRSRO was complying with its rating credit ratings methodologies, procedures, and policies.

*Paragraph (b)(5).* Paragraph (b)(5) of proposed Rule 17g–2 would require an NRSRO to retain all internal audit plans, internal audit reports, and documents relating to internal audit follow-up measures relating to the business of operating as credit rating agency and all records identified by the NRSRO's internal auditors as necessary to perform the audit of an activity relating to the business of operating as credit rating agency. Similar to the compliance reports, the retention of these records would identify activities of the NRSRO that its internal auditors determined raised, or did not raise, compliance or control issues. They also would assist the Commission in verifying whether the NRSRO was complying with its stated methods, procedures, and policies.

*Paragraph (b)(6).* Paragraph (b)(6) of proposed Rule 17g–2 would require an NRSRO to retain all marketing materials relating to the business of operating as credit rating agency. Section 15E(f) of the Exchange Act prohibits an NRSRO from representing that it has been designated, recommended, or approved, or that its abilities or qualifications have been passed upon by any federal agency or officer.[210] The retention of marketing materials would assist the Commission in verifying that the NRSRO was complying with this statutory provision.

*Paragraph (b)(7).* Paragraph (b)(7) of proposed Rule 17g–2 would require an NRSRO to retain all external and internal written communications, including electronic communications, received and sent by the NRSRO and its employees relating to initiating, determining, maintaining, changing or withdrawing a credit rating. The retention of written communications has played an important role in assisting the Commission in identifying legal violations and compliance issues with respect to other regulated entities.[211]

*Paragraph (b)(8).* Paragraph (b)(8) of proposed Rule 17g–2 would require an NRSRO to retain the record that must be made under paragraph (b) of proposed Rule 17g–6 with respect to declining to determine or withdrawing a credit rating with respect to a structured product. The retention of this record would assist the Commission in understanding the reason behind an NRSRO's decision to take one of these actions and, therefore, to monitor its compliance with the prohibitions in proposed Rule 17g–6.

*Paragraph (b)(9).* Paragraph (b)(9) of proposed Rule 17g–2 would require an NRSRO to retain the forms and exhibits (Form NRSRO) furnished to the Commission under proposed Rule 17g–1. This would make the forms and exhibits subject to the retention and production requirements in proposed Rule 17g–2. For example, they would need to be retained in a manner that makes them easily accessible to the NRSRO's principal office. This would assist Commission examiners, particularly examiners in regional and district offices, in accessing the records on site during an examination.

*Request for comment.* The Commission requests comment on whether the retention of the records under paragraph (b) of proposed Rule 17g–2 would achieve the stated purposes of the requirements. Commenters should explain any conclusions they reach on this question with respect to each type of record. The Commission also requests comment on whether there are other standards or criteria that could be used to further tailor these requirements. The Commission further requests comment on whether there are other types of records that should be required to be retained, or whether any proposed requirements should be eliminated or modified. Commenters that believe additional records should be retained are asked to describe the record and explain why requiring its retention would be necessary.

3. Remaining Provisions

Proposed Rule 17g–2 has additional provisions that would prescribe how long the records in paragraphs (a) and (b) would need to be retained, the manner in which they would need to be retained and the manner in which they, and any other records subject to the Commission's examination authority, would need to be produced. The Commission believes the additional provisions of proposed Rule 17g–2 would be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act because, as described below, they would assist the Commission in monitoring whether an NRSRO was complying with Section 15E of the Exchange Act and the rules thereunder.[212]

*Paragraph (c).* Paragraph (c) of proposed Rule 17g–2 would prescribe how long the records identified in paragraphs (a) and (b) would need to be

[210] 15 U.S.C. 78o–7(f).

[211] *See e.g.*, Commission complaint in *Commission* v. *Citigroup Global Markets Inc.*, 03 CV 2945 (WHP) (S.D.N.Y.) (April 28, 2003); Commission complaint in *Commission* v. *Merrill, Lynch, Pierce, Fenner & Smith*, 03 CV 2941 (WHP) (S.D.N.Y) (April 28, 2003); Commission Order in *Matter of Columbia Management Advisers, Inc. and Columbia Funds Distributor, Inc.*, Securities Act Release No. 8534 (February 9, 2005).

[212] *See* 15 U.S.C 78q(a)(1).

retained by an NRSRO. Specifically, the records required to be made pursuant to paragraph (a) would need to be retained for three years after the record is replaced with an updated record, except that the records with respect to customers would need to be retained for three years after the NRSRO's business relationship with the customer ended. The records required to be retained under paragraph (b) would need to be retained for three years after the record is made or received by the NRSRO. The three year retention periods are designed to ensure that the records are preserved for at least one internal audit or Commission exam cycle.

*Paragraph (d).* Paragraph (d) of proposed Rule 17g–2 would provide that records retained pursuant to paragraphs (a) and (b) must be retained in a manner that makes them easily accessible to the principal office and any other office that conducted activities causing the record to be made or received. This provision is designed to facilitate Commission examination of the NRSRO and to avoid delays in obtaining the records during an on-site examination. The proposed rule does not specify the format in which the records must be retained. NRSROs could retain them in, for example, paper form, on microfilm or microfiche, and electronically.

*Paragraph (e).* Paragraph (e) of proposed Rule 17g–2 would provide that records identified in paragraphs (a) and (b) could be made or retained by a third-party record custodian, provided the NRSRO furnishes the Commission with a written undertaking of the custodian. The proposed form of the undertaking is designed to ensure that storing the records with a third-party does not make them less accessible than records stored at an NRSRO's offices. Thus, the third-party would undertake that the records are the exclusive property of the NRSRO, will be produced promptly to the NRSRO or the Commission and its representatives at the request of the NRSRO, and will be available for inspection by the Commission and its representatives. The proposed rule also would provide that an NRSRO would remain responsible for complying with the Commission's books and records rules, notwithstanding the fact that a third-party was making and/or storing the records.

*Paragraph (f).* Paragraph (f) of proposed Rule 17g–2 would provide that a non-resident NRSRO (defined in paragraph (h)) must undertake to send books and records to the Commission and its representatives upon request. The undertaking would need to be attached to an initial application for registration as an NRSRO (see Item 3 of proposed Form NRSRO). This proposed requirement is designed to provide a mechanism for the Commission examination staff to inspect records maintained overseas without having to travel to the location. In addition, because some non-resident NRSROs may maintain original records in a language other than English, the proposed undertaking would require a translation if the Commission requested it.

*Paragraph (g).* Paragraph (g) of proposed Rule 17g–2 would require an NRSRO to promptly furnish the Commission with copies of the records that it would have to retain under proposed Rule 17g–2 and any other records of the NRSRO that are subject to examination by the Commission under Section 17(b) of the Exchange Act [213] that are requested by the Commission and its staff. Similar to the "easily accessible" requirement of paragraph (d), this proposed requirement is designed to facilitate Commission examinations of NRSROs by requiring an NRSRO to promptly produce requested records.

*Paragraph (h).* Paragraph (h) of proposed Rule 17g–2 would define the term *non-resident rating organization* to mean an NRSRO that is located or has its principal office in a location outside the U.S., its territories, or possessions. This definition is similar to definitions of non-resident entities in other Commission rules.[214]

*Request for comment.* The Commission requests comment on whether the additional provisions of proposed Rule 17g–2 would achieve the stated purposes of the requirements. Commenters should explain any conclusions they reach on this question with respect to a provision. The Commission also requests comment on whether there are other provisions that should be required, or whether any proposed requirements should be modified or omitted. Commenters that believe additional provisions would be appropriate are asked to describe the nature of the provision and explain why it should be required.

More broadly, the Commission requests comment on all aspects of proposed Rule 17g–2, including whether the proposals could be more narrowly tailored and still meet the stated goals, or whether items should be added, eliminated, or modified. Commenters are asked to explain their conclusions.

*E. Proposed Rule 17g–3 Annual Audit*

Section 15E(k) of the Exchange Act requires an NRSRO to furnish to the Commission, on a confidential basis and at intervals determined by the Commission, such financial statements and information concerning its financial condition that the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[215] The section also provides that the Commission may, by rule, require that the financial statements be certified by an independent public accountant.[216] For the reasons discussed below, the Commission believes proposed Rule 17g–3 requiring annual financial statements and schedules would be necessary or appropriate in the public interest or for the protection of investors.[217]

First, Section 15E(d) of the Exchange Act provides that the Commission shall, by order, censure, place limitations on the activities, functions or operations of, suspend for a period not exceeding 12 months, or revoke the registration of an NRSRO if, among other things, the NRSRO fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity.[218] The audited financial statements and schedules required to be furnished by an NRSRO on an annual basis under proposed Rule 17g–3 would assist the Commission in monitoring the NRSRO's financial resources and whether the resources were at a level that would necessitate the Commission taking action under Section 15(d) of the Exchange Act.[219]

Second, Section 15E(b)(1) of the Exchange Act requires an NRSRO to promptly amend its application for registration, as prescribed in that section, if any information or document provided in the application becomes materially inaccurate.[220] As discussed above, the application (proposed Form NRSRO) would require the following financial information: a list of large customers in terms of net revenues, audited financial statements, information about revenues, and information about credit analyst compensation. This information would need to be as of, or for, the previous fiscal year. Accordingly, information

[213] *See* 15 U.S.C 78q(b).

[214] *See e.g.*, 17 CFR 240.17a–7 and 17 CFR 275.0 –2.

[215] 15 U.S.C. 78o–7(k).

[216] *Id.*

[217] *See* 15 U.S.C. 78o–7(k).

[218] 15 U.S.C. 78o–7(d).

[219] *Id.*

[220] 15 U.S.C. 78o–7(b)(1).

only would become materially inaccurate and, therefore, need to be updated on an annual basis. In addition, the information would be furnished in the application on a confidential basis and, to the extent permitted by law, would not need to be made public. Therefore, because the information only would be disclosed to the Commission, it would be more appropriate to update this information by furnishing an annual financial statement and schedules than by furnishing an amended Form NRSRO.

*Paragraph (a).* Paragraph (a) of proposed Rule 17g–3 would require an NRSRO to furnish the audited financial statements to the Commission annually, as of the fiscal year end indicated on the NRSRO's current Form NRSRO, within 90 calendar days after the end of such fiscal year. The financial statements would include the schedules discussed below. The requirement that the financial statements be audited, therefore, would provide the Commission with an independent verification that the information in the financial statements is presented fairly, in all material respects, and that the schedules are presented fairly, in all material respects, based on the financial statements taken as a whole. The 90 day time period would be consistent with the time period for furnishing the annual certification with respect to NRSROs whose fiscal year-end is the end of the calendar year. These NRSROs could furnish both the annual audited financial statements and the annual certification to the Commission at the same time.

Paragraph (a) also would provide that the financial statements be prepared according to generally accepted accounting principles and comply with applicable provisions of the Commission's Regulation S–X.[221] These requirements are designed to ensure that the financial statements comport with accounting standards and Commission rules.

*Paragraph (b).* Paragraph (b) of proposed Rule 17g–3 would require an NRSRO to include three supporting schedules in the audited financial statements. These schedules would be the mechanism by which an NRSRO would update the list of large customers, information about revenues, and information about total aggregate credit analyst compensation and median compensation originally furnished in the NRSRO's initial application for registration.

As discussed above with respect to Exhibit 10, the list of the largest customers would assist the Commission in identifying customers of an NRSRO that could potentially have undue influence on the NRSRO given the amount of revenue they provide the credit rating agency. The largest customers would be determined using the same definitions of "net revenues" and "credit rating services" discussed with respect to Exhibit 10. In addition, just as with Exhibit 10, obligor and underwriter customers would be added to the list to the extent they were as large as, or larger than, the 20th largest issuer or subscriber customer.

The information on revenue sources and analyst compensation that would be required in the schedule would be the same as the information that would be required in Exhibits 12 and 13, respectively. The information on revenue sources and credit analyst compensation would augment the financial statements by providing detail as to the revenues generated specifically from credit rating services and the expenses necessary to retain the credit rating agency's credit analysts. This information collectively would assist the Commission in monitoring whether an NRSRO maintains adequate financial resources to consistently produce credit ratings with integrity.[222]

*Paragraph (c).* Paragraph (c)(1) of proposed Rule 17g–3 would require that the financial statements be certified by an independent public accountant in accordance with the provisions the Commission's Regulation S–X. These provisions are designed to ensure that auditors are independent of their audit clients.[223]

Paragraph (c)(2) of proposed Rule 17g–3 would require that the NRSRO attach to the financial statements a statement by a duly authorized person of the NRSRO that the financial statements present fairly, in all respects, the financial condition, results of operations, and the cash flows of the NRSRO. This would provide a level of assurance that the information in the financial statements had been reviewed and verified by the NRSRO. This proposed requirement parallels Commission Rule 17a–5(e)(2), which requires a duly authorized officer of a broker-dealer (or, in the case of a general partnership, the general partner) to attach an oath or affirmation stating the financial statements and schedules required under that rule are true and correct.[224]

Finally, Paragraph (d) of proposed Rule 17g–3 would provide that the Commission may grant an extension of time from any requirements in the proposed rule either unconditionally or on specified terms and conditions on the written request of an NRSRO, if the Commission finds that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. The Commission believes the 90-day period after the end of the fiscal year to prepare and furnish the financial statements and schedules required under proposed Rule 17g–3 would be a sufficient amount of time to fulfill these requirements. However, there may be situations where an NRSRO would require more time. In such cases, the NRSRO would be required to request an extension in writing and the Commission could grant it unconditionally or subject to certain specified terms and conditions.

*Request for comment.* The Commission requests comment on all aspects of proposed Rule 17g–3, including whether the proposed requirements could be more narrowly tailored and still meet the stated goals. Further, the Commission solicits comment on whether any additional requirements should be added, or whether any of the proposed requirements should be omitted or modified. The Commission also requests comment on the 90-day time period to provide the audited financial statements and, in particular, whether that time frame is too long or too short. The Commission further requests comment on whether the requirement that the schedules to the financial statements be audited is practicable, given the information to be included in them. Commenters that believe it would not be practicable should explain the reasons for their conclusion.

### *F. Proposed Rule 17g–4—Procedures to Prevent the Misuse of Material Non-Public Information*

Section 15E(g)(1) of the Exchange Act[225] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act.[226] Section 15E(g)(2) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO to establish specific policies and procedures to prevent the misuse of material, non-public information.[227]

[221] 17 CFR 210.1–01 *et seq.*

[222] 15 U.S.C. 78o–7(d).

[223] *See Final Rule: Strengthening the Commission's Rules Regarding Auditor Independence*, Securities Act Release No. 8183 (January 28, 2003), 68 FR 6005 (February 5, 2003).

[224] 17 CFR 240.17a–5(e)(2).

[225] 15 U.S.C. 78o–7(g)(1).

[226] 15 U.S.C. 78a *et seq.*

[227] 15 U.S.C. 78o–7(g)(2).

Proposed Rule 17g–4 would implement this statutory provision by requiring that an NRSRO's policies and procedures established pursuant to Section 15E(g)(1) of the Exchange Act [228] include three specific types of procedures.

First, paragraph (a) of proposed Rule 17g–4 would require procedures designed to prevent the inappropriate dissemination within and outside the NRSRO of material nonpublic information obtained for the purpose of developing a credit rating. Some credit rating agencies, as part of their analysis, contact senior management of the obligors and issuers subject to their credit ratings. In the course of these contacts, an issuer or obligor may provide the credit rating agency with nonpublic information including contemplated business transactions or estimated financial projections.[229] Credit rating agencies have commented that this confidential information greatly assists them in issuing credible and reliable ratings.[230] In fact, the Commission's Regulation FD, which governs the disclosure of material non-public information by issuers, contains an exception that permits issuers to intentionally disclose material non-public information to a credit rating agency without making a simultaneous public disclosure of the information.[231] The selective disclosure to the credit rating agency, however, must be solely for the purpose of developing a publicly available credit rating.[232]

Under paragraph (a) of proposed Rule 17g–4, a credit rating agency that permits its credit analysts to contact an issuer or obligor in the process of determining or maintaining a credit rating would be required to, for example, have procedures reasonably designed to prevent material, non-public information obtained by the credit analyst from being shared with or made readily accessible to any person outside the NRSRO or to persons employed by the NRSRO who do not need to know the information because they are not involved in determining or approving the credit rating. One concern that has been raised in the past is that subscribers to a credit rating agency's more detailed credit reports also may be granted direct access to the credit analysts.[233] If the credit analyst is in possession of material non-public information, there is a risk the information may be inappropriately disclosed to the subscriber during the course of communications with the credit analyst.[234]

The Commission believes NRSROs should have flexibility to develop procedures tailored to their specific organizational structures and business models and, consequently, is not proposing to prescribe specific procedures. Nonetheless, as applicable to the business model of the NRSRO, an NRSRO could have procedures requiring credit analysts to receive training in the laws governing the misuse of material non-public information; defining the persons within the NRSRO with whom the credit analyst can share the information; prohibiting the credit analyst from disclosing the information to any other persons; and requiring the credit analyst to take steps to safeguard documents containing the information. An NRSRO that does not use management contacts as part of its methodology for determining credit ratings could prohibit credit analysts from contacting rated issuers or obligors.

Paragraph (b) of proposed Rule 17g–4 would require an NRSRO to implement specific procedures designed to prevent an associated person or member of an associated person's household from purchasing, selling, or otherwise benefiting from any transaction in securities or money market instruments when the person possesses or has access to material nonpublic information obtained for the purpose of developing a credit rating. This proposed rule recognizes the risk that individuals in possession of, or with access to, material nonpublic information about an issuer or obligor may trade securities or money market instruments on the information.[235] Again, the Commission does not intend to prescribe exact procedures. However, as applicable to the business model of the NRSRO, an NRSRO could have policies prohibiting associated persons from purchasing or selling a security or money market instrument that is subject to a pending rating action; requiring associated persons to obtain pre-approval before purchasing or selling a security or money market instrument; and requiring associated persons to be notified of securities or money market instruments that are on a "do not trade" list.

Paragraph (c) of proposed Rule 17g–4 would require an NRSRO to implement specific procedures designed to prevent the inappropriate dissemination within and outside the NRSRO of a credit rating action prior to making the action readily accessible. This provision recognizes that a credit rating action of an NRSRO that is not yet public may be material, non-public information. Consequently, an NRSRO should have policies designed to ensure that its pending credit rating actions are not disclosed in a manner that allows a person to trade on the information before the action is widely disseminated to the market. Once again, the Commission does not intend to prescribe specific procedures. However, as applicable to the business model of the NRSRO, these policies could include procedures designed to ensure that a credit rating action is issued in a way that makes it readily accessible to the market place, such as posting the credit rating or an announcement of the credit rating action on the NRSRO's Web site or through a news or information service used by market participants. The policies also could include procedures prohibiting credit analysts from selectively disclosing the pending action to persons outside the NRSRO and to persons inside the NRSRO who do not need to know of the pending action.

At the same time, the Commission understands that some credit rating agencies, as part of their methodologies for determining credit ratings, will discuss a proposed credit rating action with the management of the issuer or obligor being rated to solicit their views or provide an opportunity to appeal the decision. NRSROs engaging in this practice should have procedures designed to ensure that the discussions with the issuer or obligor do not lead to the selective disclosure of the information to persons other than those persons within the issuer or obligor who are authorized to receive the information.

The Commission requests comment on all aspects of this proposed rule, including whether the proposals could be more narrowly tailored and still meet the stated goals. The Commission also requests comment on whether other types of specific procedures should be

[228] 15 U.S.C. 78o–7(g)(1).

[229] *See Proposed Rule: Definition of Nationally Recognized Statistical Rating Organization*, Securities Act Release No. 8570 (April 22, 2005), 70 FR 21306 (April 25, 2005).

[230] *See Id.*

[231] *See* 17 CFR 243.100.

[232] 17 CFR 243.100(b)(2)(iii).

[233] *See* Commission 2003 CRA Report and Commission 2003 Concept Release, Securities Act Release No. 8236 (June 4, 2003), 68 FR 35258 (June 12, 2003), noting the concern raised by some that subscribers may have preferential access to credit analysts and, as a result, may inappropriately learn material non-public information in the possession of a credit analyst.

[234] *Id.*

[235] *See e.g.*, Commission complaint in *Commission* v. *Rick A. Marano, William Marano and Carl Loizzi*, 04 CV 5828 (Judge Kimba Wood) (S.D.N.Y.); *see also* Commission Litigation Release No. 18799 (July 27, 2004).

required, or whether any of the proposed requirements should be omitted or modified.

*G. Proposed Rule 17g–5—Management of Conflicts of Interest*

Section 15E(h)(1) of the Act requires an NRSRO to establish, maintain, and enforce policies and procedures reasonably designed, taking into consideration the nature of its business, to address and manage conflicts of interest.[236] Section 15E(h)(2) of the Act requires the Commission to adopt rules to prohibit or require the management and disclosure of conflicts of interest relating to the issuance of credit ratings.[237] Proposed Rule 17g–5 would implement this statutory provision by requiring an NRSRO to disclose and manage certain conflicts of interest and prohibiting other conflicts of interest.

Paragraph (a) of proposed Rule 17g–5 would make it unlawful for an NRSRO to have a conflict of interest relating to the issuance of a credit rating that is identified in paragraph (b) of the proposed rule *unless* the NRSRO has publicly disclosed the type of conflict of interest in compliance with Rule 17g–1 and has implemented policies and procedures to address and manage such conflict of interest in accordance with Section 15E(h)(1) of the Exchange Act. As discussed, Rule 17g–1 would require an NRSRO to apply for registration and update its registration using Form NRSRO. Exhibit 6 to proposed Form NRSRO would require the NRSRO to identify and publicly disclose the types of conflicts of interest that arise from its business activities as required by Section 15E(a)(1)(B)(vi) of the Exchange Act.[238] As mentioned above, Section 15E(h)(1) of the Exchange Act requires an NRSRO to establish, maintain, and enforce written policies and procedures to address conflicts of interest.[239] Accordingly, under proposed Rule 17g–5, it would be unlawful for an NRSRO to have a conflict of interest identified in paragraph (b) of the rule if it had not complied with its regulatory and statutory requirements with respect to disclosing and managing types of conflicts of interest. The Commission believes that these requirements in proposed Rule 17g–5 would be appropriate in the public interest and for the protection of investors because they are designed to ensure that users of credit ratings are made aware of the potential conflicts of interest that arise from an NRSRO's business activities and that an NRSRO establishes policies and procedures for managing the specific conflicts.

The types of conflicts identified in paragraph (b) of proposed Rule 17g–5 are those that a credit rating agency commonly faces, depending on its business model. Consequently, prohibiting them outright could adversely impact the ability of an NRSRO to operate as a credit rating agency. Nonetheless, the conflicts should be managed through policies and procedures and disclosed so that users of the credit ratings can assess whether the conflict impacts the NRSRO's judgment.

The first type of conflict identified in paragraph (b) of proposed Rule 17g–5 involves receiving compensation from a rated person for a service or product of the NRSRO or its affiliates.[240] This type of conflict arises from a common business model in the credit rating industry; namely, charging issuers and obligors to determine and maintain a credit rating of the issuer or obligor. A related conflict may arise when the credit rating agency offers other services and products of its own and its affiliates to rated issuers and obligors, including credit assessment and risk management consulting.[241] Furthermore, an NRSRO could potentially issue a credit rating that the rated issuer or obligor uses for regulatory purposes. For example, an issuer may rely on the credit rating to qualify for Form S–3—the Commission's "short-form" registration statement.[242]

The second type of conflict identified in paragraph (b) of proposed rule 17g–5 involves having an ownership interest (securities or otherwise) in an issuer or obligor subject to a credit rating of the NRSRO.[243] As discussed below, this conflict would be prohibited under paragraph (c) of proposed Rule 17g–5 if the NRSRO, credit analyst, or an associated person approving the credit rating had the ownership interest.[244] However, it may be appropriate for an NRSRO to permit employees that have no involvement in determining or approving the credit rating of an obligor or issuer to own securities of the entity.[245] For example, a prohibition for all employees could be a particular hardship if the NRSRO issued credit ratings with respect to most public companies.

The third type of conflict identified in paragraph (b) of proposed rule 17g–5 involves receiving compensation from subscribers that use the credit ratings of the NRSRO for regulatory purposes.[246] As discussed in section I, numerous federal and state statutes and regulations use the term "NRSRO." A subscriber potentially could be subject to one or more of these statutes and regulations and, consequently, benefit depending on how the NRSRO rates securities held by the subscriber. For example, a broker-dealer subscriber holding debt securities would be able to apply lower haircuts when computing its net capital under Exchange Act Rule 15c3–1, if the securities are rated investment grade by two NRSROs.[247] Regulatory users of credit ratings such as broker-dealers likely also would be subscribers to an NRSRO's credit ratings or credit analysis. Therefore, prohibiting this conflict could be impractical, particularly for NRSROs that rely solely on a subscription-based business model.

The fourth type of conflict identified in paragraph (b) of proposed rule 17g–5 involves having an ownership interest in a subscriber that uses the NRSRO's credit ratings for regulatory purposes.[248] This potentially could create an incentive for the credit rating agency or an associated person to issue a credit rating that allows the subscriber to take advantage of a benefit in a statute or regulation using the NRSRO concept.

The fifth type of conflict identified in paragraph (b) of proposed rule 17g–5 involves having a business or personal

[236] 15 U.S.C. 78o–7(h)(1).

[237] 15 U.S.C. 78o–7(h)(2).

[238] 15 U.S.C. 78o–7(a)(1)(B)(vi).

[239] *Id.*

[240] Paragraph (b)(1) of proposed Rule 17g–5. *See* 15 U.S.C. 78o–7(h)(2)(A).

[241] *See* Commission 2003 CRA Report noting concerns of some that conflicts in this area could become much greater if these ancillary services were to become a substantial portion of an NRSRO's business. *See also* Commission 2003 CRA Concept Release, Securities Act Release No. 8236 (June 4, 2003), 68 FR 35258 (June 12, 2003), noting concerns of some that greater concerns about conflicts of interest arise when a credit rating agency offers consulting or other advisory services to issuers it rates.

[242] Form S–3 (17 CFR § 239.13).

[243] Paragraph (b)(2) of proposed Rule 17g–5. *See* 15 U.S.C. 78o–7(h)(1)(C); *see also Proposed Rule: Definition of Nationally Recognized Statistical Rating Organization*, Securities Act Release No. 8570 (April 22, 2005), 70 FR 21306 (April 25, 2005), which noted that conflicts may arise when a person associated with a credit rating agency also is associated with, or has an interest in, an issuer that is being rated.

[244] Several commenters to the 2005 proposing release recommended prohibiting a credit rating agency and its analysts from owning securities in the companies they rate. Letters from Charles D. Brown, General Counsel, Fitch, Inc., dated June 9, 2005; Marjorie E. Gross, Senior Vice President and Regulatory Counsel, The Bond Market Association and Frank A. Fernandez, Senior Vice President and Chief Economist, Securities Industry Association, dated June 9, 2005; and Larry G. Mayewski, Executive Vice President & Chief Rating Officer, A.M. Best Company, Inc., dated June 9, 2005.

[245] *Cf.* 17 CFR 275.204A–1(e)(1) (defining "access person" for purposes of requiring investment advisers to establish procedures requiring access persons to report their personal securities holdings).

[246] Paragraph (b)(3) of proposed Rule 17g–5.

[247] *See*, 17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H).

[248] Paragraph (b)(4) of proposed Rule 17g–5.

relationship or affiliation with a rated issuer or obligor, underwriter of a rated issuer's securities, or a subscriber that uses the credit ratings for regulatory purposes.[249] An example of this conflict would include a person associated with the NRSRO having a relative or spouse who worked for a rated issuer, obligor, or underwriter of a rated issuer's securities. It also would include a person associated with the NRSRO having a business relationship with one of these types of entities, for example, receiving a loan from a bank that is rated.[250] The Commission believes, however, that prohibiting these types of relationships outright may be unnecessary or could prove impractical. However, an NRSRO should have robust policies and procedures to manage conflicts arising from these relationships. Moreover, paragraph (c) of proposed Rule 17g–5 would not prohibit a credit analyst or associated person approving the credit rating from having these types of relationships with the rated issuer or obligor or underwriter of the rated issuer's securities.[251] However, there may be circumstances where an NRSRO, as part of its policies and procedures, should prohibit the conflict. One potential example would be if the credit analyst's spouse or close family member works for the rated issuer or obligor.

The sixth type of conflict identified in paragraph (b) of proposed rule 17g–5 involves being an officer or director of a rated issuer or obligor, underwriter of a rated issuer's securities, or subscriber that uses the NRSRO's credit ratings for regulatory purposes.[252] As discussed below, this type of conflict would be prohibited under paragraph (c) of proposed Rule 17g–5 if the credit analyst or associated person responsible for approving the credit rating was an officer or director of one of these entities. However, it may be appropriate, subject to adequate policies and procedures, for other employees of the NRSRO and its affiliates to serve in these roles, since they would have no direct role in determining the credit rating.

The seventh type of conflict identified in paragraph (b) of proposed rule 17g–5 would be any other type of conflict that the NRSRO identifies on proposed Form NRSRO in compliance with Section 15E(a)(1)(B)(vi) of the Exchange Act[253] and proposed Rule 17g–1. This catchall provision would capture conflict types not specifically listed in paragraph (b) of Rule 17g–5 that the NRSRO has identified on Exhibit 6 to proposed Form NRSRO as arising from its business activities.[254]

Paragraph (c) of proposed Rule 17g–5 would specifically prohibit four types of conflicts of interest. The Commission preliminarily believes that prohibiting such conflicts of interest would be appropriate in the public interest and for the protection of investors.

The first proposed prohibition would make it unlawful for an NRSRO to have a conflict relating to the issuance of a credit rating where the person soliciting the credit rating was the source of 10% or more of the total net revenue of the NRSRO and its affiliates in the most recently ended fiscal year.[255] Such a person would be in a position to exercise substantial influence on the NRSRO.[256] It would be difficult for the NRSRO to remain impartial, given the impact on the NRSRO's income if the issuer, obligor or underwriter withdrew its business. Given our understanding that fees from a single entity generally compose a very small percentage of the revenues of entities currently identified as NRSROs, the Commission preliminarily believes that a 10% threshold is a reasonable benchmark for registered NRSROs.[257]

The second proposed prohibition would make it unlawful for an NRSRO to have a conflict relating to the issuance of a credit rating where the NRSRO, a credit analyst responsible for the credit rating, or a person associated with the NRSRO responsible for approving the credit rating, owns securities of, or has any other ownership interest in the rated person, or is a borrower or lender with respect to the rated person.[258] The Commission preliminarily believes that the NRSRO, credit analyst responsible for determining the credit rating, and person responsible for approving the credit rating should not have a direct financial interest in the rated issuer or obligor. The Commission preliminarily believes an NRSRO or associated person having such a financial interest could not remain impartial and issue an objective credit rating in these circumstances.[259]

The third proposed prohibition would make it unlawful for an NRSRO to have a conflict relating to the issuance of a credit rating where the rated entity is a person associated with the NRSRO.[260] The Commission preliminary believes an NRSRO would not be able to maintain an appropriate level of impartiality when issuing a credit rating with respect to an affiliated entity.

The fourth proposed prohibition would make it unlawful for an NRSRO to have a conflict relating to the issuance of a credit rating where the credit analyst responsible for the credit rating, or a person associated with the NRSRO responsible for approving the credit rating, also is an officer or director of the person that is the subject of the credit rating.[261] Again the Commission preliminarily believes that an NRSRO or person associated with the NRSRO having such a position could not issue an objective credit rating in these circumstances.

The Commission requests comment on all aspects of proposed Rule 17g–5, including whether the proposals could be more narrowly tailored and still meet the stated goals. The Commission also requests comment on whether paragraph (b) of proposed Rule 17g–5 captures all the types of conflicts that arise from the activities of a credit rating agency. Comment also is sought on whether proposed Rule 17g–5 should contain materiality thresholds insomuch as some conflicts may be inconsequential. The Commission seeks comment on whether the focus of the proposal on the "type" of conflict of interest would appropriately capture the conflicts that arise from the business of a credit rating agency. In addition, the Commission requests comment on the prohibited conflicts and whether these conflicts should be permitted if a credit rating agency discloses them and has procedures in place to manage such conflicts. If so, what specific disclosures should be required? Alternatively, should the rule prohibit other types of

[249] Paragraph (b)(5) of proposed Rule 17g–5.

[250] *See* 15 U.S.C. 78o–7(h)(2)(C).

[251] *See* 15 U.S.C. 78o–7(h)(2)(D).

[252] Paragraph (b)(5) of proposed Rule 17g–5.

[253] 15 U.S.C. 78o–7(a)(1)(B)(vi).

[254] *See* 15 U.S.C. 78o–7(h)(2)(E).

[255] Paragraph (c)(1) of proposed Rule 17g–5. The determination of "net revenue" would be same as the determination of net revenue for purposes of Form NRSRO and proposed Rule 17g–3.

[256] As noted in the Commission 2003 CRA Report, some participants in the Commission 2002 CRA Hearings expressed concern that ancillary services could become much greater in the future and suggestions were made that their percentage contribution to total revenue be capped.

[257] As noted in the Commission 2003 CRA Report, fees from any single issuer typically comprise a very small percentage—less than 1%—of a credit rating agency's total revenue.

[258] Paragraph (c)(2) of proposed Rule 17g–5.

[259] The Senate Report notes that rating agencies argue that although the pay-for-rating business model presents inherent conflicts of interest, the conflict is effectively managed inasmuch as credit analysts do not benefit financially from any of their ratings decisions. The Senate Report further notes that credit analysts are not permitted to own any of the securities they follow.

[260] Paragraph (c)(3) of proposed Rule 17g–5.

[261] Paragraph (c)(4) of proposed Rule 17g–5. *Cf.* Rule 2711 of the National Association of Securities Dealers, Inc. ("NASD") allowing a securities research analyst to be an officer or director of a subject company if proper disclosure is made.

conflicts of interest, or should some of the proposed requirements be eliminated or modified? The Commission further requests comment on whether there should be specific exceptions to the proposed prohibitions. For example, should the prohibition against ownership of securities in a rated company apply to indirect ownership of securities such as through a mutual fund. The Commission also requests comment on whether the 10% net revenue threshold in proposed Rule 17g–5(c)(1) is appropriate, or should a higher or lower threshold be applied.

*H. Proposed Rule 17g–6—Prohibited Unfair, Coercive, or Abusive Practices*

Section 15E(i)(1) of the Exchange Act [262] provides that the Commission shall adopt rules prohibiting any act or practice by an NRSRO that the Commission determines is unfair, abusive, or coercive, including certain acts and practices set forth in paragraphs (i)(1)(A)–(C) of Section 15E of the Exchange Act.[263] In explaining this statutory provision, the Senate Report stated that "the Commission, as a threshold consideration, must determine that the practices subject to prohibition under this section are unfair, coercive or abusive before adopting rules prohibiting such practices." The Commission has made a preliminary determination that the acts and practices described in paragraphs (i)(1)(A)–(C) of Section 15E of the Exchange Act [264] would be unfair, coercive, or abusive. Consequently, the Commission is proposing to prohibit them in proposed Rule 17g–6, with one conditional exception. Further, the Commission also has made a preliminary determination that an additional act and practice relating to unsolicited credit ratings (as noted above, these are credit ratings that are not initiated at the request of the issuer, obligor or underwriter) would be unfair, coercive, or abusive and, consequently, is proposing to use its authority under Section 15E(i)(1) of the Exchange Act [265] to prohibit such act and practice.[266]

Section 15E(i)(1)(A) of the Exchange Act provides that the Commission shall prohibit the following practice if the Commission determines it is unfair, coercive, or abusive:

> Conditioning or threatening to condition the issuance of a credit rating on the purchase by the obligor or an affiliate thereof of other services or products, including pre-credit rating assessment products of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization[.] [267]

The Commission has preliminarily determined that this practice would be unfair, coercive, or abusive and proposes to prohibit it. Paragraph (a)(1) of Proposed Rule 17g–6 would prohibit an NRSRO from conditioning or threatening to condition the issuance of a credit rating on the purchase of other products or services, including pre-credit rating assessment products.[268]

Credit ratings play an important role in financial markets. Market participants use them in making financial decisions whether to buy or sell debt securities and extend credit to rated entities. Moreover, credit ratings of NRSROs are used in federal and state laws and regulations to establish limits or confer exemptions or privileges. Consequently, an entity may benefit from having an NRSRO credit rating because it makes its securities more marketable or the rating would qualify the entity for an exemption or privilege in one of these rules or statutes or make holding the entity's debt securities or transacting with the entity more attractive to other regulated entities. An NRSRO could abuse this incentive by using it to coerce an issuer or obligor to purchase services from the NRSRO or its affiliates. Accordingly, the Commission is proposing to prohibit this potential practice.

An NRSRO would be allowed to condition the issuance and maintenance of a credit rating on the issuer or obligor paying for the service of determining and monitoring the credit rating. As noted above, this is a longstanding business model in the credit rating industry.[269] However, as discussed, the NRSRO could not condition the issuance of the credit rating on the purchase of any other service or product offered by the NRSRO and its affiliates. This practice would violate paragraph (a)(1) of proposed Rule 17g–6 even if the NRSRO agreed to issue or did issue a credit rating that otherwise was determined in accordance with its methodologies for issuing credit ratings.

Section 15E(i)(1)(C) of the Exchange Act provides that the Commission shall prohibit the following practices if the Commissions determines they are unfair, coercive, or abusive:

> Modifying or threatening to modify a credit rating or otherwise departing from systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with such organization.[270]

The Commission has preliminarily determined that these practices would be unfair, coercive, or abusive and, consequently, proposes to prohibit them through paragraphs (a)(2) and (a)(3) of proposed Rule 17g–6. Paragraph (a)(2) would prohibit an NRSRO from issuing, or offering or threatening to issue, a credit rating that is not determined in accordance with the NRSRO's established procedures for determining credit ratings based on whether the rated person purchases or will purchase the credit rating or another product or service.[271] Thus, an NRSRO would be prohibited from issuing or threatening to issue a credit rating that is lower than would result from using its methodology for determining credit ratings based on whether the issuer or obligor pays for the credit rating or any other service or product of the NRSRO and its affiliates. The NRSRO also would be prohibited from issuing or promising to issue a higher credit rating in these circumstances.[272]

The practice proposed to be prohibited in this paragraph is distinguishable from the practice proposed to be prohibited in Paragraph (a)(1). Paragraph (a)(1) addresses the situation where an NRSRO conditions the issuance of a credit rating on the purchase of another service or product. Paragraph (a)(2) addresses the situation where an NRSRO conditions the conclusion reached in the credit rating on the purchase of the credit rating or

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[262] 15 U.S.C. 78o–7(i)(1).

[263] 15 U.S.C. 78o–7(i)(1)(A), (B) and (C).

[264] Id.

[265] 15 U.S.C. 78o–7(i)(1).

[266] *See* Commission 2003 CRA Report, which noted that some participants in the Commission 2002 CRA Hearings questioned the appropriateness of unsolicited credit ratings because they could used to engage in "strong-arm" tactics to induce payment for a credit rating an issuer did not request.

[267] 15 U.S.C. 78o–7(i)(1)(A).

[268] *See* Commission 2003 CRA Report, which noted that some participants in the Commission's 2002 CRA Hearings worried that issuers could be unduly pressured to purchase advisory services, particularly in cases where they were solicited by the credit rating analyst.

[269] *See* Commission 2003 CRA Report, which noted that by the mid-1970s credit rating agencies began charging issuers for ratings, due to difficulties in limiting access to their credit ratings to subscribers, as well as to respond to the demand for more comprehensive and resource-intensive analysis of issuers.

[270] 15 U.S.C. 78o–7(i)(1)(C).

[271] Paragraph (a)(2) of proposed Rule 17g–6.

[272] Presumably, an issuer or obligor would not agree to compensate an NRSRO for a credit rating that was lower than would result from applying the NRSRO's methodologies. Nonetheless, if an NRSRO agreed to issue a lower than warranted credit rating in return for compensation, the NRSRO would violate paragraph (a)(2) as well.

another service.[273] Thus, unlike paragraph (a)(1), an NRSRO would violate paragraph (a)(2) if it conditioned the issuance of the credit rating on the obligor or issuer paying for the credit rating. This is because the NRSRO would not be agreeing to determine a credit rating that reflected the NRSRO's assessment of the creditworthiness of the issuer or obligor as determined by its methodologies (including, as applicable, quantitative and qualitative models). Rather, the NRSRO would be agreeing to skew the rating higher based on the issuer or obligor agreeing to pay for it.

Paragraph (a)(3) of proposed Rule 17g–6 would prohibit an NRSRO from modifying, or offering or threatening to modify, a credit rating in a manner contrary to its procedures for modifying a credit rating based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the NRSRO and its affiliates. The prohibition in paragraph (a)(2) of proposed Rule 17g–6, as discussed, would apply to threats or promises with respect to the issuance of a credit rating. Paragraph (a)(3) would extend this prohibition to threats or promises with respect to changing an existing credit rating.

The potential for an NRSRO to use the threat of a lower or the promise of a higher credit rating to obtain business arises from the fact that an entity's cost of credit and, in some cases, ability to obtain credit, generally depends on its credit rating. Entities with lower credit ratings must pay higher interest rates to borrow funds or issue debt. In some cases, a low credit rating could block an entity's access to credit. Thus, it is in a borrower's economic interest to have a high credit rating. This creates the potential for an NRSRO to have inappropriate leverage over an issuer or obligor. The NRSRO could use this leverage to obtain business by threatening to issue or modify a credit rating in a manner that results in a lower rating than would have resulted from using its established methodologies. The NRSRO also could issue a lower rating or lower an existing rating to punish an issuer or obligor for not purchasing the credit rating or another service or product of the NRSRO and its affiliates. Conversely, the NRSRO could promise to issue or modify a credit rating in a manner that results in a higher rating than would have resulted from using its established methodologies as a reward for purchasing the credit rating or other services or products. Proposed Rule 17g–6 would provide a check on the potential inappropriate influence an NRSRO may have over issuers and obligors by prohibiting an NRSRO from using this leverage to coerce an issuer or obligor into purchasing a credit rating or other services and products of the NRSRO and its affiliates.

A second reason to prohibit these practices is that they would lead to credit ratings that could mislead the marketplace and undermine the regulatory use of NRSRO credit ratings. An NRSRO that follows through on a threat to issue a low credit rating or promise to issue a high credit rating would be issuing a credit rating that does not accurately reflect the credit rating agency's true assessment of the creditworthiness of the issuer or obligor. The credibility and reliability of an NRSRO and its credit ratings depends on the NRSRO developing and implementing sound methodologies for determining credit ratings and following those methodologies. The fact that an issuer or obligor agrees or refuses to purchase a credit rating or other service or product from the NRSRO and its affiliates should have no bearing on the NRSRO's credit assessment of the issuer or obligor.[274]

Section 15E(i)(1)(B) of the Exchange Act provides that the Commission by rule shall prohibit the following practices if the Commission determines they are unfair, coercive, or abusive:

> Lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the nationally recognized statistical rating organization[.][275]

In explaining this statutory provision, the Senate Report stated that "there may be instances when a rating agency may refuse to rate securities or money market instruments for reasons that are not intended to be anti-competitive." The Senate Report further stated that "the Commission * * * should prohibit only those ratings refusals that occur as part of unfair, coercive or abusive conduct."

This provision in the statute is seeking to address a practice, sometimes referred to as "notching," where a credit rating agency refuses to rate securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction (collectively, a "structured product") or discounts the rating for a structured product because it has not rated all of the underlying assets. Critics of this practice argue that it forces issuers of structured products to obtain credit ratings from the same credit rating agencies that rated the underlying assets.[276] They argue this makes it difficult for other credit rating agencies to develop a market in rating structured products. On the other hand, credit rating agencies that rate structured products argue that their rating of the structured product necessarily must involve assessments of the creditworthiness of the underlying assets. They do not believe it would be appropriate to rely on credit ratings of the underlying assets issued by another credit rating agency because those ratings may have been determined using different methodologies and may reflect different assessments of the creditworthiness of the asset.[277]

The Commission preliminarily determines that it would be unfair, coercive, or abusive for an NRSRO to issue or threaten to issue a lower credit rating, lower or threaten to lower an existing credit rating, refuse to issue a credit rating, or to withdraw a credit rating with respect to a structured product unless a portion of the assets underlying the structured product also are rated by the NRSRO. Consequently, the Commission proposes to prohibit these practices in paragraph (a)(4) of Proposed Rule 17g–6.

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[273] *See* Commission 2003 CRA Report, which noted that some participants in the Commission 2002 CRA Hearings believed that, even if the purchase of ancillary services did not impact the credit rating decision, issuers may be pressured into using the services out of fear that their failure to do so may adversely impact their credit rating.

[274] The Commission is mindful of the limitation in Section 15E(c)(2) of the Exchange Act that the rules the Commission adopts under the Exchange Act not regulate the substance of credit ratings (15 U.S.C. 78o–7(c)(2)). The Commission does not believe that this prohibition would interfere with the process by which an NRSRO assesses the creditworthiness of a security, money market instrument or obligor. An issuer's or obligor's agreement or refusal to pay the NRSRO or its affiliate for a service or product is not, necessarily of itself, relevant to a credit assessment of the issuer or obligor. Moreover, this is a practice that Congress specifically identified in Section 15E(i)(1)(C) of the Exchange Act as potentially unfair, coercive, or abusive (15 U.S.C. 78o–7(i)(1)(C)).

[275] 15 U.S.C. 78o–7(i)(1)(A).

[276] *See* Commission 2003 CRA Report, which noted that one credit rating agency that participated in the Commission 2002 CRA Hearings complained that other credit rating agencies were attempting to squeeze it out of certain structured finance markets by engaging in the practice of "notching."

[277] The Commission 2003 CRA Report noted that the credit rating agency that raised the concern about "notching" in Commission 2002 Hearings suggested, as a possible solution, that NRSROs be required to recognize the credit ratings of other NRSROs as their own for purposes of rating these asset pools.

At the same time, the Commission believes there could be legitimate reasons for an NRSRO to refuse to rate a structured product where the NRSRO has not rated the underlying assets. Therefore, the Commission is proposing that an NRSRO could refuse to initiate a rating or withdraw an existing rating in certain circumstances. This exception only would apply to the prohibition in paragraph (a)(4) against refusing to rate the security or withdrawing a rating. It would not apply to issuing or threatening to issue a lower credit rating or lowering or threatening to lower an existing credit rating.

Under the exception to the prohibition, an NRSRO could refuse to issue the rating or withdraw the rating if the NRSRO has rated less than 85% of the market value of the assets underlying the structured product. This is designed to address the concern that an NRSRO when assessing the credit worthiness of the structured product would be forced to issue a rating either when a portion of the underlying assets are not rated or when the underlying assets have been rated by another credit rating agency. If the underlying assets were unrated, the NRSRO may not have sufficient information for issuing a rating on the structured product. In cases where the underlying assets were rated by another credit rating agency, the other credit rating agency may have used different methodologies to assess the creditworthiness of the asset and may have determined a credit rating that is different than the credit rating the NRSRO would issue, if it had rated the asset. The Commission preliminarily does not believe it would be appropriate to require the NRSRO to issue or maintain a rating when the NRSRO has rated less than 85% of the market value of the underlying assets.[278]

Finally, the Commission is proposing to prohibit a practice that is not specifically identified in Section 15E(i)(1) of the Exchange Act[279] but is related to the practices described in the statute. Specifically, the Commission has preliminarily determined that it would be unfair, coercive or abusive to issue an unsolicited credit rating and communicate with the rated person to induce or attempt to induce the rated person to pay for the rating or another product or service of the NRSRO or its affiliates. Consequently, paragraph (a)(5) of proposed Rule 17g–6 would prohibit this practice.

It may be appropriate for an NRSRO that operates under a business model where issuers or obligors pay for the credit ratings to issue a credit rating that the issuer or obligor has not requested. For example, an NRSRO may want to have an active credit rating for every major issuer in a given industry.

It would not be appropriate, however, to determine an unsolicited credit rating and then to contact the issuer or obligor to solicit them to pay for the rating.[280] As discussed, an NRSRO may yield a degree of influence on issuers and obligors, given the impact a credit rating can have on the issuer's or obligor's access to credit and cost of credit. Thus, an issuer or obligor may agree to pay for an unsolicited credit rating to placate the NRSRO, rather than because they want to be rated. For example, the issuer or obligor may already be paying other credit rating agencies for a credit rating and, therefore, would derive no additional benefit from having an additional credit rating.

The Commission requests comment on all aspects of proposed Rule 17g–6, particularly on whether the proposed rule's requirements that prohibit certain acts and practices could be more narrowly tailored and still meet the stated goals. The Commission also requests comment on whether there are any other unfair, coercive, or abusive practices which should be prohibited under the proposed rules, or whether any of the practices proposed to be prohibited should not be subject to prohibition. The Commission further requests comment on whether any of the proposed prohibitions should be modified. With respect to the exception to the prohibition in paragraph (a)(4) of the Rule 17g–6, the Commission requests comment on whether the proposed exception permitting an NRSRO to refuse to issue a credit rating or withdraw a credit rating of structured product when it has not rated all the underlying assets should be modified or deleted and whether the 85% threshold in that exception should be higher or lower.

## IV. Paperwork Reduction Act

Certain provisions of the proposed rules contain a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[281] The Commission has submitted the proposed rules to the Office of Management and Budget ("OMB") for review in accordance with the PRA. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:

(1) Rule 17g–1, Application for registration as a nationally recognized statistical rating agency; Form NRSRO and the Instructions for Form NRSRO;

(2) Rule 17g–2, Records to be made and retained by national recognized statistical rating organizations;

(3) Rule 17g–3, Annual audited financial statements to be furnished by nationally recognized statistical rating organizations;

(4) Rule 17g–4, Prevention of Misuse of Material Nonpublic Information; and

(5) Rule 17g–6, Prohibited Acts and Practices.

### *A. Collections of Information Under the Proposed Amendments*

The Commission is proposing for comment rules to implement registration, recordkeeping, financial reporting, and oversight rules under the Credit Rating Agency Reform Act of 2006 (the "Act").[282] The proposed rules contain recordkeeping and disclosure requirements that are subject to the PRA. The collection of information obligations imposed by the proposed rules would be mandatory. The proposed rules, however, would apply only to credit rating agencies that are registered with the Commission as NRSROs and registration is voluntary.[283]

In summary, the proposed rules would require an NRSRO to: (1) Complete an initial application for registration on Form NRSRO;[284] (2) provide written notice to the Commission if information submitted on the application is materially inaccurate, as well as furnishing an updated Form NRSRO to the Commission, prior to final action by the Commission;[285] (3) if applicable, provide a written notice of withdrawal of the application prior to final action

[278] Anecdotally, the Commission understands that several of the credit rating agencies currently subject to a staff no-action letter have procedures under which they will undertake to issue a credit rating for a structured product where they have rated approximately 80% to 90% of the market value of the underlying assets.

[279] 15 U.S.C. 78o–7(i)(1).

[280] As discussed above, some participants in the Commission 2002 CRA Hearings questioned the appropriateness of unsolicited credit ratings because they could be used to engage in "strong-arm" tactics to induce payment for a credit rating an issuer did not request. Potential tactics identified included sending a bill for an unsolicited rating or sending a fee schedule and encouraging payment. *See* Commission 2003 CRA Report.

[281] 44 U.S.C. 3501 *et seq.* 5 CFR 1320.11.

[282] Pub. L. No. 109–291 (2006).

[283] *See* Section 15E of the Exchange Act (15 U.S.C. 78o–7)).

[284] Section 15E(a)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1)) and proposed Rule 17g–1(a).

[285] Proposed Rule 17g–1(c); *see also* Section 15E(a)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1)).

by the Commission; [286] (4) make the current Form NRSRO, including non-confidential exhibits, publicly available on its Web site or through another comparable, readily accessible means; [287] (5) if applicable, apply to be registered for an additional category of credit ratings by furnishing an amended Form NRSRO; [288] (6) update its Form NRSRO after registration with the Commission; [289] (7) furnish an annual certification to the Commission with respect to Form NRSRO; [290] (8) if applicable, provide a written notice of withdrawal of registration; [291] (9) make, keep and preserve certain records; [292] (10) if applicable, furnish the Commission with an undertaking from a third-party custodian; [293] (11) if applicable, provide an undertaking with respect to producing records to the Commission; [294] (12) furnish the Commission with annual audited financial statements; [295] (13) develop procedures to prevent the misuse of material nonpublic information; [296] and (14) if applicable, document, in writing, the reason for refusing to initiate a rating, or withdrawing an existing rating, with respect to an asset-backed or mortgaged-backed security.[297] Many of these requirements are prescribed in Section 15E of the Exchange Act.[298]

*B. Proposed Use of Information*

Proposed Rules 17g–1 through 17g–6, Form NRSRO, and the Instructions for Form NRSRO, would create a framework for Commission oversight of NRSROs. The collections of information in the proposed rules are designed to allow the Commission to determine whether an entity should be registered as an NRSRO. Further, they would assist the Commission in effectively monitoring, through its examination function, whether an NRSRO is conducting its activities in accordance with Section 15E of the Exchange Act [299] and the rules thereunder. These proposed rules also are designed to assist users of credit ratings by requiring the disclosure of information with respect to an NRSRO that could be used to compare the credit ratings quality of different NRSROs. The information would include methods for determining credit ratings, organizational structure, policies for managing material, non-public information, information regarding conflicts of interest, policies for managing conflicts of interest, credit analyst experience, and management experience. As noted in the Senate Report accompanying the Act, the information that NRSROs would have to make public "will facilitate informed decisions by giving investors the opportunity to compare ratings quality of different firms." [300]

*C. Respondents*

The number of respondents that would be subject to the proposed rules would depend, in part, on the number of entities that meet the statutory requirements to be eligible for registration. The Act, by adding definitions to Section 3 of the Exchange Act,[301] identifies the types of entities that may apply for registration with the Commission as an NRSRO.[302] First, it defines an "NRSRO" as a "credit rating agency" that, in pertinent part, has been in business as a credit rating agency for at least three consecutive years immediately preceding the date of its application for registration; issues credit ratings certified by 10 QIBs (unless exempted from that requirement) with respect to financial institutions, brokers, dealers, insurance companies, corporate issuers, issuers of asset-backed securities (as that term defined in 17 CFR 229.1101(c)), issuers of government securities, issuers of municipal securities, or issuers of foreign government securities; and is registered with the Commission.[303]

Section 3 of the Exchange Act also defines the term "credit rating agency" as, in pertinent part, any person engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee; employing either a quantitative or qualitative model, or both, to determine credit ratings; and receiving fees from either issuers, investors, or other market participants, or a combination of these persons.[304] The definition specifically excludes a commercial credit reporting company.[305] Finally, Section 3 of the Exchange Act defines the term "credit rating" to mean "an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments." [306]

These definitions create threshold eligibility requirements with respect to the entities that would be eligible to apply for registration as an NRSRO. Because NRSROs have not previously been supervised as such, and because credit rating agencies include publicly and privately held companies located throughout the world, it is difficult to estimate the number of entities that would be eligible to register as NRSROs.

In 2000, a working group of the Basel Committee on Banking Supervision [307] issued a report on credit rating agencies that was based, in part, on surveys of 28 credit rating agencies located around the world, including the five credit rating agencies currently identified as NRSROs through the Commission's no-action letter process.[308] In its report, the working group estimated that there were approximately 150 credit rating agencies located world-wide.[309] The working group also noted that there was a wide disparity in size among credit rating agencies in terms of number of employees and credit ratings issued.[310] In addition, the working group noted

[286] Proposed Rule 17g–1(b)(2); *see also* Section 15E(a)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1)).

[287] Section 15E(a)(3) of the Exchange Act (15 U.S.C. 78o–7(a)(3)) and proposed Rule 17g–1(d).

[288] Proposed Rule 17g–1(e).

[289] Section 15E(b)(1) of the Exchange Act (15 U.S.C. 78o–7(b)(1)) and proposed Rule 17g–1(f).

[290] Section 15E(b)(2) of the Exchange Act (15 U.S.C. 78o–7(b)(2)) and proposed Rule 17g–1(g).

[291] Section 15E(e)(1) of the Exchange Act (15 U.S.C. 78o–7(e)(1)) and proposed Rule 17g–1(h).

[292] Proposed Rule 17g–2 under authority in Section 17(a)(1) of the Exchange Act (15 U.S.C. 78q(a)(1)).

[293] Proposed Rule 17g–2(e) under authority in Section 17(a)(1) of the Exchange Act (15 U.S.C. 78q(a)(1)).

[294] Proposed Rule 17g–2(f) under authority in Section 17(a)(1) of the Exchange Act (15 U.S.C. 78q(a)(1)).

[295] Section 15E(k) of the Exchange Act (15 U.S.C. 78o–7(k)) and Proposed Rule 17g–3.

[296] Section 15E(g) of the Exchange Act (15 U.S.C. 78o–7(g)) and proposed Rule 17g–4.

[297] *See* Proposed Rule 17g–6(b)(2) under authority in Section 17(a)(1) of the Exchange Act (15 U.S.C. 78q(a)(1)).

[298] *See* 15 U.S.C. 78o–7.

[299] 15 U.S.C. 78o–7.

[300] *See Report of the Senate Committee on Bonking, Housing, ond Urban Affoirs to Accompony S. 3850*, Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) ("Senate Report").

[301] 15 U.S.C. 78c.

[302] *See* Section 3 of the Act.

[303] Section 3(a)(62) of the Exchange Act (15 U.S.C. 78c(a)(62)). Section 3(a)(64) of the Exchange Act defines the "qualified institutional buyer" ("QIB") as having the "meaning given such term in [17 CFR 230.144A(a)] or any successor thereto." 15 U.S.C. 78c(a)(62).

[304] Section 3(a)(61) of the Exchange Act (15 U.S.C. 78c(a)(61)).

[305] Section 3(a)(61)(A) of the Exchange Act (15 U.S.C. 78c(a)(61)(A)).

[306] Section 3(a)(60) of the Exchange Act (15 U.S.C. 78c(a)(60)).

[307] The Basel Committee on Banking Supervision is comprised of members from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States. Countries are represented by their central bank and also by the authority with formal responsibility for the prudential supervision of banking business where this is not the central bank. More information about the Basel Committee for Banking Supervision can be found at: *http://www.bis.org/*.

[308] *Credit Rotings ond Complementory Sources of Credit Quolity Information*, Working group of the Basel Committee on Banking Supervision, No. 3—August 2000 ("*Bosel Report*").

[309] *Id.*

[310] *Id.*

that some credit rating agencies focus exclusively on issuers in the countries where they are located.[311] More recently, the Web site *http://www.DefaultRisk.com* has tracked the number of credit rating agencies. This site identifies 57 credit rating agencies as of February 2006 and indicates that this count reflects a decrease from a previous count of 74.[312] The Web site attributed the decrease to smaller firms either being consolidated into larger firms or ceasing operations.[313]

The Commission believes the estimates in the 2000 *Basel Report* and by *DefaultRisk.Com* provide some basis upon which to estimate the number of entities engaging in the business of issuing credit ratings. The Commission, however, cannot determine whether the entities included in these estimates would meet the statutory requirements to apply for, and be registered as, an NRSRO.

In addition, the Commission cannot estimate with certitude how many credit rating agencies ultimately would opt to be registered as NRSROs. Section 15E(a)(1) of the Exchange Act makes registration voluntary.[314] Some credit rating agencies may decide not to seek registration because, for example, they do not believe that being an NRSRO would benefit them based on their business model. The Commission staff's experience with the current no-action letter process of identifying NRSROs provides some support for the conclusion that a substantial number of credit rating agencies may not apply for registration. Specifically, assuming the number of credit rating agencies has fluctuated over the years from between approximately 150 as of 2000 (*Basel Report*) and 57 as of February 2006 (*DefaultRisk.com*), then a large majority of these firms have not applied to the Commission to be identified as NRSROs under the current no-action letter process. It is possible that certain firms that did not seek NRSRO status previously would seek it under Section 15E of the Exchange Act[315] and any rules adopted thereunder. In addition, the use of QIB certifications as a prerequisite to registration (as opposed to the no-action letter process which evaluated national recognition) also may increase the number of credit rating agencies that would be eligible for registration as an NRSRO.

For all these reasons, the Commission estimates that the number of credit rating agencies applying for registration would be larger than the sum of the number of credit rating agencies currently identified as NRSROs plus the handful of entities with pending requests for no-action letters. At the same time, the Commission does not believe that all of the 57 credit rating agencies identified by *DefaultRisk.Com* would apply for, or be granted, registration. Consequently, the Commission estimates that approximately 30 credit rating agencies would be registered as NRSROs under Section 15E of the Exchange Act.[316]

The Commission requests comment on this estimate and whether more or fewer credit rating agencies would be registered as NRSROs. The Commission also requests comment on whether the sources of industry information used in arriving at the estimate (the *Basel Report* and the *DefaultRisk.Com* Web site) provide a reasonable basis for arriving at the estimate of 30 NRSROs. The Commission further requests comment on whether there are other industry sources that could provide credible statistics that could be used to determine the number of credit rating agencies that would be registered as NRSROs. Commenters should identify any such sources and explain how a given source would be used to either support the Commission's estimate of 30 NRSROs or arrive at a different estimate.

*D. Total Annual Recordkeeping and Reporting Burden*

As discussed in further detail below, the Commission estimates the total recordkeeping burden resulting from these proposed rules would be approximately 16,021 hours[316a] on an annual basis and 21,825 hours[316b] on a one-time basis.

The total annual and one-time hour burden estimates described below are averages across all types of expected NRSROs. The size and complexity of NRSROs would range from small entities to entities that are part of complex global organizations employing thousands of credit analysts. The Commission believes that larger NRSROs generally would have established written policies and procedures and recordkeeping systems that would comply with a substantial portion of the requirements in the proposed rules. For example, many of the requirements in the proposed rules are consistent with the IOSCO Code, which a number of credit rating agencies have adopted. These firms might only be required to augment or modify existing policies and procedures and recordkeeping systems to comply with the proposed rules.

Some smaller entities also would have implemented the policies, procedures, and recordkeeping systems necessary to comply with the proposed rules. Moreover, given their smaller size and simpler structure, smaller entities would require significantly fewer hours to comply with a substantial portion of the requirements in the proposed rules. Consequently, the burden hour estimates represent the average time across all NRSROs (regardless of size) and taking into account that many firms would only need to augment existing policies, procedures, and recordkeeping systems and processes to comply with the proposed rules. The Commission further notes that, given the significant variance in size between the largest credit rating agencies and the smaller firms, the burden estimates, as averages across all NRSROs, are skewed higher by the largest firms. Furthermore, because the Commission is proposing to require additional information in Form NRSRO beyond that prescribed in Section 15E(1)(B) of the Exchange Act,[317] the burden estimates for proposed Rule 17g–1 include estimates that arise from requirements imposed by Section 15E of the Exchange Act.[318] The intent is to quantify the incremental burden of complying with these statutory requirements as a result of the additional information that would be required under proposed Rule 17g–1. Thus, the estimates do not seek to capture paperwork burden that would be solely attributable to requirements in Section 15E of the Exchange Act.[319]

The Commission seeks comment on whether these factors have been reasonably incorporated into the burden estimates.

1. Proposed Rule 17g–1, Form NRSRO and Instructions for Form NRSRO

Section 15E(a)(1) of the Exchange Act requires a credit rating agency applying for registration with the Commission to furnish an application containing certain specified information and such other information as the Commission prescribes as necessary or appropriate in

[311] *Id.*

[312] *See http://www.defaultrisk.com* ("*DefaultRisk.com*").

[313] *Id.*

[314] 15 U.S.C. 78o–7(a)(1).

[315] 15 U.S.C. 78o–7.

[316] 15 U.S.C. 78o–7.

[316a] This total is derived from the total annual hours set forth in the order that the totals appear in the text: 1 + 1,500 + 300 + 300 + 7,620 + 6,000 + 300 = 16,021 hours.

[316b] This total is derived from the total one-time hours set forth in the order that the totals appear in the text: 9,000 + 125 + 900 + 9,000 + 100 + 1,500 = 21,825 hours.

[317] 15 U.S.C. 78o–7(a)(1)(B).

[318] 15 U.S.C. 78o–7.

[319] *Id.*

the public interest or for the protection of investors.[320] Proposed Rule 17g–1 would implement this statutory provision by requiring a credit rating agency to furnish an initial application on Form NRSRO to the Commission to apply to be registered under Section 15E of the Exchange Act.[321] The Commission estimates that the average time necessary to complete the initial Form NRSRO, and compile the various attachments, would be approximately 300 hours per applicant. This estimate is based on staff experience with the current NRSRO no-action letter process.[322] The Commission, therefore, estimates that the total one-time burden to the industry as a result of this requirement would be approximately 9,000 hours.[323]

The Commission also anticipates that an NRSRO likely would engage outside counsel to assist it in the process of completing and submitting a Form NRSRO. The amount of time an outside attorney would spend on this work would depend on the size and complexity of the NRSRO. Therefore, the Commission estimates that, on average, an outside counsel would spend approximately 40 hours assisting an NRSRO in preparing its application for registration for a one-time aggregate burden to the industry of 1,200 hours. The Commission further estimates that this work would be split between a partner and associate, with an associate performing a majority of the work. Therefore, the Commission estimates that the average hourly cost for an outside counsel would be approximately $400 per hour. For reasons, the Commission estimates that the average one-time cost to an NRSRO would be $16,000[324] and the one-time cost to the industry would be $480,000.[325]

As noted, proposed Rule 17g–1 would require a credit rating agency to provide the Commission with a written notice if it intends to withdraw its application prior to final Commission action. Based on staff experience, the Commission estimates that one credit rating agency per year would withdraw a Form NRSRO prior to final Commission action on the application and, consequently, would furnish a notice of its intent to withdraw the application. Based on the Commission's current estimates for a broker-dealer to file a notice with the Commission under Rule 17a–11, the Commission estimates the average burden to an NRSRO to furnish the notice of withdrawal would be one hour.[326] Thus, the Commission estimates that the aggregate annual burden to the industry of providing a notice of withdrawal prior to final Commission action would be one hour per year.[327]

Proposed Rule 17g–1 also would require that an NRSRO registered for fewer than the five categories of credit ratings listed in Section 3(a)(62)(B) of the Exchange Act would apply to be registered for an additional category by furnishing an amendment on Form NRSRO.[328] The Commission estimates that it would take an NRSRO substantially less time to update the Form NRSRO for this purpose than to prepare the initial application. For example, much of the information on the form and many of the exhibits would still be current and not have to be updated. Based on the Commission's estimate of the burden to complete a Form ADV, the Commission estimates that filing an amended Form NRSRO for this purpose would take an average of approximately 25 hours per NRSRO.[329]

The Commission further estimates based on staff experience that approximately five of the 30 credit rating agencies expected to register with the Commission would apply to register for additional categories of credit ratings within the first year. The Commission believes that almost all NRSROs would initially apply to register for the first three categories of credit ratings identified in the definition of NRSRO: (1) Financial institutions, brokers, or dealers; (2) insurance companies; and (3) corporate issuers.[330] The Commission believes these are the most common types of credit ratings issued, particularly since some credit rating agencies limit their credit ratings to domestic companies. The Commission believes that, after these three categories, the next largest category of credit ratings for which most NRSROs would be registered would be for credit ratings with respect to issuers of government securities, municipal securities, and foreign government securities.[331] These types of credit ratings take additional expertise. Finally, the Commission believes the category of credit ratings for which the least number of NRSROs would be registered would be credit ratings of issuers of asset-backed securities (as that term defined in 17 CFR 229.1101(c)).[332] This assumption is based on the fact that determining a credit rating for an asset-backed security takes specialized expertise beyond that for determining credit ratings of corporate issuers and obligors. For example, it requires analysis of complex legal structures.

For these reasons, the Commission anticipates that a number of NRSROs may register for less than all five categories of credit ratings. Moreover, some of these NRSROs , in time, may develop their businesses to include issuing credit ratings of a category for which they are not initially registered. Based on staff experience, the Commission estimates that approximately five of the estimated 30 NRSROs would apply to add another category of credit ratings to their registration within the first year. Therefore, given the 25 hour per NRSRO average burden estimate, the total aggregate one-time burden to the industry for filing the amended Form NRSRO to change the scope of registration would be approximately 125 hours.[333]

Section 15E(b)(1) of the Exchange Act requires an NRSRO to promptly amend its application for registration if any information or document provided in the application becomes materially inaccurate.[334] Proposed Rule 17g–1 would require an NRSRO to comply with this statutory requirement by furnishing the amendment on Form NRSRO. Based on staff experience, the Commission estimates that an NRSRO would file two amendments of its Form NRSRO per year on average. Furthermore, for the reasons discussed above, the Commission estimates that it would take an average of approximately 25 hours to prepare and furnish an amendment on Form NRSRO.[335] Therefore, the Commission estimates that the total aggregate annual burden to the industry to update Form NRSRO

[320] 15 U.S.C. 78a–7(a)(1).

[321] 15 U.S.C. 78o–7.

[322] As a comparison, the Commission notes that Form ADV, the registration form for investment advisers, is estimated to take approximately 22.25 hours to complete. *See* Investment Advisor Act of 1940 Release No. 2266 (July 20, 2004). The Commission estimates that the hour burden under Rule 17g–1 would be greater, given the substantially larger amount of information that would be required in proposed Form NRSRO.

[323] 300 hours × 30 entities = 9,000 hours.

[324] $400 per hour × 40 hours = $16,000.

[325] $16,000 × 30 NRSROs = $480,000.

[326] *See* Exchange Act Release No. 49830 (June 8, 2004), at note 89; *see also* 17 CFR 240.17a–11.

[327] (1 hour × 1 entity) = 1 hour.

[328] *See* proposed Rule 17g–1(e).

[329] As noted above, the Commission's burden estimate for Form ADV is approximately 22.25 hours to complete. *See* Investment Advisor Act of 1940 Release No. 2266 (July 20, 2004).

[330] Section 3(a)(62)(B) of the Exchange Act (15 U.S.C. 78c(a)(62)(B)).

[331] Section 3(a)(62)(B)(v) of the Exchange Act (15 U.S.C. 78c(a)(62)(B)(v)).

[332] Section 3(a)(62)(B)(iv) of the Exchange Act (15 U.S.C. 78c(a)(62)(B)(iv)).

[333] 25 hours × 5 NRSROs = 125 hours.

[334] 15 U.S.C. 78o–7(b)(1).

[335] This estimate also is based on the estimates for the collection of information on Rule 17i–2 of the Exchange Act. *See* 17 CFR 240.17i–2.

would be approximately 1,500 hours each year.[336]

Section 15E(b)(2) of the Exchange Act requires an NRSRO to furnish an annual certification.[337] Proposed Rule 17g–1 would require an NRSRO to furnish the annual certification on Form NRSRO.[338] The Commission estimates that the annual certification, generally, would take less time than an amendment to Form NRSRO because it would be done on a regular basis (albeit yearly) and, therefore, become more a matter of routine over time. Consequently, the Commission estimates that the burden would be similar to that of broker-dealers filing the quarterly reports required under Rules 17h–1T and 17h–2T, which is approximately 10 hours per year for each respondent.[339] Therefore, the Commission estimates it would take an NRSRO approximately 10 hours to complete the annual certification for a total aggregate annual hour burden to the industry of 300 hours.[340]

Finally, section 15E(a)(3) of the Exchange Act requires an NRSRO to make the information and documents submitted in its application publicly available on its Web site or through another comparable readily-accessible means.[341] Proposed Rule 17g–1 would require that this be done within five business days of the granting of an NRSRO's registration or the furnishing of an amendment to the form or annual certification.[342] The Commission assumes that each NRSRO already would have a Web site and would choose to use their Web site to comply with Section 15E(a)(3) of the Exchange Act (15 U.S.C. 78o–7(a)(3)). Therefore, based on staff experience, the Commission estimates that, on average, an NRSRO would spend 30 hours to disclose the information in its initial application on its Web site and, thereafter, 10 hours per year to disclose updated information. Accordingly, the total aggregate one-time burden to the industry to make Form NRSRO publicly available would be 900 hours[343] and the total aggregate annual burden would be 300 hours.[344]

2. Proposed Rule 17g–2

Section 17(a)(1) of the Exchange Act (as amended by the Act)[345] provides the Commission with authority to require an NRSRO to make and maintain such records as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act.[346] Proposed Rule 17g–2 would implement this rulemaking authority by requiring an NRSRO to make and keep current certain records relating to its business. In addition, the proposed rule would require an NRSRO to preserve those and other records for certain prescribed time periods. This proposed rule is designed to assist the Commission monitor, through its examination function, whether NRSROs are complying with the requirements of Section 15E of the Exchange Act[347] and the regulations thereunder. The Commission estimates that the average one-time burden of implementing a recordkeeping system to comply with this proposed rule would be approximately 300 hours. This estimates is based on the Commission's experience with, and burden estimates for, certain recordkeeping requirements of consolidated supervised entities ("CSEs") subject to Commission supervision.[348]

The Commission also estimates that an NRSRO may need to purchase recordkeeping system software to establish a recordkeeping system in conformance with the proposed rule. The Commission estimates that the cost of the software would vary based on the size and complexity of the NRSRO. Also, the Commission estimates that some NRSRO's would not need such software because they already have adequate recordkeeping systems or, given their small size, such software would not be necessary. Based on these estimates, the Commission estimates that the average cost for recordkeeping software across all NRSROs would be approximately $1000 per firm. Therefore, the one-time cost to the industry would be $30,000.

Additionally, the Commission estimates that the average annual amount of time that an NRSRO would spend to make and maintain these records would be approximately 254 hours per year. The estimate for annual hours is based on the Commission's present estimate the amount of time it would take a broker-dealer to comply with the recordkeeping rule, Rule 17a–4.[349] Therefore, the Commission estimates that the one-time hour burden for making and preserving the records under proposed Rule 17g–2 would be approximately 9,000 hours[350] and the total annual hour burden would be approximately 7,620 hours per year.[351]

Proposed Rule 17g–2 also would require that an NRSRO that uses a third-party record custodian furnish the Commission with an undertaking from the custodian. Based on staff experience, the Commission estimates that approximately five NRSROs would file this undertaking on a one-time basis. Proposed Rule 17g–2 also would require that a non-resident NRSRO provide an undertaking to the Commission. The Commission estimates, based on staff experience, approximately five non-resident NRSROs would provide this undertaking to the Commission. The Commission estimates, based on staff experience, it would take an NRSRO approximately 10 hours to complete an undertaking prior to furnishing it to the Commission.[352] Therefore, the Commission estimates the total one-time hour burden for these undertakings would be 100 hours.[353]

3. Proposed Rule 17g–3

Section 15E(k) of the Exchange Act requires an NRSRO to furnish to the Commission, on a confidential basis and at intervals determined by the Commission, such financial statements and information concerning its financial condition that the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[354] The section also provides that the Commission may, by rule, require that the financial statements be certified by an independent public accountant.[355]

[336] 25 hours per amendment × 2 amendments × 30 NRSROs = 1,500 hours.

[337] 15 U.S.C. 78o–7(b)(2).

[338] *See* proposed Rule 17g–1(g).

[339] *See* 17 CFR 240.17h–1T and 2T.

[340] 10 hour × 30 NRSROs = 300 hours.

[341] 15 U.S.C. 78o–7(a)(3).

[342] *See* proposed Rule 17g–1(d).

[343] 30 hours × 30 NRSROs.

[344] 10 hours × 30 NRSROs.

[345] *See* Section 5 of the Act.

[346] *See* Section 5 of the Act and 15 U.S.C. 78q(a)(1).

[347] 15 U.S.C. 78o–7.

[348] *See* 17 CFR 15c3–1g.

[349] *See* 17 CFR 240.17a–4 (recordkeeping requirements for broker-dealers). This rule has previously has been subject to notice and comment and has been approved by OMB. The Commission notes that proposed Rule 17g–2 is based, in part, on Exchange Act Rules 17a–3 (17 CFR 240.17a–3) and 17a–4. The annual hour burden estimate for the proposed rule, however, is based only on the PRA estimate for Rule 17a–4. The proposed rule would require substantially less records to be made and maintained than Rules 17a–3 and 17a–4. Therefore, the Commission is basing its estimate that the burden estimate for only Rule 17a–4 (as opposed to Rules 17a–3 and 17a–4 combined).

[350] 300 hours × 30 NRSROs = 9,000 hours.

[351] 254 hours × 30 NRSROs = 7,620 hours.

[352] The estimated 10 hours includes drafting, legal review and receiving corporate authorization to file the undertaking with the Commission.

[353] (10 hours × 5 NRSROs) + (10 hours × 5 NRSROs) = 100 hours.

[354] 15 U.S.C. 78o–7(k).

[355] *Id.*

Proposed Rule 17g–3 would implement this statutory provision by requiring an NRSRO to furnish audited annual financial statements to the Commission, including certain specified schedules.[356] The Commission estimates that, on average, it would take an NRSRO approximately 200 hours to prepare for and file the annual audit. This estimate is based on the current PRA estimates used for CSEs under Appendix G to Exchange Act Rule 15c3–1, as well the PRA estimates for supervised investment bank holding companies under Rule 17i–5.[357] Therefore, the Commission estimates that the total annual hour burden to prepare and furnish annual audited financial statements with the Commission would be approximately 6,000 hours.[358]

To comply with proposed Rule 17g–3, an NRSRO would need to engage the services of independent public accountant. The cost of hiring an accountant would vary substantially based on the size and complexity of the NRSRO. For example, the Commission notes, based on staff experience, that the annual audit costs of a small broker-dealer generally range from $3,000 to $5,000 a year. The Commission estimates that the annual audit costs for a small NRSRO would be comparable. The costs for a large NRSRO would be much greater. However, many of these firms already are audited by a public accountant for other regulatory purposes. These firms, however, may incur some incremental costs, given the schedules in proposed Rule 17g–3. For these reasons, the Commission estimates that the average annual cost across all NRSROs to engage the services of an independent public accountant would be approximately $15,000. Therefore, the annual cost to the industry would be $450,000.[359]

4. Proposed Rule 17g–4

Section 15E(g)(1) of the Exchange Act[360] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act.[361] Section 15E(g)(2) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO to establish specific policies and procedures to prevent the misuse of material, non-public information.[362] Proposed Rule 17g–4 would implement this statutory provision by requiring that an NRSRO's policies and procedures established pursuant to Section 15E(g)(1) of the Exchange Act[363] include three specific types of procedures.[364]

The Commission expects that most credit rating agencies already have procedures in place to address the specific misuses of material nonpublic information identified in proposed Rule 17g–4.[365] Nonetheless, the Commission anticipates that some NRSROs may need to modify their procedures to comply with the specific procedures that would be required by the proposed rule. Based on staff experience, the Commission estimates that it would take approximately 50 hours for an NRSRO to establish procedures in conformance with the proposed rule for a total one-time burden of 1,500 hours.[366]

5. Proposed Rule 17g–6(b)

Proposed Rule 17g–6(b) would require an NRSRO using the exception in the rule to document in writing the reasons for refusing to issue a credit rating or withdrawing a credit rating in connection with a mortgaged-backed or asset-backed security. Based on staff experience, the Commission estimates that each NRSRO would need to document approximately five refusals per year and that it would take approximately two hours to create the record. The two hour estimate is based on staff experience and on the current one-hour estimate for a broker-dealer to file the notice under Rule 17a–11. The Commission has adjusted this estimate upwards to two hours because the Commission believes that an NRSRO would take longer to explain the applicability of the safe harbor than to explain the reasons for the notices required under Rule 17a–11. For these reasons, the Commission estimates that the total annual hour burden for this proposed rule would be 300 hours per year.[367]

*E. Collection of Information Is Mandatory*

These recordkeeping and notice requirements are mandatory, where applicable.

*F. Confidentiality*

Pursuant to section 15E(a)(1)(B) of the Exchange Act, certain information collected in Form NRSRO required under Rule 17g–1(a) would not be confidential. However, other information would be confidential under section 15E(a)(1)(B) of the Exchange Act and proposed Rule 17g–1(b). The Commission would keep this information confidential to the extent permitted by law. The books and records information collected under proposed Rules 17g–2, 17g–4, and 17g–6 would be stored by the NRSRO and made available to the Commission and its representatives as required in connection with examinations, investigations, and enforcement proceedings.

The information collected under Rule 17g–3 (the annual audited financial statements) would be generated from the internal records of the NRSRO. Pursuant to Section 15E(k) of the Exchange Act, the annual audit would be furnished to the Commission on a confidential basis, to the extent permitted by law.[368]

*G. Record Retention Period*

Paragraph (c) of proposed Rule 17g–2 would require an NRSRO to retain the records for at least three years, except records relating to customers would need to be retained until three years after the business relationship with the customer ended.[369]

*H. Request for Comment*

The Commission requests comment on the proposed collections of information in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (4) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (5) evaluate whether the proposed rules would have any effects on any other collection of information not previously identified in this section.

Persons who desire to submit comments on the collection of information requirements should direct

[356] *See* proposed Rule 17g–3.

[357] *See* 17 CFR 240.15c3–1g and 17i–5.

[358] 200 hours × 30 NRSROs = 6,000 hours.

[359] $15,000 ×30 NRSROs = $450,000.

[360] 15 U.S.C. 78o–7(g)(1).

[361] 15 U.S.C. 78a *et seq.*

[362] 15 U.S.C. 78o–7(g)(2).

[363] 15 U.S.C. 78o–7(g)(1).

[364] *See* proposed Rule 17g–4.

[365] For example, the IOSCO Code requires credit rating agencies to develop such procedures.

[366] 50 hours × 30 NRSROs = 1,500 hours.

[367] (2 hours × 5 refusals) × 30 NRSROs = 300 hours.

[368] 15 U.S.C. 78o–7(k).

[369] *See* proposed Rule 17g–2(c).

their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, and refer to File No. S7–04–07. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the **Federal Register**; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–04–07, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549.

## V. Costs and Benefits of the Proposed Rules

The Commission is sensitive to the costs and benefits that result from its rules. The Commission has identified certain costs and benefits of the proposed rules and requests comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in the analysis.[370] The Commission seeks comment and data on the value of the benefits identified. The Commission also welcomes comments on the accuracy of its cost estimates in each section of this cost-benefit analysis, and requests those commenters to provide data so the Commission can improve the cost estimates, including identification of industry statistics relied on by commenters to reach conclusions on cost estimates. The Commission also seeks comment on the extent to which costs are attributable to requirements set forth in Section 15E of the Exchange Act,[371] rather than the proposed rules. Finally, the Commission seeks estimates and views regarding these costs and benefits for particular types of market participants, as well as any other costs or benefits that may result from the adoption of these proposed rules.

### *A. Benefits*

The purposes of the Credit Rating Agency Reform Act of 2006 (the "Act")[372] are to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry.[373] As the Senate Report states, the Act establishes "fundamental reform and improvement of the designation process," and "eliminating the artificial barrier to entry will enhance competition and provide investors with more choices, higher quality ratings, and lower costs."[374]

To these ends, the Act establishes—through statutory provisions and the grant of Commission rulemaking authority—a regulatory program for credit rating agencies opting to have their credit ratings qualify for purposes of laws and rules using the term "NRSRO." Specifically, the Act sets out a voluntary mechanism for credit rating agencies to register with the Commission as an NRSRO.[375] It requires an NRSRO to make public certain information to help users of credit ratings assess the NRSRO's credibility and compare the NRSRO with other NRSROs.[376] The Act also requires an NRSRO to furnish the Commission with periodic financial reports.[377] Further, the Act requires an NRSRO to implement policies to manage the handling of material non-public information and conflicts of interest.[378] Pursuant to authority under the Act, the Commission would prohibit certain acts and practices the Commission determines to be unfair, coercive, or abusive.[379]

The rules proposed by the Commission under the Act would be issued pursuant to specific grants of rulemaking authority in the Act. They are designed to further the goals of the Act. A primary purpose of the Act is to foster "competition in the credit rating agency business."[380] The practice of identifying NRSROs through staff no-action letters has been criticized as a process that lacks transparency and creates a barrier for credit rating agencies seeking wider recognition and market share. The Commission believes that these proposed rules further the Act's goal of increasing competition because they would provide credit rating agencies with a transparent process to apply for registration as an NRSRO that does not favor a particular business model or larger, established firms. This would make it easier for more credit rating agencies to apply for registration. Increased competition in the credit ratings business could lower the cost to issuers, obligors, and underwriters of obtaining credit ratings.

In addition, the Act requires NRSROs to make their credit ratings and information about themselves available to the public. Part of the definition of "credit rating agency" in the Act is that the entity must be in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee.[381] Under the Act and the rules proposed to be adopted thereunder, an NRSRO would need to disclose important information such as its credit ratings performance statistics, its methods for determining credit ratings, its organizational structure, its procedures to prevent the misuse of material non-public information, the conflicts of interest that arise from its business activities, its code of ethics, and the qualifications of its credit analysts, credit analyst supervisors and compliance personnel. The Commission believes that these disclosures under the

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[370] For the purposes of this cost/benefit analysis, the Commission is using salary data from the *SIA Report on Management and Professional Earnings in the Securities Industry 2005* ("SIA Management Report 2005"), which provides base salary and bonus information for middle-management and professional positions within the securities industry. The positions in the report are divided into the following categories: Accounting, Administration & Finance, Compliance, Customer Service, Floor/Trading, Human Resources Management, Internal Audit, Legal, Marketing/Corporate Communications, New Business Development, Operations, Research, Systems/Technology, Wealth Management, and Business Continuity Planning. The Commission believes that the salaries for these securities industry positions would be comparable to the salaries of similar positions in the credit rating industry. The Commission also notes that it is using salaries for New York-based employees, which tend to be higher than the salaries for comparable positions located outside of New York. This conservative approach is intended to capture unforeseen costs. Finally, the salary costs derived from the SIA Management Report 2005 and referenced in this cost benefit section, are modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[371] 15 U.S.C. 78o–7.

[372] Pub. L. No. 109–291 (2006).

[373] *See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850*, Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) ("Senate Report").

[374] *Id.*

[375] Section 15E of the Exchange Act (15 U.S.C. 78o–7).

[376] Sections 15E(a)(1) and (b)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1) and (b)(1)).

[377] Section 15E(k) of the Exchange Act (15 U.S.C. 78o–7(k)).

[378] Sections 15E(g) and (h) of the Exchange Act (15 U.S.C. 78o–7(g) and (h)).

[379] Section 15E(i) of the Exchange Act (15 U.S.C. 78o–7(i)).

[380] *See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850*, Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) ("Senate Report").

[381] Section 3(a)(61) of the Exchange Act (15 U.S.C. 78c(a)(61)).

proposed rules would allow users of the credit ratings to compare the ratings quality of different NRSROs. Although the information an NRSRO would provide on its Form NRSRO and to comply with the proposed rules cannot substitute for an investor's due diligence in evaluating a credit rating, it would aid investors by providing a publicly accessible foundation of basic information about an NRSRO.

In addition, the proposed rules implement provisions of the Act that are designed to improve the integrity of NRSROs. For example, the registration of a credit rating agency as an NRSRO would allow the Commission to conduct regular examinations of the credit rating agency to evaluate compliance with the regulatory scheme set forth in Section 15E of the Exchange Act [382] and the proposed rules and would subject an NRSRO to disclosure, recordkeeping, and annual audit requirements, as well as requirements regarding the prevention of misuse of material, nonpublic information, the management of conflicts of interest, and certain prohibited acts and practices. Increased confidence in the integrity of NRSROs and the credit ratings they issue could promote participation in the securities markets. Better quality ratings could also reduce the likelihood of an unexpected collapse of a rated issuer or obligor, reducing risks to individual investors and to the financial markets. In addition to improving the quality of credit ratings, increased oversight of NRSROs could increase the accountability of an NRSRO to its subscribers, investors, and other persons who rely on the credibility and objectivity of credit ratings in making an investment decision.

Proposed Rule 17g–1 prescribes a process for a credit rating agency to register with the Commission as an NRSRO.[383] This proposed rule would require a credit rating agency apply for registration using Form NRSRO. Proposed Form NRSRO would require that a credit rating agency provide information required under Section 15E(a)(1)(B) of the Exchange Act and certain additional information.[384] The additional information would assist the Commission in making the assessment regarding financial and managerial resources required under Section 15E(a)(2)(C)(ii)(I) of the Exchange Act.[385] This section directs the Commission to grant a credit rating agency's application for registration as an NRSRO unless, among other things, the Commission finds that the applicant does not have adequate financial and managerial resources to consistently issue ratings with integrity and to materially comply with its procedures and methodologies disclosed under Sections 15E(a)(1)(B) of the Exchange Act [386] and with the requirements in Sections 15E(g), (h), (i) and (j) of the Exchange Act.[387] Certain other additional information that would need to be made public would assist users of credit ratings in assessing the credibility of the NRSRO and to compare the NRSRO with other NRSROs.

Proposed Rule 17g–2 would implement the Commission's recordkeeping and rulemaking authority under Section 17(a) of the Exchange Act [388] by requiring an NRSRO to make and retain certain records related to its business as a credit rating agency.[389] The proposed recordkeeping rule would assist the Commission in monitoring whether an NRSRO is complying with provisions of Section 15E of the Exchange Act and the rules thereunder. This would include monitoring whether it is operating consistently with the methodologies and procedures it establishes (and discloses) to determine credit ratings and its policies and procedures designed to ensure the impartiality of its credit ratings.

Section 15E(k) of the Exchange Act requires an NRSRO to furnish to the Commission, on a confidential basis and at intervals determined by the Commission, such financial statements and information concerning its financial condition that the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[390] The section also provides that the Commission may, by rule, require that the financial statements be certified by an independent public accountant.[391] Proposed Rule 17g–3 would require an NRSRO to furnish annual audited financial statements to the Commission.[392] This proposed rule would enhance Commission oversight of an NRSRO. Specifically, it would aid the Commission in monitoring whether the initiation of a proceeding under Section 15E(d) of the Exchange Act would be appropriate because the NRSRO "fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity." [393] In addition, the audited financial statements also would assist the Commission in monitoring potential conflicts of interests of a financial nature which may arise in the operation of an NRSRO.[394]

Section 15E(g)(1) of the Exchange Act [395] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act.[396] Section 15E(g)(2) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO to establish specific policies and procedures to prevent the misuse of material, non-public information.[397] Proposed Rule 17g–4 would implement this statutory provision by requiring that an NRSRO's policies and procedures established pursuant to Section 15E(g)(1) of the Exchange Act [398] include three specific types of procedures.[399] These specific procedures would establish a baseline for the type of procedures an NRSRO must implement to meet the statutory requirement in Section 15E(g) of the Exchange Act.[400] In this way, the proposed rule is designed to ensure that an NRSRO establishes adequate procedures and controls to protect material nonpublic information.

Proposed Rule 17g–5 would implement Section 15E(h)(2) of the Exchange Act [401] by requiring an NRSRO to disclose and manage certain conflicts of interest, as well as specifically prohibiting other conflicts of interest.[402] The proposed rule would promote the disclosure and management of conflicts of interest required by Sections 15E(a)(1)(B)(vi) and 15E(h) of the Exchange Act and mitigate potential undue influences on an NRSRO's credit rating process.[403]

Proposed Rule 17g–6 would prohibit an NRSRO from engaging in certain unfair, abusive, or coercive acts or practices, including practices with

[382] 15 U.S.C. 78o–7.

[383] *See* proposed Rule 17g–1.

[384] *See* Section 15E(a)(1)(B) of the Exchange Act. 15 U.S.C. 78o–7(a)(1)(B). *See* Section III.C.2. (discussing the items included in Form NRSRO).

[385] *See* 15 U.S.C. 78o–7(a)(2)(C)(ii)(I).

[386] 15 U.S.C. 78o–7(a)(1)(B).

[387] 15 U.S.C. 78o–7(g), (h), (i) and (j).

[388] 15 U.S.C. 78q(a)(1).

[389] *See* proposed Rule 17g–2.

[390] 15 U.S.C. 78o–7(k).

[391] *Id.*

[392] *See* proposed Rule 17g–3.

[393] 15 U.S.C. 78o–7(d).

[394] *See e.g.*, proposed Rule 17g–5(c)(1) prohibiting an NRSRO from issuing or maintaining a credit rating for a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equaling or exceeding 10% of the NRSRO's total revenue for the year.

[395] 15 U.S.C. 78o–7(g)(1).

[396] 15 U.S.C. 78a *et seq.*

[397] 15 U.S.C. 78o–7(g)(2).

[398] 15 U.S.C. 78o–7(g)(1).

[399] *See* proposed Rule 17g–4.

[400] 15 U.S.C. 78o–7(g).

[401] 15 U.S.C. 78o–7(h)(2).

[402] *See* proposed Rule 17g–5.

[403] 15 U.S.C. 78o–7(a)(1)(B)(vi) and (h).

respect to unsolicited ratings.[404] These proposed prohibitions are designed to enhance the integrity of NRSROs, promote competition and fulfill a statutory mandate.

We request comment on available metrics to quantify these benefits and any other benefits the commenter may identify, including the identification of sources of empirical data that could be used for such metrics.

*B. Costs*

The Act requires that the rules and regulations that the Commission may prescribe under the Act "shall be narrowly tailored" to meet its requirements.[405] The rules proposed by the Commission are designed to adhere to this statutory mandate and, thereby, keep compliance costs as low as possible.

The cost of compliance to a given NRSRO would depend on its size and the complexity of its business activities. As discussed above, the size and complexity of credit rating agencies varies significantly. Therefore, it is difficult to quantify a cost per NRSRO. Instead, the Commission is providing estimates of the average cost per NRSRO taking into consideration the range in size and complexity of NRSROs and the fact that many already may have established policies, procedures and recordkeeping systems and processes that would comply substantially with the proposed requirements.

The Commission believes that larger NRSROs generally would already have established written policies and procedures and recordkeeping systems that would comply with a substantial portion of the requirements in the proposed rules. Many of the requirements in the proposed rules are consistent with the IOSCO Code, which a number of credit rating agencies (including the largest) have adopted. These firms would need to augment or modify existing policies and procedures and recordkeeping systems to comply with the proposed rules (rather than establish new ones). Some smaller credit rating agencies also have implemented the policies, procedures, and recordkeeping systems necessary to comply with the proposed rules. Moreover, given their smaller size and simpler structure, smaller entities would require less effort and incur less cost to comply with a substantial portion of the requirements in these proposed rules.

For these reasons, the cost estimates represent the average cost across all NRSROs (regardless of size) and take into account that many firms would only need to augment existing policies, procedures and recordkeeping systems and processes to come into compliance with the proposed rules. Furthermore, as discussed with respect to the Paperwork Reduction Act of 1995 ("PRA"),[406] the Commission is proposing to require additional information in Form NRSRO beyond that prescribed in Section 15E(1)(B) of the Exchange Act.[407] Therefore, the cost estimates for proposed Rule 17g–1 include estimates that arise from requirements imposed by Section 15E of the Exchange Act.[408] The intent is to quantify the incremental burden of complying with these statutory requirements as a result of the additional information that would be required under the proposed Rule 17g–1. Thus, those estimates do not seek to capture costs that would be solely attributable to requirements in Section 15E of the Exchange Act.[409] The Commission requests commenters to provide data for the costs that would be solely attributable to the requirements of Section 15E of the Exchange Act.

Given the estimates set forth below, the Commission estimates that the total one-time estimated cost to NRSROs resulting from these rule proposals would be approximately $4,936,325[410] and the total estimated annual cost to NRSROs resulting from these rule proposals would be approximately $3,955,500 per year.[411]

1. Proposed Rule 17g–1, Form NRSRO and Instructions to Form NRSRO

Section 15E(a)(1) of the Exchange Act requires a credit rating agency applying for registration with the Commission to furnish an application containing certain specified information and such other information as the Commission prescribes as necessary or appropriate in the public interest or for the protection of investors.[412] Proposed Rule 17g–1 would implement this statutory provision by requiring a credit rating agency to furnish an initial application on Form NRSRO to apply to be registered under section 15E of the Exchange Act.[413]

NRSROs would incur costs to register under Section 15E of the Exchange Act and proposed Rule 17g–1 thereunder.[414] As discussed above with respect to PRA, the Commission estimates that an NRSRO would spend approximately 300 hours to complete and furnish an initial Form NRSRO. Also, as discussed with respect to the PRA, the Commission estimates there would be 30 NRSROs. For these reasons, the Commission estimates that the average one-time cost to an NRSRO would be $66,900[415] and the total aggregate one-time cost to the industry would be $2,007,000.[416]

Also, as discussed with respect to the PRA, the Commission also anticipates that an NRSRO likely would engage outside counsel to assist it in the process of completing and submitting a Form NRSRO. The amount of time an outside attorney would spend on this work would depend on the size and complexity of the NRSRO. Therefore, the Commission estimates that, on average, an outside counsel would spend approximately 40 hours assisting an NRSRO in preparing its application for registration. The Commission further estimates that this work would be split between a partner and associate, with an associate performing a majority of the work. Therefore, the Commission estimates that the average hourly cost for an outside counsel would be approximately $400 per hour. For these reasons, the Commission estimates that the average one-time cost to an NRSRO would be $16,000[417] and the one-time cost to the industry would be $480,000.[418]

Under proposed Rule 17g–1, an NRSRO applying to be registered for an additional category of credit ratings would need to file an amended Form NRSRO with the Commission. As discussed with respect to the PRA, the Commission estimates, on average, an NRSRO would spend 25 hours completing and furnishing a Form NRSRO for this purpose. The Commission also estimates with respect to the PRA that five of the 30 NRSROs would apply to register for an additional

[404] *See* proposed Rule 17g–6.

[405] 15 U.S.C. 78o–7(c)(2).

[406] 44 U.S.C. 3501 *et seq.*; 5 CFR 1320.11.

[407] 15 U.S.C. 78o–7(a)(1)(B).

[408] 15 U.S.C. 78o–7.

[409] *Id.*

[410] This total is derived from the total one-time costs set forth in the order that they appear in the text: $2,007,000 + $480,000 + $25,625 + $30,000 + $241,200 + $1,845,000 + $307,500 = $4,936,325.

[411] This total is derived from the total annual costs set forth in the order that they appear in the text: $307,500 + $61,500 + $80,400 + $1,562,100 + $1,494,000 + $450,000 = $3,505,500.

[412] 15 U.S.C. 78o–7(a)(1).

[413] 15 U.S.C. 78o–7.

[414] There is no filing fee for a Form NRSRO.

[415] The Commission estimates that a credit rating agency would have a senior compliance examiner perform these responsibilities. The SIA Management Report 2005 (Senior Compliance Examiner) indicates that the average hourly cost for a senior compliance examiner is $223. Therefore, the average one-time cost per NRSRO would be approximately $66,900 [(300 hours) × ($223 per/hour)].

[416] 30 NRSROs × $66,900 = $2,007,000.

[417] $400 per hour × 40 hours = $16,000.

[418] $16,000 × 30 NRSROs = $480,000.

category of credit ratings. For these reasons, the Commission estimates that the average one-time cost to an NRSRO would be $5,125[419] and the total aggregate one-time cost to the industry would be $25,625.[420]

Furthermore, as discussed above with respect to the PRA, the Commission also estimates that an NRSRO may need to purchase recordkeeping system software to establish a recordkeeping system in conformance with the proposed rule. The Commission estimates that the cost of the software would vary based on the size and complexity of the NRSRO. Also, the Commission estimates that some NRSRO's would not need such software because they already have adequate recordkeeping systems or, given their small size, such software would not be necessary. Based on these estimates, the Commission estimates that the average cost for recordkeeping software across all NRSROs would be approximately $1000 per firm. Therefore, the one-time cost to the industry would be $30,000.[421]

Section 15E(b)(1) of the Exchange Act requires an NRSRO to promptly amend its application for registration if any information or document provided in the application becomes materially inaccurate.[422] Proposed Rule 17g–1 would require an NRSRO to comply with this statutory requirement by furnishing the amendment on Form NRSRO. As discussed with respect to the PRA, the Commission estimates that an NRSRO would furnish two amendments on Form NRSRO per year on average. The Commission also estimates with respect to the PRA that it would take approximately 25 hours to prepare and furnish an amendment and that there would be 30 NRSROs. For these reasons, the Commission estimates that the average annual cost to an NRSRO would be $10,250[423] and the total aggregate annual cost to the industry would be $307,500.[424]

Section 15E(b)(2) of the Exchange Act requires an NRSRO to furnish an annual certification.[425] Proposed Rule 17g–1 would require an NRSRO to furnish the annual certification on Form NRSRO.[426] As discussed with respect to the PRA, the Commission estimates an NRSRO would spend approximately 10 hours per year completing and furnishing the annual certification and that there would be 30 NRSROs. For these reasons, the Commission estimates that the average annual cost to an NRSRO would be $2,050[427] and the total aggregate annual cost to the industry would be $61,500.[428]

Section 15E(a)(3) of the Exchange Act requires an NRSRO to make certain information and documents submitted in its application publicly available on its Web site or through another comparable readily accessible means.[429] Proposed Rule 17g–1 would require that this be done within five business days of the granting of an NRSRO's registration or the furnishing of an amendment to the form or annual certification.[430] As discussed with respect to the PRA, the Commission estimates that the average hour burden for an NRSRO to disclose this information on its Web site would be approximately 30 hours on a one-time basis and 10 hours per year. Furthermore, as discussed with respect to the PRA, the Commission estimates that there would be 30 NRSROs. For these reasons, the Commission estimates that an NRSRO would incur an average one-time cost of $8,040 and an average annual cost of $2,680.[431] Consequently, the total aggregate one-time cost to the industry would be $241,200[432] and total aggregate annual cost to the industry would be $80,400 per year.[433]

The Commission believes the requirements in proposed Rule 17g–1 to provide notices when a credit rating agency withdraws its application or an NRSRO withdraws its registration would result in *de minimis* costs.

As noted above, we request comment on these proposed cost estimates. We also request comment on whether there would be costs in addition to those identified above, such as costs arising from systems changes. We also request comment on whether these proposals would impose costs on other market participants, including persons who use credit ratings to make investment decisions or for regulatory purposes, and persons who purchase services and products from NRSROs. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

2. Proposed Rule 17g–2

Section 17(a)(1) of the Exchange Act[434] provides the Commission with authority to require an NRSRO to make and maintain such records as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act.[435] Proposed Rule 17g–2 would implement this rulemaking authority by requiring an NRSRO to make and preserve specified records related to its credit rating business.

As discussed with respect to the PRA, the Commission estimates that an NRSRO, on average, would spend approximately 300 hours on a one-time basis to establish a recordkeeping system and 254 hours each year updating its books and records. For these reasons, the Commission estimates that an NRSRO would incur an average one-time cost of $61,500 and an average annual cost of $52,070.[436] Consequently, the total aggregate one-time cost to the industry would be $1,845,000,[437] and the total aggregate annual cost to the industry would be $1,562,100 per year.[438]

As noted above, we request comment on these proposed cost estimates. We also request comment on whether there would be costs in addition to those

[419] The Commission estimates an NRSRO would have a senior compliance person perform these responsibilities. The SIA Management Report 2005 (Compliance Officer) indicates that the average hourly cost for a compliance manager is $205. Therefore, the average cost to an NRSRO would be $5,125 [(25 hours for one year) × ($205)].

[420] 5 NRSROs × $5,125 = $25,625.

[421] $1,000 × 30 NRSROs = $30,000.

[422] 15 U.S.C. 78o–7(b)(1).

[423] Based on the PRA estimates, an NRSRO would spend approximately 50 hours each year updating its application on Form NRSRO (25 hours per amendment × two amendments). The Commission estimates an NRSRO would have a senior compliance person perform these responsibilities. The SIA Management Report 2005 (Compliance Officer) indicates that the average hourly cost for a compliance manager is $205. Therefore, the total average annual cost to an NRSRO to update its registration on Form NRSRO would be $10,250 [(50 hours per year) × ($205 per hour)].

[424] $10,250 × 30 NRSROs = $307,500.

[425] 15 U.S.C. 78o–7(b)(2).

[426] *See* proposed Rule 17g–1(g).

[427] The Commission estimates an NRSRO would have a senior compliance person perform these responsibilities. The SIA Management Report 2005 (Compliance Officer) indicates that the average hourly cost for a compliance manager is $205. Therefore, the average annual cost would be $2,050 [(10 hours per year) × ($205 per hour)].

[428] $2,050 × 30 NRSROs = $61,500.

[429] 15 U.S.C. 78o–7(a)(3).

[430] *See* proposed Rule 17g–1(d).

[431] The Commission estimates that an NRSRO would have a Senior Programmer perform this work. The SIA Management Report 2005 (Senior Programmer) indicates that the average hourly cost for a senior programmer is $268. Therefore, the average one-time cost would be $8,040 [(30 hours) × ($268 per hour)] and the average annual cost would be $2,680 [(10 hours per year) × ($268 per hour)].

[432] $8,040 × 30 NRSROs = $241,200.

[433] $2,680 × 30 NRSROs = $80,400.

[434] *See* Section 5 of the Act.

[435] *See* Section 5 of the Act and 15 U.S.C 78q(a)(1).

[436] The Commission estimates that an NRSRO would have a compliance manager perform these responsibilities. The SIA Management Report 2005 indicates that the average hourly cost for a compliance manager is $205. Therefore, the average one-time cost would be $61,500 [(300 hours) × ($205 per hour)] and the average annual cost would be $52,070 [(254 hours per year) × ($205 per hour)].

[437] $61,500 × 30 NRSROs = $1,845,000.

[438] $52,070 × 30 NRSROs = $1,562,100.

identified above, such as costs arising from restructuring business practices. We also request comment on whether these proposals would impose costs on other market participants, including persons who use credit ratings to make investment decisions or for regulatory purposes, and persons who purchase services and products from NRSROs. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

3. Proposed Rule 17g–3.

Section 15E(k) of the Exchange Act requires an NRSRO to furnish to the Commission, on a confidential basis and at intervals determined by the Commission, such financial statements and information concerning its financial condition that the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[439] The section also provides that the Commission may, by rule, require that the financial statements be certified by an independent public accountant.[440]

Proposed Rule 17g–3 would implement this statutory provision by requiring an NRSRO to furnish audited annual financial statements to the Commission, including certain specified schedules.[441] As discussed above with respect to the PRA, the Commission estimates that NRSRO, on average, would spend approximately 200 hours per year preparing for and furnishing the annual audit. For these reasons, the Commission estimates that the average annual cost to an NRSRO would be $49,800[442] and the total aggregate annual cost to the industry would be $1,494,000.[443]

As noted above, the average one-time and annual costs to NRSROs would vary widely depending on the size and complexity of the NRSRO. Moreover, some large credit rating agencies already prepare audited financial statements in accordance with other regulatory requirements. Nonetheless, these credit rating agencies, if they become NRSROs, may need to make changes to their accounting systems to comply with proposed annual audit requirements in Rule 17g–3. The Commission believes these costs would vary, depending on the size and complexity of the NRSRO, and seeks comment on the costs that would be incurred to make changes to their accounting systems.

Furthermore, as discussed above with respect to the PRA, an NRSRO would need to engage the services of an independent public accountant to comply with proposed Rule 17g–3. The cost of hiring an accountant would vary substantially based on the size and complexity of the NRSRO. As noted above, based on staff experience, the annual audit costs of a small broker-dealer generally range from $3,000 to $5,000 a year. As the Commission estimated above, the annual audit costs for a small NRSRO would likely be comparable to the costs incurred by a small broker-dealer. The costs for a large NRSRO would be much greater. However, many of these firms already are audited by a public accountant for other regulatory purposes. These firms, however, may incur some incremental costs, given the schedules in proposed Rule 17g–3. For these reasons, the Commission estimates that the average annual cost across all NRSROs to engage the services of an independent public accountant would be approximately $15,000. Therefore, the annual cost to the industry would be $450,000.[444]

As noted above, we request comment on these proposed cost estimates. We also request comment on whether there would be costs in addition to those identified above, such as costs arising from systems changes. We also request comment on whether these proposals would impose costs on other market participants, including persons who use credit ratings to make investment decisions or for regulatory purposes, and persons who purchase services and products from NRSROs. Commenters should identify the metrics and sources of any empirical data that support their cost estimates.

4. Proposed Rule 17g–4

Section 15E(g)(1) of the Exchange Act[445] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act.[446] Section 15E(g)(2) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO to establish specific policies and procedures to prevent the misuse of material, non-public information.[447] Proposed Rule 17g–4 would implement this statutory provision by requiring that an NRSRO's policies and procedures established pursuant to Section 15E(g)(1) of the Exchange Act[448] include three specific types of procedures.[449]

As discussed above with respect to PRA, the Commission estimates that it would take approximately 50 hours for an NRSRO to establish procedures in conformance with the proposed rule and that there would be 30 NRSROs. For these reasons, the Commission estimates that the average one-time cost to an NRSRO would be $10,250[450] and the total aggregate one-time cost to the industry would be $307,500.[451]

As noted above, we request comment on these proposed cost estimates. We also request comment on whether there would be costs in addition to those identified above, such as costs arising from systems changes and restructuring business practices. We also request comment on whether these proposals would impose costs on other market participants, including persons who use credit ratings to make investment decisions or for regulatory purposes, and persons who purchase services and products from NRSROs. Commenters should identify the metrics and sources of any empirical data that support their costs estimates.

5. Proposed Rules 17g–5 and 17g–6

Proposed Rules 17g–5 and 17g–6 are conduct rules that would require NRSROs respectively to avoid certain conflicts of interest and unfair, abusive or coercive acts and practices and, consequently, do not require an NRSRO to make records or reports or create recordkeeping or accounting systems.[452] Moreover, 15E(1)(B)(vi) of the Exchange Act requires an NRSRO to disclose any conflicts of interest. Additionally, Section 15E(h) of the Exchange Act requires an NRSRO establish, maintain, and enforce written policies and procedures reasonable designed to address and manage any conflicts of interest that can arise from its business. Therefore, the Commission does not anticipate that proposed Rule 17g–5

[439] 15 U.S.C. 78o–7(k).

[440] *Id.*

[441] *See* proposed Rule 17g–3.

[442] The Commission estimates that a senior internal auditor would perform these responsibilities. The SIA Management Report 2005 (Senior Internal Auditor) indicates that the average hourly cost for a senior internal auditor is $249. Therefore, the average annual cost would be $49,800 [(200 hours per year) × ($249 per hour)].

[443] $49,800 × 30 NRSROs = $1,494,000.

[444] $15,000 × 30 NRSROs = $450,000.

[445] 15 U.S.C. 78o–7(g)(1).

[446] 15 U.S.C. 78a *et seq.*

[447] 15 U.S.C. 78o–7(g)(2).

[448] 15 U.S.C. 78o–7(g)(1).

[449] *See* proposed Rule 17g–4.

[450] The Commission estimates an NRSRO would have a senior compliance person perform these responsibilities. The SIA Management Report 2005 (Compliance Officer) indicates that the average hourly cost for a compliance manager is $205. Therefore, the average one-time cost to an NRSRO would be $10,250 [(50 hours) × ($205)].

[451] 30 NRSROs × $10,250 = $307,500.

[452] Paragraph (b) of Rule 17g–6 does require a record to be made in certain situations. However, the Commission estimates that this requirement would impose *de minimis* costs.

would result in any significant incremental costs.

Proposed Rules 17g–5 and 17g–6 do prohibit respectively certain conflicts of interest and unfair, coercive and abusive acts and practices. The Commission believes that most entities that would become NRSROs do not engage in these types of conflicts, acts and practices. Therefore, the Commission estimates that these proposed rules generally would impose *de minimis* costs. However, the Commission recognizes that an NRSRO may incur costs related to training employees about the requirements in these proposed rules. It also is possible that the proposed rules could require some NRSROs to restructure their business models or activities. The Commission, therefore, requests comment on such training and restructuring costs. The Commission also request comment on whether there are any other costs associated with these proposed rules.

## VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Under Section 3(f) of the Exchange Act,[453] the Commission must, when engaging in rulemaking that requires the Commission to consider or determine if an action is necessary or appropriate in the public interest, consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[454] requires the Commission to consider the anticompetitive effects of any rules the Commission adopts under the Exchange Act. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission's preliminary view is that the proposed rules should promote efficiency, competition, and capital formation. As discussed above with respect to the costs and benefits of the proposed rules, the primary purpose of the Credit Rating Agency Reform Act of 2006 (the "Act")[455] is to foster "competition in the credit rating agency business."[456] The practice of identifying NRSROs through staff no-action letters has been criticized as a process that lacks transparency and creates a barrier for credit rating agencies seeking wider recognition and market share. The Commission believes that these proposed rules implementing provisions of the Act further the Act's goal of increasing competition because they would provide credit rating agencies with a transparent process to apply for registration as an NRSRO that does not favor a particular business model or larger, established firms. This would make it easier for more credit rating agencies to apply for registration. Increased competition in the credit ratings business could lower the cost to issuers, obligors, and underwriters of obtaining credit ratings.

In addition, the Act requires NRSROs to make their credit ratings and information about themselves available to the public. Part of the definition of "credit rating agency" in the Act is that the entity must be in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee.[457] Under the Act and the rules proposed to be adopted thereunder, an NRSRO would need to disclose important information such as its credit ratings performance statistics, its methods for determining credit ratings, its organizational structure, its procedures to prevent the misuse of material non-public information, the conflicts of interest that arise from its business activities, its code of ethics, and the qualifications of its credit analysts, credit analyst supervisors and compliance personnel. The Commission believes that these disclosures under the proposed rules would allow users of the credit ratings to compare the ratings quality of different NRSROs. Although the information an NRSRO would provide on its Form NRSRO and to comply with the proposed rules cannot substitute for an investor's due diligence in evaluating a credit rating, it would aid investors by providing a publicly accessible foundation of basic information about an NRSRO.

In addition, the proposed rules implement provisions of the Act that are designed to improve the integrity of NRSROs. For example, the registration of a credit rating agency as an NRSRO would allow the Commission to conduct regular examinations of the credit rating agency to evaluate compliance with the regulatory scheme set forth in Section 15E of the Exchange Act and the proposed rules and would subject an NRSRO to disclosure, recordkeeping, and annual audit requirements, as well as requirements regarding the prevention of misuse of material, nonpublic information, the management of conflicts of interest, and certain prohibited acts and practices. Increased confidence in the integrity of NRSROs and the credit ratings they issue could promote participation in the securities markets. Better quality ratings could also reduce the likelihood of an unexpected collapse of a rated issuer or obligor, reducing risks to individual investors and to the financial markets. In addition to improving the quality of credit ratings, increased oversight of NRSROs could increase the accountability of an NRSRO to its subscribers, investors, and other persons who rely on the credibility and objectivity of credit ratings in making an investment decision.

The Commission solicits comment on these matters with respect to the proposed rules. In particular, the Commission solicits comment on whether the proposed rules would have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act. In addition, comment is sought on whether the proposed rules, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible.

## VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[458] the Commission must advise OMB whether a proposed regulation constitutes a major rule. Under SBREFA, a rule is "major" if it has resulted in, or is likely to result in:

- An annual effect on the economy of $100 million or more
- A major increase in costs or prices for consumers or individual industries; or
- A significant adverse effect on competition, investment, or innovation.

If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review. The Commission requests comment on the potential impact of each of the proposed rules on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

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[453] 15 U.S.C. 78c(f).

[454] 15 U.S.C. 78w(a)(2).

[455] Pub. L. No. 109–291 (2006).

[456] *See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850*, Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) ("Senate Report").

[457] Section 3(a)(61) of the Exchange Act (15 U.S.C. 78c(a)(61)).

[458] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

## VIII. Initial Regulatiry Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA), in accordance with the provisions of the Regulatory Flexibility Act,[459] regarding proposed rules 17g–1, 17g–2, 17g–3, 17g–4, 17g–5, and 17g–6 and proposed Form NRSRO under the Exchange Act.

The Commission encourages comments with respect to any aspect of this IRFA, including comments with respect to the number of small entities that may be affected by the proposed rules. Comments should specify the costs of compliance with the proposed rules and suggest alternatives that would accomplish the goals of the rules. Comments will be considered in determining whether a Final Regulatory Flexibility Analysis is required and will be placed in the same public file as comments on the proposed rules. Comments should be submitted to the Commission at the addresses previously indicated.

### *A. Reasons for the Proposed Action*

The proposed rules would implement specific provisions of the Credit Rating Agency Reform Act of 2006 (the "Act").[460] The Act defines the term "nationally recognized statistical rating organization" as a credit rating agency registered with the Commission, provides authority for the Commission to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies, and directs the Commission to issue final implementing rules no later than 270 days after its enactment.

### *B. Objectives*

The proposed rules would implement specific provisions of the Act. The objectives of the Act are "to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry."[461] The proposed rules are designed to further these objectives and assist the Commission in determining whether an entity should be registered as an NRSRO, monitoring whether an NRSRO complies with the provisions of the Act and rules thereunder, fulfilling the Commission's statutory mandate to adopt rules to implement the NRSRO regulatory program, and provide information regarding NRSROs to the public and to users of credit ratings.

### *C. Legal Basis*

Pursuant to the Exchange Act[462] and, particularly, Section 15E of the Exchange Act.[463]

### *D. Small Entities Subject to the Rule*

Paragraph (a) of Rule 0–10 provides that for purposes of the Regulatory Flexibility Act, a small entity "[w]hen used with reference to an 'issuer' or a 'person' other than an investment company" means "an 'issuer' or 'person' that, on the last day of its most recent fiscal year, had total assets of $5 million or less."[464] The Commission believes that an NRSRO with total assets of $5 million or less would qualify as a "small" entity for purposes of the Regulatory Flexibility Act.

As noted above, the Commission believes that approximately 30 credit rating agencies would be registered as an NRSRO. Moreover, as also noted above, the Senate Report accompanying the Act states that the two largest credit rating agencies have about 80% of the market share as measured by revenues. The Senate Report also states that these two firms rate more than 99% of the debt obligations and preferred stock issues publicly traded in the United States. Given these figures, the Commission believes that the majority of the credit rating agencies registered with the Commission would be "small" entities.[465] Consequently, the Commission estimates that, of the approximately 30 credit rating agencies estimated to be registered with the Commission, approximately 20 would be "small" entities for purposes of the Regulatory Flexibility Act.[466]

### *E. Reporting, Recordkeeping, and Other Compliance Requirements*

A credit rating agency seeking to apply to the Commission for registration as a nationally recognized statistical rating organization would apply using proposed Form NRSRO.[467] The Form would elicit certain information and require the credit rating agency to attach a number of documents, including exhibits (some of which would have to be made publicly available and some of which would be eligible for confidential treatment) and certifications from qualified institutional buyers. The public exhibits would consist of information such as performance data for the credit ratings, organizational structure, the methods used by the credit rating agency for issuing credit ratings, the policies used by the credit rating agency to manage activities that could potentially risk the impartiality of its credit ratings, and information about managers and credit analysts. To the extent permitted by law, the confidential exhibits would consist of information about the credit rating agency's financial condition, revenues and credit analyst compensation.

After registration, the credit rating agency (now an NRSRO under the Act) would generally need to promptly update the public information on its Form NRSRO whenever an item or exhibit becomes materially inaccurate. To update information, the NRSRO would furnish the Commission with an amendment using Form NRSRO. In addition, the NRSRO would need to furnish the Commission with an annual certification on Form NRSRO.[468] The annual certification would represent that all information on the form, as amended, continues to be accurate, would require the credit rating agency to list any material changes made during the previous year, and would include an update to the public exhibit relating to the performance statistics of its credit ratings. After its application for registration is approved, the NRSRO would be required to make Form NRSRO and the public exhibits submitted to the Commission, and all amendments, readily accessible to the public.

NRSROs would also be subject to a recordkeeping rule.[469] This rule would require the NRSRO to make and retain certain records relating to the business of issuing credit ratings. These records would assist the Commission, through its examination process, in monitoring whether the NRSRO continues to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity (as required under the Act) and whether the NRSRO was complying with the provisions of the Act, the rules adopted under the act, and the NRSRO's disclosed policies and procedures.

On an annual fiscal year basis, an NRSRO would be required to furnish the Commission with audited financial statements.[470] This requirement is designed to assist the Commission in monitoring whether the NRSRO continues to maintain adequate financial resources to consistently

[459] 5 U.S.C. 603.

[460] Pub. L. No. 109–291 (2006).

[461] *See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850*, Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) ("Senate Report").

[462] 15 U.S.C. 78a *et seq.*

[463] 15 U.S.C. 78o–7.

[464] 17 CFR 240.0–10(a).

[465] *See* 17 CFR 240.0–10(a).

[466] *Id.*

[467] Proposed Rule 17g–1.

[468] *Id.*

[469] Proposed Rule 17g–2.

[470] Proposed Rule 17g–3.

produce credit ratings with integrity. It also is designed to assist the Commission in monitoring whether the NRSRO is complying with provisions of the Act and the rules adopted thereunder regarding the potential conflicts of interest arising from dealings with large customers in terms of revenues earned.

Finally, all NRSROs would be subject to requirements designed to protect their impartiality with respect to issuing credit ratings. First, they would be required to establish, maintain and enforce specific written policies designed to prevent the misuse of material non-public information.[471] Second, NRSROs would be prohibited from having certain general conflicts unless they, as required under the Act, disclosed the conflict and adopted procedures to manage the conflict. Further certain conflicts of interest—for example, rating a security owned by the NRSRO—would be prohibited. Third, NRSROs would be prohibited from engaging in certain practices that the Commission has determined to be unfair, coercive or abusive practices.[472]

*F. Duplicative, Overlapping, or Conflicting Federal Rules*

The Commission believes that there are no federal rules that duplicate, overlap, or conflict with the proposed rules.

*G. Significant Alternatives*

Pursuant to section 3(a) of the RFA,[473] the Commission must consider certain types of alternatives, including: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule, for small entities.

The Commission does not believe it is necessary or appropriate to establish different compliance or reporting requirements or timetables; clarify, consolidate, or simplify compliance and reporting requirements under the rule for small entities; or exempt small entities from coverage of the rule, or any part of the rule. The Act and the proposed rules establish a voluntary program of registration and supervision that allows NRSROs the flexibility to develop procedures tailored to their specific organizational structure and business models. The Commission also does not believe that it is necessary to consider whether small entities should be permitted to use performance rather than design standards to comply with the proposed rules as the rules already propose performance standards and do not dictate for entities of any size any particular design standards that must be employed to achieve the objectives of the proposed rules.

*H. Request for Comments*

The Commission encourages the submission of comments to any aspect of this portion of the IRFA. Comments should specify costs of compliance with the proposed rules and suggest alternatives that would accomplish the objective of the proposed rules.

The Commission specifically requests comment on the estimate that 30 credit rating agencies would be registered as NRSROs with the Commission, and that 20 of those 30 NRSROs would be small entities for purposes of the Regulatory Flexibility Act.[474] Commenters that disagree with these estimates are requested to describe in detail the basis for their conclusions and identify the sources of any industry statistics they relied on to reach their conclusions.

## IX. Statutory Authority

The Commission is proposing Form NRSRO and Rules 17g–1, 17g–2, 17g–3, 17g–4, 17g–5 and 17g–6 under the Exchange Act pursuant to the authority conferred by the Exchange Act, including Sections 3(b), 15E, 17, 23(a) and 36.[475]

## Text of Proposed Rules

### List of Subjects in 17 CFR Parts 240 and 249b

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Commission hereby proposes that Title 17, Chapter II of the Code of Federal Regulation be amended as follows.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–l, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Sections 240.17g–1 through 240.17g–6 are added to read as follows:

### Nationally Recognized Statistical Rating Organizations

Sec.

240.17g–1 Application for registration as a nationally recognized statistical rating organization.
240.17g–2 Records to be made and retained by nationally recognized statistical rating organizations.
240.17g–3 Annual audited financial statements to be furnished by nationally recognized statistical rating organizations.
240.17g–4 Prevention of misuse of material nonpublic information.
240.17g–5 Conflicts of interest.
240.17g–6 Prohibited acts and practices.

**§ 240.17g–1 Application for registration as a nationally recognized statistical rating organization.**

(a) *Form of registration.* A credit rating agency applying to the Commission to be registered under section 15E of the Act (15 U.S.C. 78o–7) as a nationally recognized statistical rating organization with respect to one or more of the categories of credit ratings described in section 3(a)(62)(B) of the Act (15 U.S.C. 78c(a)(62)(B)) must furnish the Commission with an initial application on Form NRSRO (§ 249b.300 of this chapter) that follows all applicable instructions for the form.

(b) *Furnishing and withdrawing initial application.* (1) An initial application will be considered furnished to the Commission on the date the Commission receives a complete and properly executed initial application on Form NRSRO that follows all instructions for the form. Information submitted on a confidential basis will be accorded confidential treatment to the extent permitted by law.

(2) The applicant may withdraw an application prior to the date of a Commission order granting or denying the application. To withdraw the application, the applicant must furnish the Commission with a written notice of withdrawal executed by a duly authorized person.

(c) *Updating application prior to final action by the Commission.* The applicant must promptly furnish the Commission with a written notice if information submitted to the Commission on Form NRSRO, including exhibits and attachments, is found to be or becomes materially inaccurate prior to the date of a Commission order granting or denying the application. The notice must describe the circumstances in which the information was found to

[471] Proposed Rule 17g–4.

[472] Proposed Rule 17g–6.

[473] 5 U.S.C. 603(c).

[474] 5 U.S.C. 603.

[475] 15 U.S.C. 78c(b), 78o–7, 78q, 78w, and 78mm.

be inaccurate. The applicant must also update the application with accurate and complete information by promptly furnishing the Commission with an amended initial application on Form NRSRO that follows all applicable instructions for the form.

(d) *Public availability of Form NRSRO.* A credit rating agency registered as a nationally recognized statistical rating organization ("rating organization") must make the current Form NRSRO and non-confidential exhibits publicly available by posting them on its Web site or by another comparable and readily accessible means within 5 business days of the date of the Commission order granting the application and, subsequently, within 5 business days of furnishing an amendment or an annual certification on Form NRSRO.

(e) *Amending scope of registration.* A rating organization that is registered for fewer than the five categories of credit ratings described in section 3(a)(62)(B) of the Act (15 U.S.C. 78c(a)(62)(B)) may apply to be registered for an additional category by furnishing the Commission with an amendment on Form NRSRO indicating where appropriate on the Form the additional class for which registration is sought and following all applicable instructions for the Form. The application to amend the scope of the registration will be subject to the requirements of this section and section 15E(a)(2) of the Act (15 U.S.C. 78o–7(a)(2)) applicable to an initial application for registration, including with respect to the time periods and requirements for the Commission to grant or deny the application.

(f) *Updating Form NRSRO after registration.* A rating organization amending its application for registration pursuant to the requirements of section 15E(b)(1) of the Act (15 U.S.C. 78o–7(b)(1)) must promptly furnish the Commission with the amendment on Form NRSRO that follows all applicable instructions for the Form.

(g) *Annual certification.* A rating organization submitting its annual certification pursuant to the requirements of section 15E(b)(2) of the Act (15 U.S.C. 78o–7(b)(2)) must furnish the Commission with the annual certification on Form NRSRO that follows all applicable instructions for the Form not later than 90 days after the end of each calendar year.

(h) *Withdrawal of registration.* A rating organization withdrawing its registration must furnish the Commission with a written notice of withdrawal executed by a duly authorized person.

**§ 240.17g–2 Records to be made and retained by nationally recognized statistical rating organizations.**

(a) *Records required to be made and retained.* Every credit rating agency registered with the Commission as a nationally recognized statistical rating organization ("rating organization") must make and retain the following books and records, which must be complete and current:

(1) Records of original entry into the rating organization's accounting system and records reflecting entries to and balances in all general ledger accounts of the rating organization for each fiscal year.

(2) Records with respect to each of the rating organization's current credit ratings indicating (as applicable):

(i) The identity of any credit analyst(s) that determined the rating;

(ii) The identity of the person(s) who approved the rating before it was issued;

(iii) The procedures and methodologies used to determine the rating;

(iv) The method by which the credit rating was made readily accessible;

(v) Whether the credit rating was solicited or unsolicited; and

(vi) The date the credit rating action was taken.

(3) A record for each person (for example, an obligor, issuer, underwriter, or other user) that solicits the rating organization to determine or maintain a credit rating indicating:

(i) The identity and principal business address of the person; and

(ii) The credit rating(s) determined for the person.

(4) A record for each subscriber to the credit ratings and/or credit analysis of the rating organization indicating the identity and principal business address of the subscriber and the compensation received from the subscriber.

(5) A record describing each type of service and product offered by the rating organization.

(b) *Records required to be retained.* A rating organization must retain the following books and records:

(1) All significant records (for example, bank statements, invoices, and trial balances) underlying the information included in the rating organization's annual audited financial statements and schedules furnished to the Commission pursuant to § 240.17g–3.

(2) Internal records, including non-public information and work papers, used to determine a credit rating.

(3) Credit analysis reports, credit assessment reports, and private rating reports and internal records, including non-public information and work papers, used to form the basis for the opinions expressed in these reports.

(4) All compliance reports and compliance exception reports that relate to its business as a credit rating agency.

(5) All internal audit plans, internal audit reports, documents relating to internal audit follow-up measures that relate to its business as a credit rating agency, and all records identified by the rating organization's internal auditors as necessary to perform the audit of an activity that relates to its business as a credit rating agency.

(6) All marketing materials that relate to its business as a credit rating agency.

(7) All external and internal communications, including electronic communications, received and sent by the rating organization and its employees relating to initiating, determining, maintaining, changing, or withdrawing a credit rating.

(8) All records made pursuant to paragraph (b) of § 240.17g–6.

(9) All Form NRSROs (including information and documents in the exhibits thereto) furnished to the Commission.

(c) *Record retention periods.* (1) The records required to be retained pursuant to paragraphs (a)(1), (a)(2), and (a)(5) of this section must be retained for three years after the date the record is replaced with an updated record.

(2) The records required to be retained pursuant to paragraphs (a)(3) and (a)(4) of this section must be retained for three years after the date of the last receipt by the person in the record of a service or product of the rating organization.

(3) The records required to be retained pursuant to paragraphs (b)(1) through (b)(9) of this section must be retained for three years after the date the record is made or received by the NRSRO.

(d) *Manner of retention.* An original or true and complete copy of the original of each record required to be retained pursuant to paragraphs (a) and (b) of this section must be maintained in a manner that, for the applicable retention period specified in paragraph (c) of this section, makes the original record or copy easily accessible to the rating organization's principal office and to any other office that conducted activities causing the record to be made or received.

(e) *Third-party record custodian.* The records required to be retained pursuant to paragraphs (a) and (b) of this section may be made or retained by a third-party record custodian, provided the rating organization furnishes the Commission at its principal office in Washington, DC with a written undertaking of the custodian executed by a duly authorized person. The

undertaking must acknowledge that the records are the property of the rating organization, will be surrendered promptly on request of the rating organization, and that the custodian will permit the Commission or its representatives to examine the records. The undertaking must be in substantially the following form:

The undersigned acknowledges that books and records it has made or is retaining for [the rating organization] are the exclusive property of [the rating organization] and the undersigned undertakes that upon the request of [the rating organization] it will promptly provide the books and records to [the rating organization] or the U.S. Securities and Exchange Commission ("Commission") and its representatives and that upon the request of the Commission it will promptly permit examination by the Commission and its representatives of the records at any time or from time to time during business hours, and promptly furnish to the Commission and its representatives a true and complete copy of any or all or any part of such books and records.

A rating organization that agrees with a third-party custodian to have the custodian make or retain any record specified in paragraphs (a) and (b) of this section remains responsible for complying with every provision in this section, notwithstanding the agreement.

(f) *Non-resident undertaking.* A non-resident rating organization, as defined in paragraph (h) of this section, must undertake to provide books and records to the Commission upon demand. The undertaking must be attached to the rating organization's initial application for registration as a nationally recognized statistical rating organization, signed by a duly authorized person, marked "Non-Resident Books and Records Undertaking," and in substantially the following form:

Upon a request by the U.S. Securities and Exchange Commission ("Commission") and its representatives, [the rating organization] will furnish at its own expense to the Commission and its representatives, at its principal office in Washington, DC, an accurate copy of any book(s) and record(s) which [the rating organization] is required to make, keep current, retain, or produce to the Commission pursuant to any provision of the Securities Exchange Act of 1934 or any regulation under that Act. [The rating organization] will produce the requested copy of the book(s) or record(s), in a form acceptable to the Commission and its representatives, including translation into English, within 14 days of receiving the request or within a longer period of time if the Commission consents to that longer time period.

(g) A rating organization must promptly furnish the Commission and its representatives with legible, complete, and current copies of those records of the rating organization required to be retained under this section, or any other records of the rating organization subject to examination under section 17(b) of the Act (15 U.S.C. 78q(b)) that are requested by the Commission and its representatives.

(h) Where used in this section *non-resident rating organization* means a rating organization that:

(1) If a corporation, is incorporated or has its principal office in a location outside the United States, its territories, or possessions; or

(2) If a partnership or other unincorporated organization or association, is organized under the laws of a jurisdiction or has its principal office in a location outside the United States, its territories, or possessions.

**§ 240.17g–3 Annual audited financial statements to be furnished by nationally recognized statistical rating organizations.**

(a) A credit rating agency registered with the Commission as a nationally recognized statistical rating organization ("rating organization") annually must furnish the Commission, at its principal office in Washington, DC, with audited financial statements. The audited financial statements must be prepared in accordance with generally accepted accounting principles, must comply with applicable provisions of Regulation S–X (§ 210.1–01—§ 210.12–29, of this chapter), must be as of the fiscal year end indicated on the rating organization's current Form NRSRO, and must be furnished not more than 90 calendar days after the end of the fiscal year.

(b) The audited financial statements must include the following supporting schedules:

(1) A schedule separately itemizing the following aggregate revenues (as applicable):

(i) Revenue from determining and maintaining credit ratings;

(ii) Revenue from subscribers;

(iii) Revenue from granting licenses or rights to publish credit ratings;

(iv) Revenue from determining credit ratings that are not made readily accessible (private ratings); and

(v) Revenue from all other services and products offered by the rating organization (include descriptions of any major sources of revenue);

(2) A schedule providing the total aggregate and median annual compensation of the rating organization's credit analysts; and

(3) A schedule listing the 20 largest issuers and subscribers that used credit rating services provided by the rating organization by amount of net revenue received by the rating organization and its affiliates from the issuer or subscriber during the fiscal year. In addition, add to the list any obligor or underwriter that used credit rating services provided by the rating organization if the net revenue received by the rating organization and its affiliates from the obligor or underwriter during the fiscal year equaled or exceeded the net revenue received from the 20th largest issuer or subscriber. Include the net revenue amount for each customer.

**Note to paragraph (b)(3):** A customer would have used the "credit rating services" of the rating organization if the customer was any of the following: an obligor that is rated by the rating organization (regardless of whether the obligor paid for the credit rating); an issuer that has securities or money market instruments rated by the rating organization (regardless of whether the issuer paid for the credit rating); any other person that has paid the rating organization to determine a credit rating with respect to a specific obligor, security, or money market instrument; or a subscriber to the credit ratings of the rating organization. In calculating net revenue received from a customer, the rating organization should include all fees, sales proceeds, commissions, and other revenue received by the rating organization and its affiliates for any type of service or product, regardless of whether related to credit rating services, and net of any fees, sales proceeds, rebates, and monies paid to the customer by the rating organization and its affiliates.

(c) The audited financial statements must be furnished in accordance with the following:

(1) They must be certified by an accountant who is qualified and independent in accordance with paragraphs (a) through (c) of § 210.2–01 of this chapter, and the accountant must give an opinion on the financial statements and schedules in accordance with paragraphs (a) through (d) of § 210.2–02 of this chapter; and

(2) The rating organization must attach to the financial statements a signed statement by a duly authorized person at the rating organization that the person has responsibility for the financial statements and, to the best knowledge of the person, the financial statements fairly present, in all material respects, the financial condition, results of operations, and cash flows of the rating organization for the period presented.

(d) The Commission may grant an extension of time from any requirements in this section either unconditionally or on specified terms and conditions on the written request of a rating organization if the Commission finds

that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

**§ 240.17g–4 Prevention of misuse of material nonpublic information.**

The written policies and procedures a nationally recognized statistical rating organization ("rating organization") establishes, maintains, and enforces to prevent the misuse of material nonpublic information in accordance with section 15E(g)(1) of the Act (15 U.S.C. 78o–7(g)(1)) must include:

(a) Procedures designed to prevent the inappropriate dissemination within and outside the rating organization of material nonpublic information obtained in connection with the performance of credit rating services;

(b) Procedures designed to prevent a person associated with the rating organization or any member of an associated person's household from purchasing, selling, or otherwise benefiting from any transaction in securities or money market instruments when the person possesses or has access to material nonpublic information obtained in connection with the performance of credit rating services that affects the securities or money market instruments; and

(c) Procedures designed to prevent the inappropriate dissemination within and outside the rating organization of a pending credit rating action prior to making the action readily accessible.

**§ 240.17g–5 Conflicts of interest.**

(a) It shall be unlawful for a nationally recognized statistical rating organization ("rating organization") or a person associated with the rating organization to have a conflict of interest relating to the issuance of a credit rating identified in paragraph (b) of this section, unless:

(1) The rating organization has disclosed the type of conflict of interest on Form NRSRO in accordance with section 15E(a)(1)(B)(vi) of the Act (15 U.S.C. 78o–7(a)(1)(B)(vi)); and

(2) The rating organization has implemented policies and procedures to address and manage conflicts of interest in accordance with section 15E(h) of the Act (15 U.S.C. 78o–7(h)).

(b) *Conflicts of interest.* For purposes of this section, each of the following is a conflict of interest:

(1) Receiving compensation for any type of service or product from a person that is subject to a pending or issued credit rating of the rating organization.

(2) Owning securities or money market instruments of a person that is subject to a pending or issued credit rating of the rating organization.

(3) Receiving compensation from a subscriber that uses the credit ratings of the rating organization for regulatory purposes.

(4) Owning securities or money market instruments of, or having any other form of ownership interest in, a subscriber that uses the credit ratings of the rating organization for regulatory purposes.

(5) Having any other business, personal, or ownership relationship or affiliation with a person that is subject to a credit rating of the rating organization, an underwriter of securities or money market instruments rated by the rating organization, or a subscriber that uses the credit ratings of the rating organization for regulatory purposes.

(6) Being an officer or director of a person that is subject to a credit rating of the rating organization, an underwriter of securities or money market instruments rated by the rating organization, or a subscriber that uses the credit ratings of the rating organization for regulatory purposes.

(7) Any other type of conflict of interest identified by the rating organization on Form NRSRO in accordance with section 15E(a)(1)(B)(vi) of the Act (15 U.S.C. 78o–7(a)(1)(B)(vi)).

(c) *Prohibited conflicts.* It shall be unlawful for a rating organization to have a conflict of interest relating to the issuance of a credit rating in the following circumstances:

(1) The rating organization issues or maintains a credit rating solicited by a person that, in the most recently ended fiscal year, provided the rating organization and its affiliates with net revenue (as determined under § 240.17g–3) equaling or exceeding 10% of the total net revenue of the rating organization and its affiliates for the year;

(2) The rating organization issues or maintains a credit rating with respect to a person where the rating organization, a credit analyst who participated in determining the credit rating, or a person associated with the rating organization responsible for approving the credit rating, owns securities of, or has any other ownership interest in, the rated person or is a borrower or lender with respect to the rated person;

(3) The rating organization issues or maintains a credit rating with respect to a person associated with the rating organization; or

(4) The rating organization issues or maintains a credit rating where a credit analyst who participated in determining the credit rating, or a person associated with the rating organization responsible for approving the credit rating, is also an officer or director of the person that is subject to the credit rating.

**§ 240.17g–6 Prohibited acts and practices.**

(a) *Prohibitions.* It shall be unlawful for a nationally recognized statistical rating organization ("rating organization") to engage in any of the following unfair, coercive, or abusive practices:

(1) Conditioning or threatening to condition the issuance of a credit rating on the purchase by an obligor or issuer, or an affiliate of the obligor or issuer, of any other services or products, including pre-credit rating assessment products, of the rating organization or any person associated with the rating organization.

(2) Issuing, or offering or threatening to issue, a credit rating that is not determined in accordance with the rating organization's established procedures and methodologies for determining credit ratings, based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the rating organization or any person associated with the rating organization.

(3) Modifying, or offering or threatening to modify, a credit rating in a manner that is contrary to the rating organization's established procedures and methodologies for modifying credit ratings based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the rating organization or any person associated with the rating organization.

(4) Issuing or threatening to issue a lower credit rating, or lowering or threatening to lower an existing credit rating, or refusing to issue a credit rating or withdrawing a credit rating, with respect to securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets which comprise the asset pool or the asset-backed or mortgage-backed securities also are rated by the rating organization. The prohibitions on refusing to issue a credit rating or withdrawing a credit rating shall not apply if the rating organization has rated less than 85% of the market value of the assets underlying the asset pool or the asset-backed or mortgage-backed securities.

(5) Issuing an unsolicited credit rating and communicating with the rated person to induce or attempt to induce the rated person to pay for the credit rating or any other service or product of

the rating organization or a person associated with the rating organization.

(b) A rating organization refusing to issue a credit rating or withdrawing a credit rating with respect to an asset pool or the asset-backed or mortgage-backed security must document in writing the reason for the refusal or withdrawal.

* * * * *

## PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 249b continues to read in part as follows.

**Authority:** 15 U.S.C. 78a *et seq.*, unless otherwise noted;

* * * * *

4. Section 249b.300 and Form NRSRO are added to read as follows:

**§ 249b.300 Form NRSRO, application for registration as a nationally recognized statistical rating organization pursuant to section 15E of the Securities Exchange Act of 1934 and § 240.17g–1 of this chapter.**

This form shall be used for application for, and amendments to applications for, registration as a nationally recognized statistical rating organization pursuant to section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) and § 240.17g–1 of this chapter.

**Note:** The text of Form NRSRO will not appear in the Code of Federal Regulations.

BILLING CODE 8010–01–P

**Form NRSRO**

| OMB APPROVAL |
| --- |
| OMB Number: 3235- |
| Expires: |
| Estimated average burden hours per response: |

# APPLICATION FOR REGISTRATION AS A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO)

**Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.**

SEC 1541 (2-07)

**FORM NRSRO**
**Page 1**

**APPLICATION FOR REGISTRATION AS A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO)**

☐ INITIAL APPLICATION ☐ AMENDMENT ☐ ANNUAL CERTIFICATION

Briefly describe the nature of the amendment (attach extra pages if necessary):

_____

**Important: Refer to Form NRSRO Instructions for General Instructions, Instructions for an INITIAL APPLICATION, AMENDMENT, and ANNUAL CERTIFICATION, Item-by-Item Instructions, an Explanation of Terms, and the Disclosure Reporting Page (NRSRO).**

1. **A.** Full name:

_____

**B. (i)** Name under which credit rating business is primarily conducted, if different from Item 1A:

_____

**(ii)** Any other name under which credit rating business is conducted and where it is used:

_____

**C.** Address of principal office (do not use a P.O. Box):

_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

**D.** Mailing address, if different:

_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

**E.** Contact person (SEE INSTRUCTIONS):

_____
(Name and Title)

_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

**CERTIFICATION:**

The undersigned has executed this Form on behalf of, and on the authority of, the Applicant/NRSRO. The undersigned, on behalf of the Applicant/NRSRO, represents that the information and statements contained in this Form, including attachments, all of which are part of this Form, are accurate. If this is an ANNUAL CERTIFICATION, the undersigned, on behalf of the NRSRO, represents that the NRSRO's application on Form NRSRO, as amended, is accurate.

_____ _____
(Date) (Name of the Applicant/NRSRO)

By: _____ _____
(Signature) (Print Name and Title)

2. A. Legal status:

☐ Corporation ☐ Limited Liability Company ☐ Partnership ☐ Other (specify) _____

B. Month and day of fiscal year end: _____

C. The place and date of formation (i.e., state or country where incorporated, where the partnership agreement was filed, or where the entity was formed):

State/Country of formation: _____ Date of formation: _____

3. If a non-resident rating organization, attach to an INITIAL APPLICATION a written undertaking to provide books and records upon Commission request, signed by a person duly authorized by the credit rating agency (SEE INSTRUCTIONS).

4. Designated compliance officer (SEE INSTRUCTIONS):

_____
(Name and Title)

_____
(Number and Street) (City) (State/Country) (Postal Code)

5. Describe in detail below how the non-confidential information and documents submitted to the Commission in the completed INITIAL APPLICATION, any AMENDMENT, and the ANNUAL CERTIFICATION will be made publicly available on the credit rating agency's Web site or through another comparable, readily accessible means (SEE INSTRUCTIONS):

_____

_____

**6. COMPLETE ITEM 6 ONLY IF THIS IS AN INITIAL APPLICATION OR IF THIS IS AN APPLICATION TO CHANGE THE SCOPE OF AN EXISTING REGISTRATION TO ADD A CLASS OF CREDIT RATINGS.**

A. Indicate below the classes of credit ratings for which the credit rating agency is applying to be registered. For each class, indicate the approximate number of credit ratings the credit rating agency currently has outstanding as of the date of the application and the number of consecutive years immediately preceding the date of this application that the credit rating agency has issued ratings as a credit rating agency, as defined in Section 3(a)(61) of the Exchange Act , with respect to that class (SEE INSTRUCTIONS):

| Class of credit rating | Applying for registration | Approximate number of ratings currently outstanding | Consecutive years issued |
|---|---|---|---|
| **financial institutions as that term is defined in section 3(a)(46) of the Exchange Act (15 U.S.C. 78c(a)(46)), brokers as that term is defined in section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)), and dealers as that term is defined in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5))** | ☐ | | |
| **insurance companies as that term is defined in section 3(a)(19) of the Exchange Act (15 U.S.C. 78c(a)(19))** | ☐ | | |
| **corporate issuers** | ☐ | | |
| **issuers of asset-backed securities as that term is defined in 17 CFR 229.1101(c)** | ☐ | | |

| | | | |
|---|---|---|---|
| **issuers of government securities as that term is defined in section 3(a)(42) of the Exchange Act (15 U.S.C. 78c(a)(42)), municipal securities as that term is defined in section 3(a)(29) of the Exchange Act (15 U.S.C. 78c(a)(29)), and foreign government securities** | ☐ | | |

| | |
|---|---|
| **TOTAL** | |

B. Briefly describe how the credit rating agency makes the credit ratings in the classes indicated in Item 6A readily accessible (SEE INSTRUCTIONS):

_____

_____

C. Check the applicable box and attach certifications from qualified institutional buyers, if required (SEE INSTRUCTIONS):

☐ The Applicant is submitting _____ certifications from qualified institutional buyers as part of this application. Each is marked "Certification from Qualified Institutional Buyer."

☐ The Applicant is exempt from the requirement to submit certifications from qualified institutional buyers pursuant to section 15E(a)(1)(D) of the Exchange Act.

**Note: Certifications from qualified institutional buyers should be marked "Confidential," and will be accorded confidential treatment to the extent permitted by law. A credit rating agency is not required to make them publicly available.**

**7. The information in Item 7 need only be updated when an NRSRO furnishes an ANNUAL CERTIFICATION or when the NRSRO furnishes an AMENDMENT because information provided in another Item or a non-confidential exhibit has become materially inaccurate or incomplete or to apply to change the scope of its registration.**

A. Indicate below each class of credit ratings for which the Registrant is currently registered as an NRSRO. For each class, indicate the approximate number of credit ratings the Registrant currently has outstanding as of the end of the preceding calendar year and the number of consecutive years that the Registrant has issued ratings as a credit rating agency, as defined in Section 3(a)(61) of the Exchange Act, with respect to that class (SEE INSTRUCTIONS):

| Class of credit rating | Currently registered | Approximate number of ratings currently outstanding | Consecutive years issued |
|---|---|---|---|
| **financial institutions as that term is defined in section 3(a)(46) of the Exchange Act (15 U.S.C. 78c(a)(46)), brokers as that term is defined in section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)), and dealers as that term is defined in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5))** | ☐ | | |
| **insurance companies as that term is defined in section 3(a)(19) of the Exchange Act (15 U.S.C. 78c(a)(19))** | ☐ | | |
| **corporate issuers** | ☐ | | |
| **issuers of asset-backed securities as that term is defined in 17 CFR 229.1101(c)** | ☐ | | |

| | | | |
|---|---|---|---|
| **issuers of government securities as that term is defined in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42)), municipal securities as that term is defined in section 3(a)(29) of the Exchange Act (15 U.S.C. 78c(a)(29)), and foreign government securities** | ☐ | | |

| | |
|---|---|
| **TOTAL** | |

B. Briefly describe how the credit rating agency makes the credit ratings in the classes indicated in Item 7A readily accessible (SEE INSTRUCTIONS):

_____

_____

| **8.** Answer each question. Provide information that relates to a "Yes" answer on a Disclosure Reporting Page (NRSRO) and attach to this form (SEE INSTRUCTIONS). | | |
|---|---|---|
| | **YES** | **NO** |
| A. Has the credit rating agency, or any person associated with the credit rating agency, whether prior to or subsequent to becoming associated with the credit rating agency, committed or omitted any act, or been subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H) of section 15(b)(4) of the Securities Exchange Act of 1934, or any substantially equivalent foreign statute or regulation, or been enjoined from any action, conduct, or practice specified in subparagraph (C) of section 15(b)(4), or any substantially equivalent foreign statute or regulation, in the ten years preceding the date of its INITIAL APPLICATION to the Commission for registration as an NRSRO or at any time thereafter? | ☐ | ☐ |
| B. Has the credit rating agency, or any person associated with the credit rating agency, whether prior to or subsequent to becoming associated with the credit rating agency, been convicted of any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4) of the Securities Exchange Act of 1934, or been convicted of a substantially equivalent crime by a foreign court of competent jurisdiction, in the ten years preceding the date of its INITIAL APPLICATION to the Commission for registration as an NRSRO or at any time thereafter? | ☐ | ☐ |
| C. Is any person associated with the credit rating agency subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO? | ☐ | ☐ |

**9. Exhibits** (SEE INSTRUCTIONS).

**Exhibit 1.** Credit ratings performance measurement statistics.

☐ Exhibit 1 is attached and made a part of this INITIAL APPLICATION.

☐ Exhibit 1 is updated and made a part of this ANNUAL CERTIFICATION.

**Exhibit 2.** Procedures and methodologies used in determining credit ratings.

☐ Exhibit 2 is attached and made a part of this INITIAL APPLICATION.

☐ Exhibit 2 is updated and made a part of this AMENDMENT.

**Exhibit 3.** Policies or procedures adopted and implemented to prevent the misuse of material, nonpublic information.

☐ Exhibit 3 is attached and made a part of this INITIAL APPLICATION.

☐ Exhibit 3 is updated and made a part of this AMENDMENT.

**Exhibit 4.** Organizational structure.

☐ Exhibit 4 is attached and made a part of this INITIAL APPLICATION.

☐ Exhibit 4 is updated and made a part of this AMENDMENT.

**Exhibit 5.** The code of ethics in effect at the credit rating agency or a statement of the reasons why the credit rating agency does not have a code of ethics.

☐ Exhibit 5 is attached and made a part of this INITIAL APPLICATION.

☐ Exhibit 5 is updated and made a part of this AMENDMENT.

**Exhibit 6.** Any conflict of interest relating to the issuance of credit ratings.

☐ Exhibit 6 is attached and made a part of this INITIAL APPLICATION.

☐ Exhibit 6 is updated and made a part of this AMENDMENT.

**Exhibit 7.** Policies and procedures to address and manage conflicts of interest.

☐ Exhibit 7 Is attached and made a part of this INITIAL APPLICATION.

☐ Exhibit 7 is updated and made a part of this AMENDMENT.

**Exhibit 8.** Certain information regarding the credit rating agency's credit analysts and credit analyst supervisors.

☐ Exhibit 8 is attached and made a part of this INITIAL APPLICATION.

☐ Exhibit 8 is updated and made a part of this AMENDMENT.

**Exhibit 9.** Certain information regarding the credit rating agency's designated compliance officer and persons who assist the designated compliance officer.

☐ Exhibit 9 is attached and made a part of this INITIAL APPLICATION.

☐ Exhibit 9 is updated and made a part of this AMENDMENT.

**Exhibit 10.** A list of the largest customers that used credit rating services provided by the credit rating agency by the amount of net revenue received by the credit rating agency and its affiliates from the customer during the fiscal year ending immediately before the date the credit rating agency submits an initial application.

☐ Exhibit 10 Is attached and made a part of this INITIAL APPLICATION.

**Note: This exhibit should be marked "Confidential," and will be accorded confidential treatment to the extent permitted by law. A credit rating agency is not required to make it publicly available.**

**Exhibit 11.** Audited financial statements for each of the three fiscal or calendar years ending immediately before the date the credit rating agency submits an initial application.

☐ Exhibit 11 is attached and made a part of this INITIAL APPLICATION.

| |
|---|
| **Note: This exhibit should be marked "Confidential," and will be accorded confidential treatment to the extent permitted by law. A credit rating agency is not required to make it publicly available.** |
| **Exhibit 12.** Information regarding revenues for the fiscal or calendar year ending immediately before the date the credit rating agency submits an initial application.<br>☐ Exhibit 12 is attached and made a part of this INITIAL APPLICATION.<br>**Note: This exhibit should be marked "Confidential," and will be accorded confidential treatment to the extent permitted by law. A credit rating agency is not required to make it publicly available.** |
| **Exhibit 13.** The total and median annual compensation of credit analysts.<br>☐ Exhibit 13 is attached and made a part of this INITIAL APPLICATION.<br>**Note: This exhibit should be marked "Confidential," and will be accorded confidential treatment to the extent permitted by law. A credit rating agency is not required to make it publicly available.** |

**Form NRSRO Instructions**

*A. General Instructions*

1. Form NRSRO is the Application for Registration as a Nationally Recognized Statistical Rating Organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act"). Exchange Act Rule 17g–1 requires credit rating agencies to use Form NRSRO to submit an INITIAL APPLICATION to apply to register with the U.S. Securities and Exchange Commission ("Commission") as an NRSRO, to submit updated information as required by Section 15E(b)(1) of the Exchange Act as an AMENDMENT to Form NRSRO, and to submit the ANNUAL CERTIFICATION required by Section 15E(b)(2) of the Exchange Act.

2. Exchange Act Rule 17g–1(c) requires a credit rating agency to promptly furnish the Commission with a written notice if information submitted on an INITIAL APPLICATION, including exhibits and attachments, is found to be or becomes materially inaccurate before the Commission has granted or denied the application. The notice must describe the circumstances in which the information was found to be materially inaccurate, and the credit rating agency must promptly update the application with accurate information by furnishing the Commission with an amended INITIAL APPLICATION on Form NRSRO.

3. An INITIAL APPLICATION will be considered furnished to the Commission on the date the Commission receives a complete and properly executed Form NRSRO. Section 15E(a)(2) of the Exchange Act prescribes time periods and requirements for the Commission to grant or deny the application after it has been furnished to the Commission.

4. Type or clearly print all information. Provide the name of the credit rating agency and the date on each page. Use only the current version of Form NRSRO or a reproduction of it.

5. Mark each page of information that is submitted on a confidential basis "Confidential." The Commission will accord that information confidential treatment to the extent permitted by law.

6. Section 15E of the Exchange Act (15 U.S.C. 78o–7) authorizes the Commission to collect the Information on this form from Applicants and NRSROs. The principal purpose of this form is to determine whether an Applicant should be granted registration as an NRSRO and, once registration is granted, whether a credit rating agency continues to meet the criteria for registration as an NRSRO. Intentional misstatements or omissions constitute federal criminal violations under 18 U.S.C. 1001.

The information collection is in accordance with the clearance requirements of Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The Commission may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is displayed on the facing page of this form. Send comments regarding this burden estimate or suggestions for reducing the burden to Director, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The Commission has published in the **Federal Register** the Privacy Act Systems of Records Notice for these records, and the Commission may make "routine use" disclosure of the information as outlined under the Notice.

7. Exchange Act Rule 17g–2(b)(9) requires a credit rating agency to retain copies of all information and documents submitted to the Commission with Form NRSRO These records must be made available for inspection upon a regulatory request.

8. ADDRESS—The mailing address for Form NRSRO is: U. S. Securities and Exchange Commission, Form NRSRO Mailbox, Mail Stop, 100 F Street, NE., Washington, DC 20549–

*B. Instructions for Initial Applications*

1. Check the appropriate box at the top of Form NRSRO;

2. All Items must be answered and all required responses must be complete. Enter "None" or "N/A" where appropriate;

3. Provide all required information and attachments, including undertakings, exhibits, certifications, and Disclosure Reporting Pages, as applicable;

4. If information submitted, including exhibits and attachments, is found to be or becomes materially inaccurate before the Commission approves the application, promptly furnish the Commission with accurate information, pursuant to Rule 17g–1(c); and

5. Execute the Form.

*C. Instructions for Amendments*

1. Submit an AMENDMENT to Form NRSRO in order to:

a. Promptly provide accurate information to the Commission in the event that information on the current Form NRSRO, on any Disclosure Reporting Page (NRSRO), or on Exhibits 2 through 9 becomes materially inaccurate, pursuant to Section 15E(b)(1) of the Exchange Act; or

b. Change the scope of an existing registration to add a class of credit ratings.

2. To submit an AMENDMENT:

a. Check the appropriate box at the top of Form NRSRO and briefly describe the nature of the amendment;

b. Complete Items 1, 2, 4, 5, 7, 8 (with Disclosure Reporting Pages, as applicable), and update, as required, Exhibits 2 through 9, to provide accurate information. (Do not update or attach Exhibits 2 through 9 if the information in them remains materially accurate.) If applying to change the scope of an existing registration, complete Item 6. An NRSRO is not required to update certifications by qualified institutional buyers. (*See* instructions for Item 6 below.); and

c. Execute the Form.

*D. Instructions for Annual Certifications*

1. Submit an ANNUAL CERTIFICATION on Form NRSRO within 90 days after the end of each calendar year, in accordance with Section 15E(b)(2) of the Exchange Act;

2. Check the appropriate box at the top of Form NRSRO;

3. Complete and update, as required, Items 1, 2, 4, 5, 7, 8 (with Disclosure Reporting Pages, as applicable), and update, as required, Exhibits 2 through 9, to provide accurate and complete information;

4. Update Exhibit 1;

5. Attach a list of all AMENDMENTs submitted during the previous calendar year; and

6. Execute the Form.

*E. Instructions for Specific Line Items*

Item 1E. The individual listed as the contact person must be authorized to receive all communications from the Commission and must be responsible for their dissemination within the credit rating agency's organization.

Item 3. Exchange Act Rule 17g–4(c) requires a non-resident rating organization to undertake to provide books and records upon Commission request. The undertaking must be signed by a person duly authorized by the credit rating agency, must be attached to the INITIAL APPLICATION, must be marked "Non-Resident Books and Records Undertaking," and must be in substantially the following form:

"Upon a request by the U.S. Securities and Exchange Commission ("Commission") and its representatives, [the rating organization] will furnish at its own expense to the Commission and its representatives, at its principal office in Washington, D.C., an accurate copy of any book(s) or record(s) which [the rating organization] is required to make, keep current, retain, or produce to the Commission pursuant to any provision of the Securities Exchange Act of 1934 or any regulation under that Act. [The rating organization] will produce the requested copy of the book(s) or record(s), in a form acceptable to the Commission and its representatives, including translation into English, within 14 days of receiving the request or within a longer period of time if the Commission consents to that longer time period.

Signature"

Item 4. Section 15E(j) of the Exchange Act requires an NRSRO to designate a compliance officer responsible for administering the policies and procedures of the credit rating agency established pursuant to Sections 15E(g) and (h) of the Exchange Act (respectively, to prevent the misuse of material nonpublic information and address and manage conflicts of interest) and for ensuring compliance with applicable securities laws, rules, and regulations.

Item 5. Section 15E(a)(3) of the Exchange Act and Exchange Act Rule 17g–1(d) require a credit rating agency to make certain information and documents submitted to the Commission publicly available on its Web site or through another comparable, readily accessible means within 5 business days of the date of the Commission order granting the application for registration as an NRSRO, and, subsequently, within 5 business days of furnishing an amended Form NRSRO to the Commission. All information and documents submitted to the Commission in the completed INITIAL APPLICATION, any AMENDMENT, and the ANNUAL CERTIFICATION must be made publicly available *except* Exhibits 10 through 13, the certifications from qualified institutional buyers, and the non-resident undertaking. Describe in detail how that information will be made readily accessible. If the information and documents will be posted on the credit rating agency's Web site, for example, give the Internet address and link to the information and documents.

Item 6. Complete Item 6 only if submitting an INITIAL REGISTRATION or changing the scope of an existing registration to add a class of credit ratings.

Item 6A. Pursuant to Section 15E(a)(1)(B)(vii) of the Exchange Act, a credit rating agency applying for registration as an NRSRO must disclose in the application the classes of credit ratings for which the credit rating agency is applying to be registered. Indicate these classes by checking the appropriate box or boxes. Pursuant to the definition of "nationally recognized statistical rating agency" in Section 3(a)(62) of the Exchange Act, a credit rating agency must have been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration as an NRSRO. For each class of credit ratings, provide the approximate number of ratings the credit rating agency currently has outstanding and the number of consecutive years immediately preceding the date of the application that the credit rating agency has issued ratings as a credit rating agency, as defined in Section 3(a)(61) of the Exchange Act, with respect to that class.

Item 6B. Pursuant to Section 3(a)(61)(A) of the Exchange Act, a "credit rating agency" issues "credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee." Briefly describe how the credit rating agency makes the credit ratings in the classes indicated in Item 6A readily accessible for free or for a reasonable fee.

Item 6C. Section 15E(a)(1)(B)(ix) of the Exchange Act requires that an application for registration as an NRSRO include written certifications from qualified institutional buyers, as defined in paragraph Section 3(a)(64) of the Exchange Act, except that, under Section 15E (a)(1)(D), a credit rating agency is not required to submit these certifications if it has received a no-action letter from Commission staff prior to August 2, 2006 stating that the staff would not recommend enforcement action to the Commission against any broker or dealer that uses credit ratings issued by the credit rating agency to compute capital charges under Exchange Act Rule 15c3–1. If the credit rating agency is required to submit certifications, paragraph Section 15E(a)(1)(C) of the Exchange Act requires the credit rating agency to submit a minimum of 10 certifications from qualified institutional buyers, none of which is affiliated with the credit rating agency. Each certification may address more than one class of credit ratings. Of the submitted certifications, at least two must address each class of credit rating identified in Item 6A under "Applying for Registration." If this is an AMENDMENT to an existing

registration to add one or more classes of credit ratings to the scope of its NRSRO registration, the NRSRO must submit at least two certifications that address each additional class of credit ratings.

The required certifications must be signed by a person duly authorized by the certifying entity, must be notarized, must be marked "Certification from Qualified Institutional Buyer," and must be in substantially the following form:

"I, [Executing official], am authorized by [Certifying entity] to execute this certification on behalf of [Certifying entity]. I certify that all actions by stockholders, directors, general partners, and other bodies necessary to authorize me to execute this certification have been taken and that [Certifying entity]:

(i) Meets the definition of a 'qualified institutional buyer' as set forth in section 3(a)(64) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(64)) pursuant to following subsection(s) of 17 CFR 230.144A(a)(1) [insert applicable citations];

(ii) Has seriously considered the credit ratings of [the credit rating agency] in the course of making investment decisions for at least the three years immediately preceding the date of this certification, in the following classes of credit ratings:

[Applicable classes of credit ratings]; and

(iii) Has not received compensation either directly or indirectly from [the credit rating agency] for executing this certification.

Signature"

The certifications should be marked "Confidential," and the Commission will accord them confidential treatment to the extent permitted by law. A credit rating agency is not required to make them publicly available.

Item 7. Check the appropriate boxes indicating the classes of credit ratings for which the credit rating agency is currently registered as an NRSRO. Complete other parts of this Item according to the instructions for Item 6.

Item 8. Answer each question by checking the appropriate box. Information that relates to an affirmative answer must be provided on a Disclosure Reporting Page (NRSRO) and attached to Form NRSRO. The Disclosure Reporting Page (NRSRO) is attached to these instructions.

Item 9. Exhibits. Section 15E(a)(1)(B) of the Exchange Act requires an application for registration as an NRSRO to contain certain specific information and documents and, pursuant to Section 15E(a)(1)(B)(x), any other information and documents concerning the applicant and any person associated with the applicant that the Commission requires as necessary or appropriate in the public interest or for the protection of investors.

A. Initial Application. An Initial Application must include Exhibits 1 through 13.

B. Amendment. Update Exhibits 2 through 9 promptly with new information and documents whenever the existing information or documents contained in the exhibit becomes materially inaccurate (*see* Section 15E(b)(1) of the Exchange Act). Do not update Exhibits 10 through 13 after registration is granted.

C. Annual Certification. Section 15E(b)(2) of the Exchange Act requires an NRSRO to certify annually that the information and documents attached to Form NRSRO are accurate and to list any material changes that occurred to the information and documents during the previous year. Section 15E(b)(1) of the Exchange Act requires that an NRSRO amend the information provided with Exhibit 1 in the ANNUAL CERTIFICATION.

D. If any information or document required to be included with any exhibit is maintained in a language other than English, provide both the original document (or a true and complete copy of the original document) and a version of the document translated into English. Attach a certification by an authorized person that the translated version is a true, accurate, and complete English translation of the information or document.

E. Attach exhibits to Form NRSRO in numerical order. Bind each exhibit separately, and mark each exhibit or bound volume of the exhibit with the appropriate exhibit number. The information provided in the exhibits must be sufficiently detailed to allow for verification. The information and documents required to be provided in Exhibits 1 through 9 must be made publicly available (*see* Item 5); the information and documents required to be provided in Exhibits 10 through 13 should be marked "Confidential." The Commission will accord them confidential treatment to the extent permitted by law. The credit rating agency is not required to make them publicly available.

Exhibit 1. This exhibit must include credit ratings performance measurement statistics over short-term, mid-term, and long-term periods *(as applicable)* of the credit rating agency through the most recent calendar year-end, including, *as applicable:* historical down-grade and default rates within each credit rating category (ranking) of the credit rating agency. As part of this exhibit, define the credit ratings used by the credit rating agency and explain the performance measurement statistics, including the metrics used to determine the statistics.

Exhibit 2. This exhibit must include the procedures and methodologies that the credit rating agency uses to determine credit ratings, including unsolicited credit ratings. The procedures and methodologies furnished in this exhibit should include, *as applicable*: policies for determining whether to initiate a credit rating; a description of the public and non-public sources of information used in determining credit ratings, including information and analysis provided by third-party vendors; a description of any quantitative and qualitative models and metrics used to determine credit ratings; procedures for interacting with the management of a rated obligor or issuer of rated securities or money market instruments; the structure and voting process of committees that review or approve credit ratings; procedures for informing rated obligors or issuers of rated securities or money market instruments about credit rating decisions and for appeals of final or pending credit rating decisions; procedures for monitoring, reviewing, and updating credit ratings; and procedures to withdraw, or suspend the maintenance of, a credit rating.

For purposes of this exhibit: *Unsolicited credit rating* means a credit rating that the credit rating agency determines without being requested to do so by the issuer or underwriter of the rated securities or money market instruments or the rated obligor.

Exhibit 3. This exhibit must include policies or procedures established, maintained, and enforced by the credit rating agency to prevent the misuse of material, nonpublic information as required by Section 15E(g) of the Exchange Act and 17 CFR 240.17g–4.

Exhibit 4. This exhibit must include a description of the organizational structure of the credit rating agency, including, *as applicable*, an organizational chart that identifies the credit rating agency's ultimate and sub-holding companies, subsidiaries, and material affiliates; an organizational chart showing the divisions, departments, and business units of the credit rating agency; and an organizational chart showing the managerial structure of the credit rating agency, including the designated compliance officer identified in Item 4.

Exhibit 5. This exhibit must include a copy of the written code of ethics in effect at the credit rating agency or a statement of the reasons why the credit rating agency does not have a written code of ethics.

Exhibit 6. This exhibit must identify in general terms the types of conflicts of interest relating to the issuance of credit ratings by the credit rating agency including, *as applicable:* whether the credit rating agency receives compensation from rated obligors, issuers of rated securities or money market instruments, and underwriters of rated securities or money market instruments to determine or maintain a credit rating and for other services (identify the services); whether an affiliate of the credit rating agency owns securities of, or has any other form of ownership interest in, a rated obligor, issuer of rated securities or money market instruments, or underwriter of rated securities or money market instruments; whether the credit rating agency's employees are permitted to own securities of a rated obligor or issuer of rated securities or money market instruments; whether the credit rating agency receives compensation from entities that use its credit ratings for regulatory purposes and for other services (identify the services); whether the credit rating agency, or an affiliate, owns securities of, or has any other form of ownership interest in, an entity that uses credit ratings for regulatory purposes; whether the credit rating agency's employees are permitted to own securities of an entity that uses credit ratings for regulatory purposes; and whether the credit rating agency, its affiliates, or its employees have any other business relationship or affiliation with a rated obligor, issuer of rated securities or money market instruments, underwriter of rated securities or money market instruments, or entity that uses credit ratings for regulatory purposes. In addition, identify each entity that is an underwriter of rated securities or money market instruments or that uses credit ratings for regulatory purposes that is also a person associated with the credit rating agency.

Exhibit 7. This exhibit must include the written policies and procedures established, maintained, and enforced by the credit rating agency pursuant to Section 15E(h) of the Exchange Act to address and manage conflicts of interest.

Exhibit 8. This exhibit must include the following information regarding each of the credit rating agency's credit analysts and each officer and employee of the credit rating agency responsible for supervising the credit rating agency's credit analysts:

- Name.
- Title and brief description of responsibilities, including whether a supervisor.
- Employment history.
- Post-secondary education.
- Whether employed by the credit rating agency full-time (at least 35 hours per week) or part-time.

For purposes of this exhibit: *Credit analyst* means an individual associated with the credit rating agency who is responsible for determining a credit rating using either a quantitative model, a qualitative model and analysis, or a combination of these methods.

Exhibit 9. This exhibit must include the following information about the credit rating agency's designated compliance officer (identified in Item 4) and any other persons that assist the designated compliance officer in carrying out the responsibilities set forth in Section 15E(j) of the Exchange Act:

- Name.
- Title and brief description of responsibilities.
- Employment history.
- Post secondary education.
- Whether employed by the credit rating agency full-time (at least 35 hours per week) or part-time.

Exhibit 10. This exhibit must include a list of the largest customers that used credit rating services provided by the credit rating agency by the amount of net revenue received by the credit rating agency and its affiliates from the customer during the fiscal year ending immediately before the date the credit rating agency submits an INITIAL APPLICATION. In making this list, the credit rating agency should first determine the 20 largest issuer and subscriber customers in terms of net revenue received by the credit rating agency and its affiliates from the issuer or subscriber. Next, the credit rating agency should add to the list any obligor or underwriter that used credit rating services provided by the credit rating agency if the net revenue received by the credit rating agency and its affiliates from the obligor or underwriter during the fiscal year equaled or exceeded the net revenue received from the 20th largest issuer or subscriber. In making the list, rank the customers from largest to smallest and include the net revenue amount for each customer.

For purposes of this exhibit:

*Net revenue* means all fees, sales proceeds, commissions, and other revenue received by the credit rating agency and its affiliates for any type of service or product, regardless of whether related to credit rating services, and net of any fees, sales proceeds, rebates, and other monies paid to the customer by the credit rating agency and its affiliates; and

*Credit rating services* means any of the following: rating an obligor (regardless of whether the obligor or any other person paid for the credit rating); rating an issuer's securities or money market instruments (regardless of whether the issuer, underwriter, or any other person paid for the credit rating); and providing credit ratings to a subscriber.

Exhibit 11. This exhibit must include financial statements of the credit rating agency, which must include a balance sheet, an income statement and statement of cash flows, and a statement of changes in owners' equity, audited by an independent public accountant, for each of the three fiscal or calendar years ending immediately before the date it submits an INITIAL APPLICATION to the Commission, subject to the following:

If the credit rating agency is a division, unit, or subsidiary of a parent company, the credit rating agency can provide audited consolidated and consolidating financial statements of the parent company.

If the credit rating agency does not have audited financial statements for one or more of the three fiscal or calendar years ending immediately before the date it submits an INITIAL APPLICATION to the Commission, it can provide unaudited financial statements for the applicable year or years, but the credit rating agency must provide audited financial statements for the fiscal or calendar year ending immediately before the date it submits an INITIAL APPLICATION to the Commission. The credit rating agency must attach to the unaudited financial statements a certification by a person duly authorized by the credit rating agency to make the certification that the person has responsibility for the financial statements and that to the best knowledge of the person making the certification the financial statements fairly present, in all material respects, the financial condition, results of operations, and cash flows of the rating organization for the period presented.

Exhibit 12. This exhibit must include the following information, *as applicable,* regarding the credit rating agency's aggregate revenues for the fiscal or calendar year ending immediately before the date it furnishes an INITIAL APPLICATION to the Commission:

- Revenue from determining and maintaining credit ratings;
- Revenue from subscribers;
- Revenue from granting licenses or rights to publish credit ratings;
- Revenue from determining credit ratings that are not made readily accessible (private ratings); and
- Revenue from all other services and products offered by the rating

organization (include descriptions of any major sources of revenue).

Exhibit 13. This exhibit must include the total and median annual compensation of the credit rating agency's credit analysts.

F. Explanation of Terms. For purposes of Form NRSRO, the following definitions and descriptions apply:

1. COMMISSION—The U. S. Securities and Exchange Commission.

2. CREDIT RATING—An assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments [Section 3(a)(60) of the Exchange Act].

3. CREDIT RATING AGENCY [Section 3(a)(61) of the Exchange Act]—Any person:

- Engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;
- Employing either a quantitative or qualitative model, or both to determine credit ratings; and
- Receiving fees from either issuers, investors, and/or other market participants.

4. NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION [Section 3(a)(62) of the Exchange Act]—A credit rating agency that:

- Has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration as an NRSRO;
- Issues credit ratings certified by qualified institutional buyers with respect to:
  - Financial institutions, brokers, or dealers;
  - Insurance companies;
  - Corporate issuers;
  - Issuers of asset-backed securities;
  - Issuers of government securities, municipal securities, or securities issued by a foreign government; or
  - A combination of one or more of the above; and
- Is registered as an NRSRO.

5. NON-RESIDENT RATING ORGANIZATION [Exchange Act Rule 17g-4(a)]—A nationally recognized statistical rating organization that:

- If a corporation, is incorporated in or has its principal office in, a location outside the United States, its territories, or possessions;
- If a partnership or other unincorporated organization or association, has its principal office in a location outside the United States, its territories, or possessions.

6. PERSON—An individual, partnership, corporation, trust, limited liability company, or other organization.

7. PERSON ASSOCIATED WITH THE CREDIT RATING AGENCY—Any partner, officer, director, or branch manager of the credit rating agency (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a credit rating agency, or any employee of a credit rating agency [Section 3(a)(63) of the Exchange Act].

8. QUALIFIED INSTITUTIONAL BUYER—An entity listed in 17 CFR 230.144A(a) that is not affiliated with the credit rating agency [Section 3(a)(64) of the Exchange Act].

**Disclosure Reporting Page (NRSRO)**

This Disclosure Reporting Page (DRP) is to be used to report information related to affirmative responses to Item 8 of Form NRSRO.

Use a separate DRP for each event or proceeding. Attach additional pages as necessary.

Name of credit rating agency

Date

Check Item being responded to:

☐ Item 8A
☐ Item 8B
☐ Item 8C

The individual(s) or entity(ies) for whom this DRP is being filed is (are):

☐ The credit rating agency
☐ The credit rating agency and one or more associated persons
☐ One or more associated persons

If this DRP is being filed for one or more associated persons, provide the full name of the associated person(s):

If this DRP provides information relating to a "Yes" answer to Item 8A, describe the act(s) that was (were) committed or omitted; or the order(s) or finding(s); or the injunction(s) (provide the relevant statute(s) or regulation(s)) and provide jurisdiction(s) and date(s):

If this DRP provides information relating to a "Yes" answer to Item 8B, describe the crime(s) and provide jurisdiction(s) and date(s):

If this DRP provides information relating to a "Yes" answer to Item 8C, attach the relevant Commission order(s) and provide date(s):

☐ This DRP should be removed from Form NRSRO because the person(s) is (are) no longer associated with the credit rating agency.

By the Commission.

Dated: February 2, 2007.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. 07–548 Filed 2–8–07; 8:45 am]

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Federal Register

Vol. 72, No. 27

Friday, February 9, 2007

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## FEDERAL REGISTER PAGES AND DATE, FEBRUARY

| | |
|---|---|
| 4615–4942 | 1 |
| 4943–5148 | 2 |
| 5149–5326 | 5 |
| 5327–5594 | 6 |
| 5595–5912 | 7 |
| 5913–6140 | 8 |
| 6141–6432 | 9 |

## CFR PARTS AFFECTED DURING FEBRUARY

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**

Ch. XXV ..... 4943
3254 ..... 6141

**3 CFR**

**Proclamations:**
8104 ..... 5323
8105 ..... 5913

**Executive Orders:**
13396 (See Notice of Feb. 5, 2007) ..... 5593

**Administrative Orders:**
Memorandums:
Memorandum of January 25, 2007 ..... 5149
Notices:
Notice of February 5, 2007 ..... 5593

**5 CFR**

890 ..... 5151
950 ..... 6142

**6 CFR**

13 ..... 6143

**7 CFR**

301 ..... 4945
966 ..... 5327
3550 ..... 5153

**Proposed Rules:**
930 ..... 5646
1000 ..... 6179
1001 ..... 6179
1005 ..... 6179
1006 ..... 6179
1007 ..... 6179
1030 ..... 6179
1032 ..... 6179
1033 ..... 6179
1124 ..... 6179
1126 ..... 6179
1131 ..... 6179

**8 CFR**

**Proposed Rules:**
103 ..... 4888

**10 CFR**

72 ..... 4615, 5595
73 ..... 4945

**Proposed Rules:**
40 ..... 5348
72 ..... 4660, 5348
74 ..... 5348
150 ..... 5348
170 ..... 5108
171 ..... 5108
430 ..... 6184
431 ..... 6186

**11 CFR**

100 ..... 5595

**12 CFR**

611 ..... 5606
612 ..... 5606
613 ..... 5606
614 ..... 5606
615 ..... 5606

**Proposed Rules:**
354 ..... 5217

**13 CFR**

123 ..... 5607

**14 CFR**

23 ..... 4618, 5915, 5917
39 ..... 4625, 4633, 4635, 4948, 5157, 5160, 5164, 5919, 5921, 5923, 5925
71 ..... 5607, 5608, 5609, 5610, 5611, 5612
97 ..... 4950, 4952

**Proposed Rules:**
23 ..... 4661
39 ..... 4663, 4964, 5359, 5362, 5364
61 ..... 5806
91 ..... 5806
121 ..... 5366
125 ..... 5366
135 ..... 5366
141 ..... 5806

**15 CFR**

801 ..... 5167, 5169
902 ..... 6144

**17 CFR**

**Proposed Rules:**
240 ..... 6378
249b ..... 6378

**18 CFR**

35 ..... 5171
50 ..... 5613
157 ..... 5614
366 ..... 5171
375 ..... 5171
380 ..... 5613

**21 CFR**

510 ..... 5329
524 ..... 5929
529 ..... 5329
558 ..... 4954
864 ..... 4637

**Proposed Rules:**
20 ..... 5944
101 ..... 5367
201 ..... 5944
207 ..... 5944
314 ..... 5944
330 ..... 5944
514 ..... 5944

515.....5944
601.....5944
607.....5944
610.....5944
1271.....5944

**22 CFR**

126.....5614

**24 CFR**

28.....5586
30.....5586
81.....5586
180.....5586
3282.....5586
3500.....5586

**26 CFR**

1.....4955, 5174, 6155
602.....5174, 6155

**Proposed Rules:**

1.....5228, 6190

**27 CFR**

9.....6165

**29 CFR**

1603.....5616
1610.....5616

**30 CFR**

943.....5330

**Proposed Rules:**

914.....5374
926.....5377
938.....5380

**31 CFR**

500.....4960

**33 CFR**

100.....5333
104.....5930
117.....4961, 5333, 5617
120.....5930
155.....6168
165.....4639, 5333, 5619

**Proposed Rules:**

100.....4669
110.....5382

**37 CFR**

201.....5931

**39 CFR**

**Proposed Rules:**

3001.....5230

**40 CFR**

52.....4641, 5932
55.....5936
60.....4641
62.....5940
86.....6049
180.....4963, 5621, 5624
261.....4645
600.....6049

**Proposed Rules:**

49.....5944
51.....5944
52.....4671, 4674, 5232, 5946
60.....4674, 5510, 6320
62.....5946
80.....4966

**41 CFR**

102-76.....5942

**42 CFR**

**Proposed Rules:**

412.....4776, 5507
413.....4776, 5507

**44 CFR**

64.....5630
67.....5197

**Proposed Rules:**

67.....5239, 5247, 6192

**45 CFR**

620.....4943
689.....4943
1154.....6141

**46 CFR**

296.....5342

**47 CFR**

0.....5631
15.....5632

**48 CFR**

511.....4649
516.....4649
532.....4649
538.....4649
546.....4649
552.....4649

**Proposed Rules:**

2.....4675
4.....4675
5.....4675
13.....4675

**49 CFR**

71.....6170
192.....4655
195.....4655
1515.....5632
1540.....5632
1572.....5632

**Proposed Rules:**

371.....5947
375.....5947
386.....5947
387.....5947
571.....5385
1243.....4676

**50 CFR**

17.....6052
223.....5633
229.....4657, 5214
300.....6144
404.....5642
622.....5345
635.....5633
648.....5643
679.....5346, 5644, 6177, 6178

**Proposed Rules:**

17.....4967, 5552, 5856, 6106
223.....5648
300.....5652
679.....5654
680.....5255

## 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 FEBRUARY 9, 2007

**AGRICULTURE DEPARTMENT**

**Commodity Credit Corporation**

Loan and purchase programs:

2006 emergency agricultural disaster assistance programs; published 2-12-07

**ENERGY DEPARTMENT**

Worker Safety and Health Program; chronic beryllium disease prevention; published 2-9-06

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Electric utilities (Federal Power Act):

Pricing reform; transmission investment promotion; published 1-10-07

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Medical devices:

Immunology and microbiology devices—

Cystic fibrosis nucleic acid assays; quality control material classification; published 1-10-07

**PERSONNEL MANAGEMENT OFFICE**

Combined Federal Campaign; eligibility requirements and public accountability standards; correction; published 2-9-07

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Dassault; published 1-25-07

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Qualified film and television production costs deduction; published 2-9-07

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Cherries (tart) grown in Michigan et al.; comments due by 2-15-07; published 1-16-07 [FR E7-00423]

Cranberries grown in Massachusetts, et al.; comments due by 2-15-07; published 1-16-07 [FR E7-00428]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:

Horse quarantine facilities, permanent, privately owned; standards; comments due by 2-12-07; published 12-13-06 [FR E6-21032]

Interstate transportation of animals and animal products (quarantine):

Brucellosis in cattle; research facilities; comments due by 2-12-07; published 12-13-06 [FR E6-21172]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic commercial shark; comments due by 2-12-07; published 12-14-06 [FR 06-09667]

**CONSUMER PRODUCT SAFETY COMMISSION**

Consumer Product Safety Act:

Portable generators—

Mandatory performance standards; comments due by 2-12-07; published 12-12-06 [FR E6-21131]

**DEFENSE DEPARTMENT**

**Defense Acquisition Regulations System**

Acquisition regulations:

Labor reimbursement on DoD non-commercial time-and-materials and labor-hour contracts; comments due by 2-12-07; published 12-12-06 [FR 06-09602]

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Performance-based payments; comments due by 2-12-07; published 12-14-06 [FR 06-09678]

**ENERGY DEPARTMENT**

**Energy Efficiency and Renewable Energy Office**

Consumer products; energy conservation program:

Energy conservation standards—

Battery chargers and external power supplies; document availability and public meeting; comments due by 2-16-07; published 12-29-06 [FR E6-22437]

Residential water heaters, direct heating equipment, and pool heaters; comment period extension; comments due by 2-13-07; published 1-30-07 [FR E7-01502]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollution; standards of performance for new stationary sources:

Solid waste incineration units; Federal plan requirements; comments due by 2-16-07; published 12-18-06 [FR E6-21285]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Ohio; comments due by 2-16-07; published 1-17-07 [FR E7-00520]

Air quality implementation plans; approval and promulgation; various States:

Kentucky; comments due by 2-16-07; published 1-17-07 [FR E7-00531]

Nevada; comments due by 2-16-07; published 12-18-06 [FR E6-21500]

West Virginia; comments due by 2-12-07; published 1-12-07 [FR E7-00249]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Clothianidin; comments due by 2-12-07; published 12-13-06 [FR E6-20898]

Nomenclature changes; technical amendment; comments due by 2-12-07; published 12-13-06 [FR E6-21025]

**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:

Connecticut; comments due by 2-12-07; published 1-10-07 [FR E7-00185]

Oklahoma and Texas; comments due by 2-12-07; published 1-10-07 [FR E7-00181]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Depository Institution Management Interlocks Act; implementation; comments due by 2-12-07; published 1-11-07 [FR 07-00079]

**FEDERAL RESERVE SYSTEM**

Depository Institution Management Interlocks Act; implementation; comments due by 2-12-07; published 1-11-07 [FR 07-00079]

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Performance-based payments; comments due by 2-12-07; published 12-14-06 [FR 06-09678]

**HOMELAND SECURITY DEPARTMENT**

Acquisition regulations:

Revisions; comments due by 2-12-07; published 1-11-07 [FR 07-00061]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:

Critical habitat designations—

Monterey spineflower; comments due by 2-12-07; published 12-14-06 [FR 06-09656]

Findings on petitions, etc.—

Uinta Basin hookless cactus and Pariette cactus; comments due by 2-12-07; published 12-14-06 [FR E6-21259]

Migratory bird hunting:

Alaska; 2007 subsistence harvest regulations; comments due by 2-12-07; published 12-13-06 [FR 06-09492]

**LABOR DEPARTMENT**

**Employment Standards Administration**

Family Medical Leave Act; information request; comments due by 2-16-07; published 1-26-07 [FR 07-00353]

**LABOR DEPARTMENT**

**Employment and Training Administration**

Aliens; temporary employment in U.S.:

E-3 visa category; labor-condition application requirements; filing procedures; comments due by 2-12-07; published 1-12-07 [FR 07-00044]

**LABOR DEPARTMENT**

**Wage and Hour Division**

Family Medical Leave Act; information request; comments due by 2-16-07; published 1-26-07 [FR 07-00353]

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Performance-based payments; comments due by 2-12-07; published 12-14-06 [FR 06-09678]

**SECURITIES AND EXCHANGE COMMISSION**

Securities:

Foreign private issuer's termination of registration; comments due by 2-12-07; published 1-11-07 [FR E6-22405]

Securities futures; short selling In connection with public offering; comments due by 2-12-07; published 12-13-06 [FR E6-21141]

Short sale price test; amendments; comments due by 2-12-07; published 12-13-06 [FR E6-21156]

**TRANSPORTATION DEPARTMENT**

Workplace drug and alcohol testing programs:

Procedures; revision; comments due by 2-12-07; published 1-11-07 [FR E7-00242]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Air carrier certification and operations:

Digital flight data recorders; filtered flight data; comments due by 2-13-07; published 11-15-06 [FR E6-19205]

Airworthiness directives:

Airbus; comments due by 2-12-07; published 1-12-07 [FR E7-00315]

McDonnell Douglas; comments due by 2-12-07; published 12-12-06 [FR E6-20951]

MT-Propeller Entwicklung GmbH; comments due by 2-12-07; published 12-13-06 [FR E6-21184]

Rolls-Royce Corp.; comments due by 2-12-07; published 12-14-06 [FR E6-21185]

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

Engineering and traffic operations:

Temporary traffic control devices; work zone safety protection measures for workers and motorists; comments due by 2-16-07; published 11-1-06 [FR E6-18283]

**TRANSPORTATION DEPARTMENT**

**Federal Motor Carrier Safety Administration**

Motor carrier safety standards:

Commercial Driver's License; medical certification requirements; comments due by 2-14-07; published 11-16-06 [FR E6-19246]

Minimum levels of financial responsibility for motor carriers; rulemaking petitions; comments due by 2-13-07; published 12-15-06 [FR E6-21314]

**TREASURY DEPARTMENT**

**Comptroller of the Currency**

Depository Institution Management Interlocks Act; implementation; comments due by 2-12-07; published 1-11-07 [FR 07-00079]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Katrina Emergency Tax Relief Act; Hurricane Katrina displaced individuals; taxable income reduction for housing; cross-reference; comments due by 2-12-07; published 12-12-06 [FR E6-21030]

**TREASURY DEPARTMENT**

**Thrift Supervision Office**

Depository Institution Management Interlocks Act; implementation; comments due by 2-12-07; published 1-11-07 [FR 07-00079]

**VETERANS AFFAIRS DEPARTMENT**

Adjudication; pensions, compensation, dependency, etc.:

Persian Gulf War veterans; compensation for disabilities resulting from undiagnosed illnesses; presumptive period extension; comments due by 2-16-07; published 12-18-06 [FR E6-21531]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

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**H.R. 475/P.L. 110–2**

House Page Board Revision Act of 2007 (Feb. 2, 2007; 121 Stat. 4)

**Last List January 22, 2007**

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