Federal Register

4–28–08 Monday
Vol. 73 No. 82 Apr. 28, 2008

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

4–28–08 Monday
Vol. 73 No. 82 Apr. 28, 2008

Pages 22785–23062

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

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

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

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

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

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

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

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

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

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

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

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

3. The important elements of typical Federal Register documents.

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

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

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

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

RESERVATIONS: (202) 741-6008

Contents

Federal Register

Vol. 73, No. 82

Monday, April 28, 2008

Separate Parts In This Issue

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.

5 CFR
250.....23012

7 CFR
301.....22785

10 CFR
2.....22786
50.....22786
51.....22786
52.....22786
100.....22786

12 CFR
Proposed Rules:
701.....22836
705.....22836
740.....22839

14 CFR
39 (5 documents).....22787, 22789, 22791, 22793, 22795
Proposed Rules:
39 (2 documents).....22840, 22845

16 CFR
Proposed Rules:
23.....22848

18 CFR
Proposed Rules:
38.....22849
40.....22856
382.....22867

20 CFR
Proposed Rules:
404.....22871

21 CFR
312.....22800
Proposed Rules:
872.....22877

26 CFR
Proposed Rules:
301.....22879

27 CFR
4.....22816
24.....22816
27.....22816
Proposed Rules:
9.....22883

30 CFR
Proposed Rules:
916.....22887

36 CFR
Proposed Rules:
13.....22890

37 CFR
Proposed Rules:
2.....22894

40 CFR
52.....22818
180.....22823
300.....22828
Proposed Rules:
52.....22896
60.....22901
81.....22896

49 CFR
Proposed Rules:
523.....22913
531.....22913
533.....22913
534.....22913
536.....22913
537.....22913

50 CFR
648.....22831

Rules and Regulations

Federal Register
Vol. 73, No. 82
Monday, April 28, 2008

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–112–2]

RIN 0579–AB45

Karnal Bunt Compensation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations to provide compensation for certain growers and handlers of grain and seed affected by Karnal bunt who had not been eligible for compensation, and for certain wheat grown outside the regulated area that had been commingled with wheat grown in regulated areas in Texas. The compensation provided by the interim rule was necessary to encourage the participation of, and obtain cooperation from, affected individuals in our efforts to contain and reduce the prevalence of Karnal bunt.

DATES: Effective on April 28, 2008, we are adopting as a final rule the interim rule published at 67 FR 21561–21566 on May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Royer, Associate Director, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–7819.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations). Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of certain regulated articles, including wheat seed and grain, from the regulated areas. The regulations also provide for the payment of compensation for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, participants in the National Karnal Bunt Survey, and custom harvesters and owners or lessees of other equipment who incurred losses and expenses because of Karnal bunt during certain years. These provisions are in § 301.89–15, "Compensation for growers, handlers, and seed companies in the 1999–2000 and subsequent crop seasons," and § 301.89–16, "Compensation for grain storage facilities, flour millers, National Survey participants, and certain custom harvesters and equipment owners or lessees for the 1999–2000 and subsequent crop seasons."

In an interim rule effective and published in the **Federal Register** on May 1, 2002 (67 FR 21561–21566, Docket No. 01–112–1), we amended the Karnal bunt regulations to provide compensation for certain growers and handlers of grain and seed affected by Karnal bunt who had not been eligible for compensation, and for certain wheat grown outside the regulated area that had been commingled with wheat grown in four counties in Texas that had been added to the list of regulated areas.

In Archer, Baylor, Throckmorton, and Young Counties, certain wheat growers, handlers, and other parties covered by the compensation regulations had appeared to be ineligible to receive compensation for grain or seed affected by Karnal bunt due to restrictive language in the regulations that did not anticipate certain complications in the harvest and storage of grain that arose following the discovery of Karnal bunt in those counties. Due to the need to quickly declare these counties as regulated areas, we had been unable to modify the compensation regulations at that time to address certain relevant aspects of the way seed and grain were moved, stored, and used in the newly regulated areas.

The May 2002 interim rule amended the compensation provisions of the regulations to allow persons affected by these complications in the harvest or storage of grain to apply for compensation. These cases represented unanticipated circumstances applicable only to the 2000–2001 growing season, and we determined that the parties affected should, in fairness, be eligible for compensation. The situations addressed by the interim rule primarily affected growers and handlers in Texas, and certain handlers who moved grain from other States to Texas for storage.

We solicited comments on the interim rule for 60 days ending on July 1, 2002. We received 86 comments by that date, from individual custom harvesters and wheat growers and from boards and associations of custom harvesters and wheat growers and marketers. None of these commenters objected to the provisions of the interim rule.

Several commenters urged us to provide compensation to custom harvesters whose business was affected by the addition of the four counties as regulated areas. In response to these comments, in an interim rule that was effective and published in the **Federal Register** on May 5, 2004 (69 FR 24909–24016, Docket No. 03–052–1) and in a subsequent final rule that was effective and published in the **Federal Register** on May 9, 2005 (70 FR 24297–24302, Docket No. 03–052–3), we amended the regulations in § 301.89–16 to provide for the payment of compensation to custom harvesters whose mechanized harvesting equipment was used to harvest Karnal bunt-infected host crops in Archer, Baylor, Throckmorton, and Young Counties, TX, during the 2000–2001 crop season and was required to be cleaned and disinfected prior to movement from those counties. (A fuller discussion of the comments we received on this topic can be found in the May 2004 interim rule.) This compensation

was intended to reimburse custom harvesters for the cost of that cleaning and disinfection.

The May 2004 interim rule also provided for the payment of compensation equivalent to the value of one contract that an eligible custom harvester lost due to the downtime necessitated by cleaning and disinfection. If an eligible custom harvester did not lose a contract due to this downtime, the interim rule provided for the payment of compensation for the fixed costs he or she incurred during the time the machine was being cleaned and disinfected. The May 2004 interim rule also provided for the payment of compensation for the expenses associated with the cleaning and disinfection of other types of equipment used in the four affected counties.

The other comments we received did not address the situations addressed by the interim rule. Instead, they addressed the regulations in place before the publication of the interim rule, requesting that APHIS provide additional compensation to parties affected by the Karnal bunt quarantine regulations. Specifically, commenters stated that:

- APHIS should pay compensation for wheat grown in quarantined areas;
- Compensation for wheat should be based on the market in which the wheat farmer being compensated is accustomed to selling wheat;
- Compensation should be provided for acreage within the quarantined areas that would normally be planted with wheat but is left fallow;
- APHIS should provide compensation for more than 50 percent of the cost of decontaminating grain storage facilities and raise the $20,000 overall limit on such compensation; and
- APHIS should provide greater compensation for seed, since seed prices are 2 to 4 times higher than local grain prices.

These comments are outside the scope of the interim rule. The provisions of the regulations addressed by these commenters were added to the regulations in a final rule published in the **Federal Register** on August 6, 2001 (66 FR 40839–40843, Docket No. 96–016–37) that established the compensation levels for the 1999–2000 crop season and subsequent years and made several other changes to the compensation regulations. For the reasons discussed in that final rule, we have determined that the present compensation provisions are appropriate.

One commenter stated that APHIS should provide compensation to seed companies and handlers that store uncertified wheat seed that tests spore-positive for Karnal bunt.

The regulations in § 301.89–15 provide for compensation for handlers and seed companies who sell wheat grown in an area under the first regulated crop season only if the wheat was not tested by APHIS prior to purchase by the handler or seed company and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid is not contingent on the test results. Compensation for such wheat will equal the estimated market price for the relevant class of wheat (meaning the type of wheat, such as durum or hard red winter), minus the actual price received by the handler or seed company. Further details are specified in paragraph (a)(2) of § 301.89–15. These provisions were in place during the 2000–2001 crop season, and thus it was not necessary to amend the regulations in the interim rule to accommodate this situation.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 21561–21566 on May 1, 2002.

Done in Washington, DC, this 17th day of April 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–9236 Filed 4–25–08; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 51, 52, and 100

[NRC–2008–0222]

RIN 3150–AI05

Limited Work Authorizations for Nuclear Power Plants; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on October 9, 2007 (72 FR 57415), that amended the Nuclear Regulatory Commission's (NRC) regulations applicable to limited work authorizations (LWAs). This document is necessary to correct erroneous language to the preamble and codified language of the final rule.

DATES: The correction is effective April 23, 2008, and is applicable to November 8, 2007.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administrative, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7163, e-mail *Michael.Lesar@nrc.gov*.

SUPPLEMENTARY INFORMATION: This document corrects erroneous language to the preamble and codified language of the final rule published on October 9, 2007 (72 FR 57415). Also, as published, the final regulations contain errors which may prove to be misleading and need to be clarified. The following corrects the preamble to the October 9, 2007, document.

1. On page 57427, third column, in the first paragraph, the last line is corrected to read as follows:

To ensure that the NRC has sufficient information to perform the cumulative impacts analysis in a timely fashion, the final LWA rule includes a requirement, in § 51.45(c), for the environmental report submitted by an applicant for an ESP, LWA, construction permit, or combined license to include a description of impacts of the applicant's preconstruction activities at the proposed site (i.e., the activities listed in a paragraph (2)(i) through (2)(x) in the definition of construction contained in § 51.4), that are necessary to support the construction and operation of the facility which is the subject of the ESP, LWA, construction permit, or combined license application, and an analysis of the cumulative impacts of the activities

to be authorized by the ESP, LWA, construction permit, or combined license in light of the preconstruction impacts.

2. On page 57433, third column, the last paragraph is revised to read as follows:

Section 51.4 is revised by adding a new definition of "construction," which is identical to the definition of construction in the revised § 50.10. This makes applicable throughout part 51 the definition of construction in § 50.10.

3. On page 57434, in the first column, the first paragraph is removed.

4. On page 57434, in the first column, the paragraph under § 51.45 is corrected to read as follows:

Paragraph (c) is revised by adding a new requirement requiring environmental reports for ESPs, LWAs, construction permits, and combined licenses to include a description of impacts of the applicant's preconstruction activities at the proposed site (i.e., the activities listed in paragraphs (2)(i) through (2)(x) in the definition of "construction" contained in § 51.4), that are necessary to support the construction and operation of the facility which is the subject of the ESP, LWA, construction permit, or combined license application, and an analysis of the cumulative impacts of the activities to be authorized by the ESP, LWA, construction permit, or combined license in light of the preconstruction impacts.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 51.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

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

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

■ 2. In § 51.45, paragraph (c), the second complete sentence is corrected to read as follows:

§ 51.45 Environmental report.

* * * * *

(c) * * * An environmental report prepared at the early site permit stage under § 51.50(b), limited work authorization stage under § 51.49, construction permit stage under § 51.50(a), or combined license stage under § 51.50(c) must include a description of impacts of the preconstruction activities performed by the applicant at the proposed site (i.e., those activities listed in paragraphs (2)(i) through (2)(x) in the definition of "construction" contained in § 51.4), necessary to support the construction and operation of the facility which is the subject of the early site permit, limited work authorization, construction permit, or combined license application. * * *

* * * * * *

Dated at Rockville, Maryland, this 18th day of April 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–8890 Filed 4–25–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25983; Directorate Identifier 2006–SW–11–AD; Amendment 39–15463; AD 2008–08–11]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model MD900 series helicopters that requires modifying the pilot and co-pilot dual-control directional pedal assemblies, or the pilot single-control directional pedal assembly (directional control pedal assembly). This amendment is prompted by an accident which has been attributed to loss of directional control due to failure of the welds in the directional control pedal assembly. The actions specified by this AD are intended to prevent fatigue cracking in the welds that connect the directional control pedal to the pedal shaft, resulting in loss of directional control and subsequent loss of control of the helicopter.

DATES: Effective June 2, 2008.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 2, 2008.

ADDRESSES: You may get the service information identified in this AD from MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com.*

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5233, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on October 17, 2006 (71 FR 60927). That action proposed to require, for MDHI Model MD900 series helicopters, serial numbers (S/N) 900–00008 through 900–00111, 900–00113, and 900–00114, modifying the directional control pedal assembly, part number (P/N) 900C1012007–107, –109, –111, –113, or 900C6012007–111 (pilot dual control); or P/N 900C1012207–105, –107, –109, –111, or –113 (co-pilot dual control); or P/N 900C1010007–107, –109, –111, –113, or 900C6010007–111

(pilot single control), by removing the existing pedals, removing the welded pedal support plate from the pedal shafts, and installing a directional control pedal modification kit, P/N SBK–010. Ink stamping the P/N, 900O5340111–101, on the pedal shaft of each modified directional control pedal assembly using permanent ink was also proposed.

MDHI has issued Service Bulletin SB900–100, dated April 5, 2006, which describes procedures for modifying the directional control pedal assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The one commenter, the Modification and Replacement Parts Association, "does not object to the TC holder provided modification kits provided at no cost to operators" and states that "Such action removes any incentive for the development of alternative parts under 14 CFR 21.303." They also note that the cost impact stated in the AD is $61,650 per helicopter, but should correctly be stated as $61,650 for the entire U.S. fleet of MDHI MD900 helicopters. The FAA concurs and has corrected that error in this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that this AD will affect 30 helicopters of U.S. registry, and the required actions will take approximately 8 work hours for helicopters with single pilot controls installed, or 16 work hours for helicopters with dual pilot and co-pilot controls installed, at an average labor rate of $80 per work hour. Required parts will cost approximately $775 for helicopters with dual pilot and co-pilot controls installed. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $61,650 for the entire fleet, or $2,055 per helicopter, assuming that dual pilot and co-pilot controls are installed on the entire fleet and there is no warranty coverage.

Regulatory Findings

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

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

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

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

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

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2008–08–11 MD Helicopters, Inc.: Amendment 39–15463. Docket No. FAA–2006–25983; Directorate Identifier 2006–SW–11–AD.

Applicability

Model MD900 series helicopters, serial numbers (S/N) 900–00008 through 900–00111, 900–00113, and 900–00114, certificated in any category.

Compliance

Required within 90 days after the effective date of this AD, unless accomplished previously.

To prevent fatigue cracking in the welds which connect the pilot and co-pilot dual-control, or pilot single-control directional control pedal (directional control pedal) to the pedal shaft, resulting in loss of directional control and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify each directional control pedal assembly, part number (P/N) 900C1012007–107, –109, –111, –113, or 900C6012007–111 (pilot dual control); or P/N 900C1012207–105, –107, –109, –111, or –113 (co-pilot dual control); or P/N 900C1010007–107, –109, –111, –113, or 900C6010007–111 (pilot single control), by removing the existing pedals, removing the welded pedal support plate from the pedal shafts, and installing a directional control pedal modification kit, P/N SBK–010, in accordance with part 2, Accomplishment Instructions, in MD Helicopters Service Bulletin SB900–100, dated April 5, 2006. One modification kit is required to be installed on helicopters with single controls and two modification kits are required to be installed on helicopters with dual controls.

(b) Using a permanent ink, ink stamp the P/N, 900O5340111–101, on the pedal shaft of each modified directional control pedal assembly.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: Roger Durbin, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5233, fax (562) 627–5210, for information about previously approved alternative methods of compliance.

(d) The modification shall be done in accordance with the specified portions of MD Helicopters Service Bulletin SB900–100, dated April 5, 2006. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/*

code_of_federal_regulations/ibr_locations.html.

(e) This amendment becomes effective on June 2, 2008.

Issued in Fort Worth, Texas, on April 3, 2008.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–8638 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29248; Directorate Identifier 2007–NM–155–AD; Amendment 39–15487; AD 2008–09–06]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required a safety review of the aircraft Fuel Tank System * * *.

* * * * *

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 2, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 2, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on March 6, 2008 (73 FR 12034). That supplemental NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: the date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 144 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $11,520, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–09–06 Saab Aircraft AB: Amendment 39–15487. Docket No. FAA–2007–29248; Directorate Identifier 2007–NM–155–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 2, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) *Air Transport Association (ATA) of America Code 28:* Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: the date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Before December 16, 2008, or within 3 months after the effective date of this AD, whichever occurs earlier, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate the maintenance and inspection instructions in Part 1 of Saab 340 Fuel Airworthiness Limitations Document 340 LKS 009033, dated February 14, 2006. For all tasks identified in Part 1 of Saab 340 Fuel Airworthiness Limitations Document 340 LKS 009033, dated February 14, 2006, the initial compliance times start from the effective date of this AD, and the repetitive inspections must be accomplished thereafter at the interval specified in Part 1 of Saab 340 Fuel Airworthiness Limitations Document 340 LKS 009033, dated February 14, 2006; except as provided by paragraphs (f)(3) and (g) of this AD.

(2) Before December 16, 2008, revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs as defined in Part 2 of Saab 340 Fuel Airworthiness Limitations Document 340 LKS 009033, dated February 14, 2006.

(3) After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspection, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of Saab 340 Fuel Airworthiness Limitations Document 340 LKS 009033, dated February 14, 2006, that is approved by the Manager, International Branch, ANM–116, Transport Airplane

Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent); or unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g)(1) of this AD.

(4) Where Saab 340 Fuel Airworthiness Limitations Document 340 LKS 009033, dated February 14, 2006, allows for exceptional short-term extensions, an exception is acceptable to the FAA if it is approved by the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2006–0221, dated July 20, 2006; and Saab 340 Fuel Airworthiness Limitations Document 340 LKS 009033, dated February 14, 2006; for related information.

Material Incorporated by Reference

(i) You must use Saab 340 Fuel Airworthiness Limitations Document 340 LKS 009033, dated February 14, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on April 15, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8663 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0431; Directorate Identifier 2008–SW–08–AD; Amendment 39–15483; AD 2008–09–03]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109A, A109A II, and A109C Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified Agusta S.p.A. (Agusta) model helicopters. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority to identify and correct an unsafe condition on an aviation product. The European Aviation Safety Agency (EASA), the Technical Agent for Italy, with which we have a bilateral agreement, states in the MCAI:

It has been reported, on an A109A helicopter, a case of failure of the grooved clamp fixing the engine exhaust duct, with the consequent loss of the duct.

The duct has hit the main and tail rotor producing the loss of the tail rotor and the emergency landing of the helicopter.

The fracture of the grooved clamp was due to excessive loads and corrosion around the attaching rivets. This AD requires actions that are intended to address this unsafe condition.

DATES: This AD becomes effective May 13, 2008.

The Director of the Federal Register approved the incorporation by reference of Agusta Bollettino Tecnico No. 109–123, dated November 16, 2006, as of May 13, 2008.

We must receive comments on this AD by June 27, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Eric Haight, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5204, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

EASA, which is the Technical Agent for the aviation authority of Italy, has issued AD No. 2007–0041, dated February 21, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for this Italian-certificated product. The MCAI states:

> It has been reported, on an A109A helicopter, a case of failure of the grooved clamp fixing the engine exhaust duct, with the consequent loss of the duct.
>
> The duct has hit the main and tail rotor producing the loss of the tail rotor and the emergency landing of the helicopter.

The fracture of the grooved clamp was due to excessive loads and corrosion around the attaching rivets. Even though the failed part was on a Model A109A, the Models A109A II and A109C use the same parts. You may obtain further information by examining the MCAI and service information.

Relevant Service Information

Agusta has issued Bollettino Tecnico No. 109–123, dated November 16, 2006. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Determination and Requirements of This AD

These products have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Differences Between the AD and the MCAI

We have reviewed the MCAI and related service information and, in general, agree with their substance. However, this AD differs from the MCAI as follows:

(1) We refer to flight hours as hours time-in-service (TIS).

(2) We are requiring the initial inspection to be done within the next 20 hours TIS rather than using the date and operating hours specified in the MCAI.

(3) We are not requiring a recurring inspection of the grooved clamps, but we intend to propose to mandate the 300 hour time-in-service or yearly recurring inspection of the grooved clamps through our non-emergency rulemaking procedures.

These differences are highlighted in the "Differences Between the FAA AD and the MCAI" section of this AD.

Costs of Compliance

We estimate that this AD will affect about 59 products of U.S. registry. We also estimate that it will take about 4 work-hours per helicopter to inspect the grooved clamps that attach the engine exhaust ducts. The average labor rate is $80 per work-hour. Required parts cost is negligible. Based on these figures, we estimate the cost of the AD on U.S. operators to be $18,880.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because we are requiring an inspection within 20 hours time-in-service (TIS), a short time frame. The short inspection time is necessary because of the failure of a grooved clamp attaching the external left side engine exhaust duct and the consequent loss of the exhaust duct that occurred, resulted in an emergency landing. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0431; Directorate Identifier 2008–SW–08–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–09–03 Agusta S.p.A.: Amendment 39–15483. Docket No. FAA–2008–0431; Directorate Identifier 2008–SW–08–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on May 13, 2008.

Applicability

(b) This AD applies to Model A109A, A109A II, and A109C helicopters, with grooved clamps, part number 4606AC, that attach the engine exhaust ducts, installed, certificated in any category.

Reason

(c) The mandatory continued airworthiness information (MCAI) states:

It has been reported, on an A109A helicopter, a case of failure of the grooved clamp fixing the engine exhaust duct, with the consequent loss of the duct.

The duct has hit the main and tail rotor producing the loss of the tail rotor and the emergency landing of the helicopter.

The fracture of the grooved clamp was due to excessive loads and corrosion around the attaching rivets.

Actions and Compliance

(d) Required as indicated, unless already done, do the following:

(1) Within the next 20 hours time-in-service (TIS), remove, clean, and using a 10X or higher magnifying glass, inspect the four grooved clamps that attach the engine exhaust ducts as shown in Figure 1 and by following Steps 3 through 4.2. of the Compliance Instructions of Agusta Bollettino Tecnico No. 109–123, dated November 16, 2006.

(2) If you find a crack or corrosion, before further flight, replace the unairworthy grooved clamp with an airworthy grooved clamp.

Differences Between the FAA AD and the MCAI

(e) This AD differs from the MCAI as follows:

(1) We refer to flight hours as hours TIS.

(2) We are requiring the initial inspection to be done within the next 20 hours TIS instead of using the date and operating time specified in the MCAI.

(3) We are not requiring a recurring inspection of the grooved clamps, but we intend to propose to mandate the 300 hour time-in-service or yearly recurring inspection of the grooved clamps through our non-emergency rulemaking procedures.

(f) Air Transport Association of America (ATA) Code 7800: Engine Exhaust.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Safety Management Group, Rotorcraft Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Eric Haight, Aviation Safety Engineer, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5204, fax (817) 222–5961.

(2) *Airworthy Product:* Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) EASA Mandatory Continuing Airworthiness Information (MCAI) AD No. 2007–0041, dated February 21, 2007, contains related information.

Material Incorporated by Reference

(i) The Director of the Federal Register approved the incorporation by reference of Agusta Bollettino Tecnico No. 109–123, dated November 16, 2006, under 5 U.S.C. 552(a) and 1 CFR part 51.

(1) For service information identified in this AD, contact Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

(2) You may review copies of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on April 4, 2008.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–8640 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0249; Directorate Identifier 2008–CE–012–AD; Amendment 39–15490; AD 2008–09–09]

RIN 2120–AA64

Airworthiness Directives; DORNIER LUFTFAHRT GmbH Models 228–200, 228–201, 228–202, and 228–212 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During production testing of a batch of control cables, cracks inside the cable terminal were detected. Despite the specified strength at the date of delivery was achieved, it can not be excluded that the mechanical properties of the cable will degrade.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 2, 2008.

On June 2, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 5, 2008 (73 FR 11841). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During production testing of a batch of control cables, cracks inside the cable terminal were detected. Despite the specified strength at the date of delivery was achieved, it can not be excluded that the mechanical properties of the cable will degrade.

The MCAI requires replacing rudder control cables, part number (P/N) B–422420A00F delivered with European Aviation Safety Agency (EASA) Form One tracking number RS52074/05 after January 1, 2006 (also identified by production batch number 1141044, which is printed on the fork end next to the P/N), with FAA-approved serviceable rudder control cables. You

may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 17 products of U.S. registry. We also estimate that it will take about 15 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $20,400 or $1,200 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–09–09 DORNIER LUFTFAHRT GmbH: Amendment 39–15490; Docket No. FAA–2008–0249; Directorate Identifier 2008–CE–012–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 2, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models 228–200, 228–201, 228–202, and 228–212, all serial numbers, that are:

(1) Equipped with rudder control cables, part number (P/N) B–422420A00F delivered with European Aviation Safety Agency (EASA) Form One tracking number RS52074/05 after January 1, 2006 (also identified by production batch number 1141044, which is printed on the fork end next to the P/N); and

(2) Certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During production testing of a batch of control cables, cracks inside the cable terminal were detected. Despite the specified strength at the date of delivery was achieved, it can not be excluded that the mechanical properties of the cable will degrade.

The MCAI AD requires replacing rudder control cables, P/N B–422420A00F delivered with EASA Form One tracking number RS52074/05 after January 1, 2006 (also identified by production batch number 1141044, which is printed on the fork end next to the P/N), with FAA-approved serviceable rudder control cables.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Replace the rudder control cables identified in paragraph (c)(1) of this AD with FAA-approved serviceable rudder control cables following RUAG Aerospace Defence Technology Dornier 228 Alert Service Bulletin No. ASB–228–269, dated March 23, 2007, at whichever of the following occurs first:

(i) Upon reaching 1,200 total hours time-in-service (TIS) on the rudder control cables identified in paragraph (c)(1) of this AD or within 30 days after June 2, 2008 (the effective date of this AD), whichever occurs later; or

(ii) Within the next 3 months after June 2, 2008 (the effective date of this AD).

(2) As of June 2, 2008 (the effective date of this AD), do not install any rudder control cables, P/N B–422420A00F delivered with EASA Form One tracking number RS52074/05 after January 1, 2006 (also identified by production batch number 1141044, which is printed on the fork end next to the P/N).

(3) Within 30 days after doing the replacement required in paragraph (f)(1) of this AD, return the removed rudder control cables and any held as spares to the manufacturer at the address on RUAG Aerospace Defence Technology Dornier 228 Alert Service Bulletin No. ASB–228–269, dated March 23, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Luftfahrt-Bundesamt (LBA) AD No. D–2007–353, dated December 28, 2007, and RUAG Aerospace Defence Technology Dornier 228 Alert Service Bulletin No. ASB–228–269, dated March 23, 2007, for related information.

Material Incorporated by Reference

(i) You must use RUAG Aerospace Defence Technology Dornier 228 Alert Service Bulletin No. ASB–228–269, dated March 23, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact RUAG Aerospace Services, Customer Support, P.O. Box 1253, 82231 Wessling, Germany.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on April 18, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9055 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0476; Directorate Identifier 2008–CE–018–AD; Amendment 39–15491; AD 2008–09–10]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–300, AT–301, AT–302, AT–400, and AT–400A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2003–06–01, which applies to all Air Tractor, Inc. (Air Tractor) Models AT–300, AT–301, AT–302, and AT–400A airplanes that have aluminum spar caps; certain Air Tractor Models AT–400 airplanes that have aluminum spar caps; and all Models AT–300 and AT–301 airplanes that have aluminum spar caps and are or have been converted to turbine power. AD 2003–06–01 requires replacing the wing spar lower caps at a specified safe life limit; allows extending the safe life limit on certain airplanes if a wing lower spar cap splice rework is done; allows a limited time of continued operation beyond the safe life limit provided parts are ordered, the replacement is scheduled, and repetitive inspections reveal no cracks; and requires a report of any cracks found during any inspection to the FAA. This AD results from a recent report of cracks found on a Model AT–301 airplane at hours below the modification time specified in AD 2003–06–01. Consequently, this AD retains the wing spar lower cap replacement and reporting requirements from AD 2003–06–01 and adds a repetitive eddy-current inspection. We are issuing this AD to detect and correct cracks in the wing centerline splice joint. If not detected and corrected, these cracks could result in the wing separating from the airplane during flight.

DATES: This AD becomes effective on May 8, 2008.

On May 8, 2008, the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Service Letter #55, revised October 4, 2004, listed in this AD.

As of April 4, 2003, (68 FR 13221, March 19, 2003), the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Service Letter #55, revised October 23, 2002, and Snow Engineering Co. Process Specification Number 197, revised June 4, 2002, listed in this AD.

We must receive any comments on this AD by June 27, 2008.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; facsimile: (940) 564–5612.

To view the comments to this AD, go to *http://www.regulations.gov.* The docket number is FAA–2008–0476; Directorate Identifier 2008–CE–018–AD.

FOR FURTHER INFORMATION CONTACT: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; or Andrew McAnaul, Aerospace Engineer, FAA, Fort Worth ACO (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Discussion

An incident on an Air Tractor Model AT–400A where the wing separated from the airplane caused us to issue AD 2002–13–02, Amendment 39–12789 (67 FR 44024, July 1, 2002). Investigation revealed that the right-hand lower spar cap failed due to fatigue at the 3/8-inch outboard bolt, which is located 6.5 inches outboard of the fuselage centerline.

The airplanes affected by AD 2002–13–02 have a similar type design to that of the accident airplane. AD 2002–13–02 required inspecting (one-time) the wing centerline splice joint for cracks and, if any crack was found, replacing the affected wing spar lower cap; reporting the results of the inspection to the FAA; and replacing the wing spar lower caps after a certain amount of usage.

The inspection reports submitted to the FAA (as required in AD 2002–13–02) revealed a Model AT–400A airplane with a cracked spar cap. The damage was significant enough to require spar cap replacement. Based on this damage and the results of the inspection reports, we determined that the mandatory replacement time for the wing spar lower cap on the affected turbine engine powered airplanes should be reduced.

This prompted us to issue AD 2003–06–01, Amendment 39–13088 (68 FR 13221, March 19, 2003) to supersede AD 2002–13–02. AD 2003–06–01 requires replacing the wing spar lower caps at a specified safe life limit; allows extending the safe life limit on certain airplanes if a wing lower spar cap splice rework is done; allows a limited time of continued operation beyond the safe life limit provided parts are ordered, the replacement is scheduled, and repetitive inspections reveal no cracks; and requires a report of any cracks found during any inspection to the FAA.

The FAA recently received a report of cracks found on a Model AT–301 airplane with less hours than the modification time specified in AD 2003–06–01. Based on this incident, we reevaluated the fatigue management plan for the AT–300 and AT–400 series airplanes that have aluminum spar caps without part number 20990–1/–2 steel web plate installed. We have determined that repetitive eddy-current inspections are needed on these airplanes in order to detect any cracks that may develop on the wing spar lower cap before reaching the safe life limit.

This condition, if not corrected, could result in the wing separating from the airplane during flight.

Relevant Service Information

The manufacturer has issued the following service information to address this situation:

- Snow Engineering Co. Service Letter #55, revised October 23, 2002, which includes procedures and information for doing the wing lower spar cap splice joint modification rework on all AT–300 and AT–301 series airplanes;
- Snow Engineering Co. Service Letter #55, revised October 4, 2004, which includes revised procedures and information for doing the wing lower spar cap splice joint modification rework on all AT–300 and AT–301 series airplanes; and
- Snow Engineering Co. Process Specification Number 197, revised June 4, 2002, which provides procedures for accomplishing eddy current inspections of the wing lower spar caps.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD supersedes AD 2003–06–01 with a new AD that:

- Requires repetitive eddy-current inspections;
- Requires you to replace the wing spar lower caps at specified times;
- Allows you to extend the time for replacement on certain airplanes if a wing lower spar cap splice rework is done;
- Requires you to inspect the wing lower spar cap immediately prior to modification; and
- Requires you to report any cracks found during the inspections to the FAA.

We are not retaining from AD 2003–06–01 the provision to allow a limited time of continued operation beyond the safe life limit.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number "FAA–2008–0476; Directorate Identifier 2008–CE–018–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–06–01, Amendment 39–13088 (68 FR 13221, March 19, 2003), and by adding a new AD to read as follows:

2008–09–10 Air Tractor, Inc.: Amendment 39–15491; Docket No. FAA–2008–0476; Directorate Identifier 2008–CE–018–AD.

Effective Date

(a) This AD becomes effective on May 8, 2008.

Affected ADs

(b) This AD supersedes AD 2003–06–01, Amendment 39–13088.

Applicability

(c) This AD applies to the following airplanes that are certificated in any category:

(1) Models AT–300, AT–301, AT–302, and AT–400A airplanes, all serial numbers, that have aluminum spar caps;

(2) Models AT–400 airplanes, serial numbers 400–0244 through 400–0415, that have aluminum spar caps; and

(3) Models AT–300 and AT–301 airplanes, all serial numbers that have aluminum spar caps and are or have been converted to turbine power.

Unsafe Condition

(d) This AD is the result of service reports and analysis done on wing lower spar caps of Air Tractor, Inc. airplanes. The actions specified by this AD are intended to prevent fatigue cracks from occurring in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in failure of the spar cap and lead to wing separation and loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done:

(1) For all affected airplanes without steel web plates, part numbers (P/N) 20990–1 or 20990–2, or steel spar caps installed, eddy-current inspect the left and right wing spar lower cap outboard holes for cracks following Snow Engineering Co. Process Specification #197, revised June 4, 2002. Do the inspections at the following compliance times:

Affected airplanes	Initial compliance time	Repetitive compliance time
(i) For all airplanes	Initially inspect upon reaching 3,500 total hours time-in-service (TIS) on the wing spar lower cap or within the next 10 hours TIS after May 8, 2008 (the effective date of this AD), whichever occurs later.	Repetitively inspect thereafter at intervals not to exceed 450 hours TIS until the wing spar center splice joint modification or the required wing spar lower cap replacement. After each replacement, initially inspect upon reaching 3,500 total hours TIS on either wing spar lower cap, and repetitively inspect thereafter at intervals not to exceed 450 hours TIS until the wing spar center splice joint modification or the required wing spar lower cap replacement.
(ii) Airplanes that have had an eddy-current inspection done on the wing spar lower cap within the last 450 hours TIS before the effective date of this AD.	You may take credit for that inspection. Continue with the required repetitive inspection intervals.	Repetitively inspect thereafter at intervals not-to-exceed 450 hours TIS from the time of the last inspection until the wing spar center splice joint modification or the required wing spar lower cap replacement. After each replacement, initially inspect upon reaching 3,500 total hours TIS on either wing spar lower cap, and repetitively inspect thereafter at intervals not to exceed 450 hours TIS until the wing spar center splice joint modification or the required wing spar lower cap replacement.

(2) For all affected Models AT–300 and AT–301 airplanes with reciprocating engines, the 450-hour repetitive inspections required in this AD are terminated after the wing spar center splice joint modification is incorporated in accordance with paragraph (g) of this AD or when the wing lower spar caps are replaced. The replacement specified in paragraph (f)(2) of this AD is still applicable.

(3) If cracks are found during any inspection required in paragraphs (e)(1)(i), (e)(1)(ii), or (g)(2) of this AD, replace the wing lower spar cap before further flight.

(f) Replace each wing lower spar cap in accordance with the applicable maintenance manual, as follows:

Affected airplanes	Initial replacement compliance time	Repetitive replacement/inspection compliance time
(1) For all affected Models AT–300 and AT–301 airplanes with reciprocating engines and that do not incorporate the wing spar center splice joint modification.	Upon reaching 5,000 total hours TIS on either wing spar lower cap or within the next 25 hours TIS after April 4, 2003 (the effective date of AD 2003–06–01), whichever occurs later.	Replace each time the safe life limit of 5,000 total hours TIS on either wing spar lower cap is reached. After each replacement, inspect as specified in paragraph (e)(1) of this AD until the wing spar center splice joint modification or the required wing spar lower cap replacement.
(2) For all affected Models AT–300 and AT–301 airplanes with reciprocating engines that do incorporate the wing spar center splice joint modification done in accordance paragraph (g) of this AD.	Upon reaching the safe life limit of 7,000 total hours TIS on either wing spar lower cap or within the next 25 hours TIS after April 4, 2003 (the effective date of AD 2003–06–01), whichever occurs later.	Replace each time the safe life limit of 7,000 total hours TIS on either wing spar lower cap is reached. After each replacement, inspect as specified in paragraph (e)(1) of this AD until the wing spar center splice joint modification or the required wing spar lower cap replacement.
(3) For all affected AT–302, AT–400, and AT–400A airplanes with aluminum spar caps; and all affected Models AT–300 and AT–301 airplanes with aluminum spar caps that are or have ever been converted to turbine power.	Upon reaching 4,450 total hours TIS on either wing spar lower cap or within the next 25 hours TIS after April 4, 2003 (the effective date of AD 2003–06–01), whichever occurs later.	Replace each time the safe life limit of 4,450 total hours TIS on the wing spar lower cap is reached. After each replacement inspect as specified in paragraph (e)(1) of this AD until the required wing spar lower cap replacement.

(g) For airplanes specified in paragraph (f)(1) of this AD, you may extend the safe life limit of the wing spar lower cap to 7,000 hours TIS by incorporating the wing spar center splice joint modification following the procedures in Snow Engineering Co. Service Letter #55, revised October 23, 2002; or Snow Engineering Co. Service Letter #55, revised October 4, 2004, with the following requirements:

(1) This modification must be done no earlier than 4,600 total hours TIS on the wing spar lower cap and no later than 5,000 total hours TIS on the wing spar lower cap.

(2) Immediately before incorporating the modification, you must do an eddy-current inspection for cracks following Snow Engineering Co. Process Specification #197, revised June 4, 2002.

(3) After each replacement, inspect as specified in paragraph (e)(1) of this AD until the wing spar center splice joint modification or the required wing spar lower cap replacement.

(h) Eddy-current inspections required by this AD must be done by one of the following:

(1) A level 2 or 3 inspector certified in eddy-current inspection using the guidelines established by the American Society for Nondestructive Testing or NAS 410; or

(2) A person authorized to perform AD maintenance work and who has completed and passed the Air Tractor, Inc. training course on eddy-current inspection on wing lower spar caps.

Note 1: We are not retaining from AD 2003–06–01 the provision to allow a limited time of continued operation beyond the safe life limit provided parts are ordered, the replacement is scheduled, and repetitive inspections reveal no cracks. That provision was put in AD 2003–06–01 to prevent airplanes from being inadvertently grounded if parts were not available. If parts availability were to ever become a problem in the future, the owner/operator could request an alternative method of compliance following the procedures in 14 CFR 39.19 and this AD.

(i) Report the results of any inspection required by this AD where cracks are found to the FAA.

(1) Submit this report within 10 days after the inspection.

(2) Use the form (Figure 1 of this AD) and submit it to FAA, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

(3) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.

BILLING CODE 4910–13–P

AD 2008-09-10 INSPECTION REPORT	
1. Inspection Performed By:	2. Phone:
3. Airplane Model:	4. Airplane Serial Number:
5. Engine Model Number:	6. Airplane Total Hours TIS:
7. Wing Total Hours TIS:	8. Lower Spar Cap Hours TIS:
9. Has the lower spar cap been inspected before? (eddy-current, dye penetrant, magnetic particle, ultrasound) ☐ Yes ☐ No	9a. If yes, Date: _____ Inspection Method: _____ Lower Spar Cap Hours TIS: _____ Cracks found? ☐ Yes ☐ No
10. Has there been any major repair or alteration performed to the spar cap? ☐ Yes ☐ No	10a. If yes, specify (Description and Hours TIS)
11. Date of AD inspection: _____	
12. Inspection Results: (Note: Report **only** if cracks are found)	12a. ☐ Left Hand ☐ Right Hand
12b. Crack Length: _____	12c. Does drilling hole to next larger size remove all traces of the crack(s)? ☐ Yes ☐ No
12d. Corrective Action Taken:	

Mail report to: Andrew McAnaul, Fort Worth ACO, ASW-150 (c/o MIDO-43), 100 Reunion Place, Suite 650, San Antonio, Texas 78216

Figure 1

BILLING CODE 4910–13–C

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Fort Worth ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Rob Romero, Aerospace Engineer, FAA, Fort Worth ACO, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; or Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDQ–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(k) AMOCs approved for AD 2003–06–01 are approved for this AD.

Special Flight Permit

(l) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by the following conditions:

(1) Operate only in day visual flight rules (VFR).

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

Material Incorporated by Reference

(m) You must use Snow Engineering Co. Service Letter #55, revised October 23, 2002; Snow Engineering Co. Service Letter #55, revised October 4, 2004; and Snow Engineering Co. Process Specification Number 197, revised June 4, 2002, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Service Letter #55, revised October 4, 2004, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On April 4, 2003, (68 FR 13221, March 19, 2003), the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Service Letter #55, revised October 23, 2002, and Snow Engineering Process Specification Number 197, revised June 4, 2002.

(3) For service information identified in this AD, contact Tractor, Inc., P.O. Box 485, Olney, Texas 76374.

(4) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on April 18, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9058 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 2004N–0018]

Human Subject Protection; Foreign Clinical Studies Not Conducted Under an Investigational New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on acceptance of foreign clinical studies not conducted under an investigational new drug application (IND) (non-IND foreign clinical studies) as support for an IND or application for marketing approval for a drug or biological product. The final rule replaces the requirement that these studies be conducted in accordance with ethical principles stated in the Declaration of Helsinki (Declaration) issued by the World Medical Association (WMA), specifically the 1989 version (1989 Declaration), with a requirement that the studies be conducted in accordance with good clinical practice (GCP), including review and approval by an independent ethics committee (IEC). The final rule updates the standards for the acceptance of foreign clinical studies not conducted under an IND and helps ensure the protection of human subjects and the quality and integrity of data obtained from these studies.

DATES: This rule is effective October 27, 2008.

FOR FURTHER INFORMATION CONTACT:

Janet Norden, Office of Medical Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4200, Silver Spring, MD 20993–0002, 301–796–2270; and

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

In the **Federal Register** of June 10, 2004 (69 FR 32467), we published a proposed rule that would revise our regulations in part 312 (21 CFR part 312) on the conditions under which we will accept non-IND foreign clinical studies as support for an IND, a new drug application (NDA), or a biologics license application (BLA). As discussed in section III.A of this document, we revised the language used to refer to an application (other than an IND) that may be supported by non-IND foreign clinical studies from "NDA or BLA" or "marketing application" to "application for marketing approval," which we define as an application under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) or section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262), to make it clear that the regulation also applies to foreign clinical studies supporting abbreviated new drug applications (ANDAs). Previous § 312.120(a) stated that we generally accepted for review non-IND foreign clinical studies provided they were well designed, well conducted, performed by qualified clinical investigators, and conducted in accordance with ethical principles acceptable to the world community. With respect to such ethical principles, § 312.120(c)(1) stated that for a foreign clinical study not conducted under an IND to be used to support an

IND or application for marketing approval, the study must have been conducted in accordance with the ethical principles stated in the 1989 Declaration or the laws and regulations of the country in which the research was conducted, whichever represents the greater protection of the individual. Section 312.120(c)(4) set forth the text of the 1989 Declaration.

We proposed to replace the requirement that non-IND foreign clinical studies be conducted in accordance with ethical principles stated in the 1989 Declaration with a requirement that the studies be conducted in accordance with GCP. We proposed to define GCP as a standard for the design, conduct, performance, monitoring, auditing, recording, analysis, and reporting of clinical trials in a way that provides assurance that the data and reported results are credible and accurate, and that the rights, safety, and well-being of trial subjects are protected. GCP also would include review and approval by an IEC before initiating a study, continuing IEC review of ongoing studies, and obtaining and documenting freely given informed consent of study subjects.

In the preamble to the proposed rule, we provided several reasons for our proposed change in requirements for non-IND foreign clinical studies. First, we noted that standards for protecting human subjects have evolved considerably over the past decade, as evidenced by revisions of the Declaration by the WMA's General Assembly and the issuance of several documents by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). We noted that the ICH document "E6 Good Clinical Practice: Consolidated Guideline" (ICH E6), which we adopted for use as guidance for industry in 1997 (62 FR 25692, May 9, 1997), includes a definition of GCP that shares many important ethical principles with the 1989 Declaration.[1] However, we stated that the concept of GCP in ICH E6 provides more detail and enumeration of specific responsibilities of various parties, including monitoring of the trial and reporting adverse events. Although we did not specifically incorporate ICH E6 into the proposed revision of § 312.120, we stated that the standard of GCP that we proposed for § 312.120 was consistent with that in ICH E6 and was sufficiently flexible to accommodate differences in how countries regulate the conduct of clinical research and obtain informed consent, while helping to ensure adequate and comparable human subject protection.

Another reason we stated for proposing to revise § 312.120 was that the adoption of a GCP requirement for non-IND foreign clinical studies would help provide greater assurance of the quality of the data obtained from these studies. Although the Declaration states that it is unethical to enroll human subjects in poorly designed or conducted clinical trials, it does not provide guidance on how to ensure proper conduct of trials. We proposed the GCP provisions to help ensure data quality and integrity by, among other things, specifying that GCP includes providing assurance that data are credible and accurate and requiring the submission of information on study monitoring and conformance with protocols.

Finally, we stated that deleting the reference in § 312.120 to the Declaration was necessary to eliminate the potential for confusion about the requirements for non-IND foreign clinical studies that could result from potential revisions of the Declaration. We noted that the Declaration is a document that is subject to change independent of FDA authority and, therefore, could be modified to contain provisions that are inconsistent with U.S. laws and regulations. We further noted that although revisions to the Declaration could not supersede U.S. laws and regulations, the changes might be confusing for sponsors.

We received 32 comments on the proposed rule, which we address in section III of this document.

II. Overview of the Final Rule, Including Changes to the Proposed Rule

We are revising our regulations in § 312.120 on the conditions under which we will accept as support for an IND or application for marketing approval (an application under section 505 of the act or section 351 of the PHS Act) a foreign clinical study not conducted under an IND.

A. Acceptance of Studies

Under revised § 312.120(a)(1), we will accept as support for an IND or application for marketing approval a well-designed, well-conducted, non-IND foreign clinical study if it was conducted in accordance with GCP and we are able to validate the data from the study through an onsite inspection, if necessary.

Under § 312.120(a)(1)(i), GCP is defined as a standard for the design, conduct, performance, monitoring, auditing, recording, analysis, and reporting of clinical trials in a way that provides assurance that the data and reported results are credible and accurate and that the rights, safety, and well-being of trial subjects are protected. GCP includes review and approval (or provision of a favorable opinion) by an IEC before initiating a study, continuing review of an ongoing study by an IEC, and obtaining and documenting the freely given informed consent of the subject (or a subject's legally authorized representative, if the subject is unable to provide informed consent) before initiating a study. (An IEC is defined in § 312.3 as a review panel that is responsible for ensuring the protection of the rights, safety, and well-being of human subjects involved in a clinical investigation and is adequately constituted to provide assurance of that protection.) GCP does not require informed consent in life-threatening situations under limited circumstances, as specified in § 312.120(a)(1)(i).

Section 312.120(a)(2) states that although we will not accept as support for an IND or application for marketing approval a study that does not meet the conditions in § 312.120(a)(1), we will examine data from such a study. We will do so because we require the submission of such data under applicable regulations for drugs and biologics (e.g., §§ 314.50, 314.80, 600.80, 601.2 (21 CFR 314.50, 314.80, 600.80, 601.2)) and because the data may have a bearing on the safety of a drug.

B. Supporting Information

The final rule revises the regulations on the information that a sponsor or applicant who wishes to rely on a non-IND foreign clinical study to support an IND or application for marketing approval must submit to us to demonstrate that the study conformed to GCP. In response to comments, we revised § 312.120(b) to make clear that a sponsor or applicant is not required to duplicate information already submitted in the IND or application for marketing approval. Instead, the sponsor or applicant may either submit the supporting information listed in § 312.120(b) or provide a cross reference to another section of the submission where the information is located (see comment 21 of this document).

Under § 312.120(b), the sponsor or applicant must submit the information described in paragraphs (b)(1) through (b)(11). In response to comments, we changed the information requirements in § 312.120(b)(6) and (b)(11) of the proposed rule as noted in the following description. Under § 312.120(b), the

[1] ICH E6 and other FDA guidances adopted from the ICH are available electronically at *http://www.fda.gov/cder/guidance/index.htm.*

sponsor or applicant must submit the following information:

- The investigator's qualifications (§ 312.120(b)(1)).
- A description of the research facilities (§ 312.120(b)(2)).
- A detailed summary of the protocol and study results and, if we request, case records or additional background data (§ 312.120(b)(3)).
- A description of the drug substance and drug product, including the components, formulation, specifications, and, if available, the bioavailability of the drug product (§ 312.120(b)(4)).
- Information showing that the study is adequate and well controlled (if the study is intended to support the effectiveness of a drug product) (§ 312.120(b)(5)).
- The name and address of the IEC that reviewed the study and a statement that the IEC meets the definition in § 312.3 (records supporting the statement, including the names and qualifications of IEC members, must be maintained by the sponsor or applicant and be available for agency review) (§ 312.120(b)(6)). (The proposed rule would have required submission to FDA of the names and qualifications of the IEC members that reviewed the study (see comment 25 of this document).)
- A summary of the IEC's decision to approve or modify and approve the study, or to provide a favorable opinion (§ 312.120(b)(7)).
- A description of how informed consent was obtained (§ 312.120(b)(8)).
- A description of what incentives, if any, were provided to subjects to participate (§ 312.120(b)(9)).
- A description of how the sponsors monitored the study and ensured that the study was consistent with the protocol (§ 312.120(b)(10)).
- A description of how investigators were trained to comply with GCP and to conduct the study in accordance with the study protocol, and a statement on whether written commitments by investigators to comply with GCP and the protocol were obtained (any signed commitments must be maintained and available for agency review) (§ 312.120(b)(11)). (The proposed rule would have required sponsors and applicants to submit copies of any written commitments (see comment 32 of this document).)

C. Waivers

The final rule includes a provision (§ 312.120(c)) under which a sponsor or applicant may request that we waive any requirement in § 312.120(a)(1) or (b).

D. Records

In response to comments, we included in the final rule a provision on record retention requirements. Section 312.120(d) states that a sponsor or applicant must retain the records required by § 312.120 for 2 years after the agency's decision on an application for marketing approval for a drug or, if a study is submitted in support of an IND but not an application for marketing approval, for 2 years after the submission of the IND. The requirement to maintain appropriate records was implicit in the requirement, in proposed § 312.120(a)(1)(ii), that FDA be able to validate the data from a study through an onsite inspection if necessary, and under the proposed rule, the record retention requirements of § 312.57(c) would have applied to non-IND foreign clinical studies. However, we have concluded that it is appropriate to set forth record retention requirements specifically for these studies in § 312.120(d) (see comment 24 of this document).

III. Comments on the Proposed Rule

We received 32 comments on the proposed rule. Comments were received from manufacturers, trade associations, advocacy groups, foreign bioethics organizations, and individual health care providers, researchers, and consumers. Summaries of the comments received and our responses follow:

A. Replacement of the Declaration With GCP

Section 312.120(a)(1)(i) of the proposed rule stated that we would accept as support for an IND or application for marketing approval a well-designed and well-conducted foreign clinical study not conducted under an IND if the study was conducted in accordance with GCP. The requirement for conducting a study in accordance with GCP would replace the former requirement in § 312.120(c)(1) that such a study be conducted in accordance with the ethical principles stated in the 1989 Declaration or the laws and regulations of the country in which the research was conducted, whichever represents the greater protection of the individual.

At our own initiative, we revised the language used to refer to an application (other than an IND) that may be supported by non-IND foreign clinical studies to "application for marketing approval" instead of "NDA or BLA" or "marketing application." Under § 312.120(a)(1), we further clarified that an "application for marketing approval" means "an application under section 505 of the act or section 351 of the * * * PHS Act." Applications for marketing approval under section 505 of the act include both NDAs and ANDAs. The phrase "application for marketing approval" tracks the language used in previous § 312.120. We made these revisions to avoid speculation that this final rule differed in scope from previous § 312.120, which was not our intention.

(Comment 1) Several comments expressed support for adoption of the GCP requirement and deletion of the reference to the Declaration, for the following reasons:

- The proposed changes are appropriate measures to improve public assurance of the quality of the science and ethics supporting data for non-IND studies.
- Relying on GCP reflects the adoption of ICH E6 as a global standard for the conduct of sponsored clinical research.
- The 13 principles of GCP set forth in ICH E6 are very encompassing and are in line with the guidelines used for domestic studies.
- The principles of the Declaration are within GCP and form the basis for the ethical considerations in those guidelines.
- The change from the Declaration to GCP would update the standards for the acceptance of foreign studies and help ensure the quality and integrity of data obtained from such studies.
- Applying GCP standards to foreign studies not conducted under an IND brings logical symmetry with FDA regulation of studies conducted in the United States and ends the need to comply with the strict wording of the Declaration, which lacks the detail needed to describe usefully the intended compliance.
- The proposal to rely on GCP is a more coherent approach to the multitude of complex issues that arise in overseas research than the Declaration provides.

(Response) We agree with the comments stating that the requirement to conduct studies in accordance with GCP will ensure that these foreign studies will be conducted in a manner that is comparable to that required for domestic studies conducted under an IND. We also agree that the principles of the Declaration are reflected in the concept of GCP codified in § 312.120(a)(1)(i). We also agree with the comment that application of the GCP standard will protect human subjects while also enhancing the quality and integrity of data generated in these foreign studies.

(Comment 2) One comment recommended that we give attention to the current development of international standards for the ethical review of clinical studies, including the work done by the Office for Human Research Protections (OHRP) (of the U.S. Department of Health and Human Services), the European Forum for GCP, the World Health Organization (WHO), and the Strategic Initiative for Developing Capacity in Ethical Review.

(Response) We agree that it is important for us to monitor the development of international standards for the ethical review of clinical studies. However, for purposes of determining whether data from non-IND foreign clinical studies can be used in support of an IND or application for marketing approval under § 312.120, we have concluded that it is appropriate to require that these studies be conducted in accordance with GCP for the reasons stated in section I of this document. Although the international standards noted by the comment are important, they are not legally binding on sponsors and applicants under § 312.120, and incorporating these standards into our regulations would present the same problems as codifying a reference to the Declaration, as explained in our response to comment 4 of this document.

(Comment 3) Several comments opposed the proposal to delete the reference to the Declaration in § 312.120. Several comments stated that the Declaration represents the international standard or paradigm for the ethical conduct of clinical studies and the protection of human subjects. One comment stated that the Declaration is a living document that remains extremely influential and forms the substance of what people understand as the guiding principles of ethical research.

(Response) As stated in the preamble to the proposed rule, we believe that our GCP standard will ensure adequate protection of human subjects while providing the flexibility necessary to accommodate differences in how countries regulate clinical research and obtain informed consent. We acknowledge the prominence of the Declaration among international standards on the treatment of human subjects in medical research, but other national and international ethical guidelines for research, such as the Belmont Report and guidelines issued by the Council for International Organizations of Medical Sciences, also are important.

The U.S. Government continues to support the Declaration's underlying principles. However, as discussed in our response to comment 7 of this document, the U.S. Government does not fully support the 2000 version of the Declaration because it contains certain statements that may be inconsistent with U.S. law and policy (e.g., concerning use of placebos in clinical trials). We believe that the requirement to conduct non-IND foreign studies in accordance with GCP, which includes a requirement to protect the rights, safety, and well-being of subjects, ensures adequate protection of subjects without a need for reference to the Declaration.

(Comment 4) Four comments stated that our statement in the proposed rule that the Declaration can be modified independent of FDA authority does not provide a basis for deleting the Declaration. These comments stated that we acknowledged that revisions to the Declaration could not supersede U.S. laws and regulations. These comments added that FDA declared in 2001 (in our guidance on "Acceptance of Foreign Clinical Studies") that the reference to the Declaration in FDA regulations was to the 1989 version. One comment stated that the possibility that the 40-year-old Declaration might become inconsistent with U.S. ethics regulations is minimal.

(Response) The comments appear to misunderstand our statements concerning the effect of modification of the Declaration. As we stated in the preamble to the proposed rule, the Declaration was not established under our authority and is subject to change independent of our control. We proposed to remove from the regulations the 1989 Declaration, which, because it was not the most recent version approved by the WMA, had the potential to cause confusion about the requirements for non-IND foreign clinical studies. The potential for confusion may increase with each subsequent revision of the Declaration. Moreover, initiating a rulemaking to revise § 312.120 each time the Declaration is changed would be burdensome and would not be possible if the changes were inconsistent with U.S. law and policy. For these reasons, the comments' statements regarding modification of the Declaration do not support retaining a reference to the Declaration in § 312.120.

(Comment 5) One comment stated that eliminating the reference to the Declaration would damage international medical ethics and undermine the human rights approach and traditional foundations of research ethics in the Declaration, the Nuremberg Code, and the Universal Declaration of Human Rights. One comment stated that deleting the reference to the Declaration might send a message that FDA no longer supports high standards of ethics in research involving human subjects in foreign countries. One comment stated that the policy of unilaterally deciding not to rely on one of the most respected ethical documents is worrying. One comment stated that dismissing the relevance of the Declaration would encourage every other country to do the same.

(Response) We disagree with these comments. We remain firmly committed to protecting the rights, safety, and well-being of subjects in both foreign and domestic research, and this commitment is reflected in § 312.120, our IND regulations, and our guidance documents, including ICH E6. We do not believe that deleting the reference to the Declaration in § 312.120 will damage international medical ethics or result in harm to research subjects because sponsors and applicants will need to comply with GCP, which includes protection of human subjects. It is also worth noting that the United States is not alone in declining to adopt the Declaration as the standard to apply. For example, the European Union (EU) recognizes the importance of the Declaration, noting in Directive 2001/20/EC on the implementation of GCP in the conduct of clinical trials that the "accepted basis for the conduct of clinical trials * * * is founded in the protection of human rights and the dignity of the human being with regard to the application of biology and medicine, as for instance reflected in the 1996 version of the Helsinki Declaration." Nevertheless, Directive 2001/20/EC does not incorporate the Declaration in the articles of the directive. Similarly, we do not believe that codification of the Declaration in our regulations is needed to ensure that foreign studies used to support U.S. drug applications are conducted in accordance with high ethical standards.

(Comment 6) Several comments stated that they preferred the Declaration over GCP (as described in ICH E6) as a standard for ethical principles. Several comments stated that the Declaration is produced by the WMA, which is comprised of 82 national medical associations, whereas ICH documents are the product of the regulatory authorities and pharmaceutical industries of the United States, the EU, and Japan. One comment stated that the Declaration is independent of any one nation and represents a consensus, albeit sometimes uneasy, between many different parties with many diverse interests. One comment stated that the ethical principles in the 2000

Declaration were produced under an international and democratic process conducted by the WMA. One comment stated that it is improper for FDA to dismiss the views of the academicians, researchers, and clinicians who comprise the WMA and who have adopted the Declaration provisions.

(Response) Although we appreciate the significance of the Declaration, we do not agree that the manner in which it was adopted makes it the most appropriate standard for the conduct of clinical studies. In fact, our regulations do not require that studies conducted in the United States under an IND be conducted in accordance with the Declaration. Furthermore, although we have not incorporated ICH E6 into our regulations (see comment 9 of this document), we disagree with the comment's characterization of the process for developing ICH guidelines. Twenty-seven countries (the United States, Japan, and the 25 member-states of the EU) participate in the ICH process, and Canada, Switzerland, and the WHO are observers. In addition to input from regulatory authorities and drug manufacturers, there is considerable opportunity for public health organizations, consumers, researchers, academicians, and others to comment publicly on proposed ICH guidelines, both before their adoption at the international level and before they are incorporated into the regulatory framework of individual ICH countries. Finally, by deleting the reference to the Declaration, we are not dismissing the views of WMA members regarding the protection of human subjects. Instead, we simply conclude that it is most appropriate and effective to ensure that studies are properly conducted by requiring compliance with GCP, as defined in § 312.120(a)(1)(i).

(Comment 7) In objecting to the deletion of the reference to the Declaration, several comments cited the United States' objection to paragraphs 29 and 30 of the version of the Declaration adopted in 2000 (paragraphs 29 and 30). Paragraph 29 states: "The benefits, risks, burdens and effectiveness of a new method should be tested against those of the best current prophylactic, diagnostic, and therapeutic methods. This does not exclude the use of placebo, or no treatment, in studies where no proven prophylactic, diagnostic or therapeutic method exists." Paragraph 30 states: "At the conclusion of the study, every patient entered into the study should be assured of access to the best proven prophylactic, diagnostic and therapeutic methods identified by the study." Several comments were critical of the United States' objection to paragraphs 29 and 30 and expressed concern about its impact on research subjects. On the other hand, one comment expressed opposition to paragraphs 29 and 30.

(Response) Compliance with the GCP standard will ensure adequate protection of human subjects in foreign clinical studies while accommodating differences in local authorities' regulation of these studies. As stated in our response to comment 3 of this document, we cannot endorse the 2000 version of the Declaration. We believe that paragraph 29 is inconsistent with U.S. law and policy because it would impose a standard for the design of clinical trials that is different from the standard of "adequate and well-controlled investigations," which the act requires us to apply. Paragraph 30 invokes issues of health care policy that are not directly related to FDA's mission of ensuring that medical products are safe and effective. In addition, we do not believe that this rulemaking is the proper forum for debating or resolving issues concerning particular paragraphs of the Declaration, such as use of placebo controls or continued access to therapy after a study is concluded.

(Comment 8) Several comments stated that deletion of the reference to the Declaration will have an adverse impact on the populations of developing countries, who are vulnerable to abuse, exploitation, and negligence because of their relative poverty and lack of education. One comment stated that the proposed rule is consistent with FDA's purported purpose of weakening items in the Declaration related to protection of human subjects in developing countries. One comment stated that deletion of the Declaration would imply that FDA believes that non-U.S. study populations do not need access to study results or that non-U.S. populations could be studied and put at risk only to identify medical products that would benefit the U.S. population.

(Response) We do not agree that deleting the reference to the Declaration will have a negative impact on research subjects in developing countries or result in less protection for subjects in foreign studies. Human subject protection is essential to GCP as defined in revised § 312.120, which, among other things, requires the protection of the rights, safety, and well-being of trial subjects, and review and approval of studies by an IEC. We do not believe that referencing the Declaration in our regulations would provide additional protection to the populations of developing countries beyond the protections set forth in revised § 312.120.

(Comment 9) Several comments stated that ICH E6 is concerned primarily with procedural and technical issues, not overarching ethical issues. One comment stated that GCP does not encompass the range of concerns about the protection of human subjects that is provided for in the Declaration. One comment stated that while the Declaration focuses on researchers' ethical conduct and the primacy of patient welfare, ICH E6 focuses on the relations between researchers and pharmaceutical sponsors. One comment stated that ICH E6 is designed to improve data quality but is unconcerned with ethics.

(Response) We disagree with the comments. Most importantly, we note that the definition of GCP contained in § 312.120 is the standard that will apply to these studies, rather than the procedures set forth in ICH E6. The regulation requires, among other things, that the rights, safety, and well-being of subjects be protected, that an IEC review and approve (or provide a favorable opinion on) each study before initiation, and that subjects give informed consent.

As for ICH E6 itself, protecting the interests of human subjects is one of its two fundamental purposes, along with helping to ensure the quality of data from clinical studies. The first paragraph of the introduction to ICH E6 states that compliance with GCP "provides public assurance that the rights, safety, and well-being of trial subjects are protected, consistent with the principles that have their origin in the Declaration of Helsinki, and that the clinical trial data are credible" (p. 6). In addition, the first principle of GCP listed in ICH E6 (section 2.1) is that "[c]linical trials should be conducted in accordance with the ethical principles that have their origin in the Declaration of Helsinki, and that are consistent with GCP and the applicable regulatory requirement(s)" (p. 8). Sections 3.1 and 4.3/4.8 of ICH E6 address the responsibilities of institutional review boards (IRBs)/IECs and investigators, respectively, concerning matters related to the care and treatment of research subjects,[2] including provisions on informed consent and medical care of subjects. Thus, although ICH E6 does address procedural issues, ethical issues are another principal focus of the document.

(Comment 10) Several comments recommended that FDA simply add to the regulations a requirement to comply with GCP rather than delete the reference to the Declaration. One comment stated that it understood the

[2] ICH E6 at pp. 10–11, 14–15, 17–21.

need for data standardization and urged us to add GCP requirements without eliminating the reference to the Declaration. One comment stated that international studies, as they have been conducted in the past, can comply with both documents. Another comment stated that adherence to both documents would not cause the quality of these foreign studies to suffer. Several comments stated that the GCP guidance does not address conflict of interest or the need to publish results, which are both included in the Declaration. These comments stated that the two documents are complementary and that the regulations could require that affected studies comply with both documents.

(Response) For the reasons stated previously in this document, it is no longer appropriate for § 312.120 to require compliance with the Declaration, either the 1989 version, the current (2000) version, or some other future or past version. Moreover, we believe that because of the requirement in § 312.120 that acceptable foreign studies be conducted in accordance with GCP, which includes ensuring that the rights, safety, and well-being of trial subjects are protected, a specific reference to the Declaration will not enhance protection of human subjects. Nor do we believe that § 312.120 should address conflicts of interest or the need to publish study results. Other FDA regulations address conflicts of interest in these foreign studies (for example, the provisions on financial disclosure by clinical investigators in part 54 (21 CFR part 54) are applicable to studies submitted in support of an NDA, ANDA, or BLA under § 314.50(k), 21 CFR 314.94(a), and § 601.2(a), respectively). With respect to the publication of study results, we note that section 801 of the Food and Drug Administration Amendments Act of 2007 (42 U.S.C. 282(j)(3)) provides for publication in a results data bank of the results of "applicable clinical trials" under certain circumstances. In addition, we strongly encourage sponsors to seek publication in peer-reviewed journals.

B. Definition of Independent Ethics Committee

We proposed to add, under § 312.3, a definition for IEC. We proposed to define IEC to mean a review panel that is responsible for ensuring the protection of the rights, safety, and well-being of human subjects involved in a clinical investigation and is adequately constituted to provide assurance of that protection. An IRB, as defined in § 56.102(g) (21 CFR 56.102(g)) of this chapter and subject to the requirements of part 56 (21 CFR part 56), is one type of IEC.

(Comment 11) Several comments stated that the proposed definition of IEC differed from the definition in ICH E6, and requested that we provide clarification of the term "adequately constituted" in the definition of IEC. One comment suggested either defining "adequately constituted" as "if its composition and membership complies with [part] 56, subpart B of this chapter," or omitting "adequately constituted" from the definition of IEC, making it consistent with the definition in ICH E6. Other comments suggested defining IEC as in section 1.27 or 3.2 of ICH E6.

(Response) The requirement in § 312.3 that the IEC be "adequately constituted" emphasizes the importance of the IEC having appropriate expertise to perform its critical role in the protection of human subjects. As described in the preamble to the proposed rule, we would consider an IEC to be adequately constituted if it "includes a reasonable number of members with the qualifications and experience to perform the IEC's functions (see, e.g., section 3.2.1 of the Good Clinical Practice guidance [ICH E6])" (69 FR 32467 at 32468). Such an "adequately constituted" IEC is responsible for ensuring the protection of the rights, safety, and well-being of human subjects involved in a clinical investigation. Although the definition of an IEC in ICH E6 does not include the term "adequately constituted," ICH E6 defines an IEC as being "constituted of medical/scientific professionals and nonmedical/nonscientific members whose responsibility it is to ensure the protection of the rights, safety and well-being of human subjects" (section 1.27). We view our proposed definition of IEC as consistent with the definition of IEC in ICH E6 but at the level of specificity and detail appropriate for regulation. We recognize that the organization and membership of IECs may differ among countries because of the local needs of the host country, but we believe that such variation should not affect an IEC's ability to perform its functions. Our regulations must be sufficiently flexible to accommodate differences in how countries regulate the conduct of clinical research, including the composition of an IEC. Therefore, we will not specifically define IEC membership in the regulations or require that an IEC comply with the requirements in subpart B of part 56, or with the recommendations for membership in ICH E6. However, we would consider an IEC that is constituted to comply with part 56 or with ICH E6 to be "adequately constituted." In fact, the definition of IEC in § 312.3 clarifies that an IRB, as defined in § 56.102(g) and subject to the requirements of part 56, is one type of IEC. For these reasons, we decline to omit "adequately constituted" from the definition of IEC in § 312.3.

C. Local Laws and Regulations

(Comment 12) Some comments stated that the proposed rule would delete the provision in former § 312.120(c)(1) requiring that foreign clinical research be conducted according to the laws and regulations of the country in which the research was conducted, when such laws provided for greater protection of human research subjects than the principles of the Declaration. Some comments stated that deleting the reference to compliance with local laws of the host country supported the notion that FDA could accept data collected in violation of those laws.

(Response) We do not agree that deletion of this provision will lead to FDA accepting studies not conducted in accordance with local laws. Sponsors, IECs, investigators, and research sites and/or institutions are all responsible for complying with the local requirements for conducting research, including any requirements that may be more stringent than the requirements in § 312.120. A host country may deny a sponsor's request to conduct research in the country if the sponsor does not comply with local requirements, or may stop a study that is in progress in violation of the host country's laws. New § 312.120 sets forth U.S. standards for acceptance of foreign clinical studies in support of an IND or application for marketing approval, including that the study be conducted in accordance with GCP. We are confident that these standards provide for the protection of human subjects, and we will accept a study only if these standards are met. In addition, sponsors or applicants that currently conduct clinical trials in accordance with ICH E6 would comply with local requirements because ICH E6 states that one of the principles of GCP is that clinical trials be conducted consistent with the applicable regulatory requirements (i.e., any laws and regulations addressing the conduct of clinical trials of investigational products of the jurisdiction where a trial is conducted).

(Comment 13) One comment stated that although proposed § 312.120 referenced general GCP standards, it did not clarify whether GCP as interpreted by the host country was at all relevant to acceptance of data or whether the

ethics committee that must be used was one approved by the host country.

(Response) The host country's interpretation of GCP is relevant to these non-IND foreign clinical studies because the host country requires the sponsor to comply with its laws. However, we will only accept data from studies that we determine were conducted in accordance with GCP as described in § 312.120(a)(1)(i). As to whether the IEC must be approved by the host country, if a host country requires by law that the host country approve the IEC, the sponsor would need to comply with that requirement. However, we will not specifically require in § 312.120 that an adequately constituted IEC be approved by the host country. We do not believe that such approval is essential to ensuring the quality of data or the protection of human subjects. Therefore, this matter is left to the discretion of the host country.

(Comment 14) One comment recommended including a provision in § 312.120 to continue to allow a sponsor to document that the study was conducted in a country where the laws and regulations already provide for strict adherence to the principles of GCP, which would clearly provide for the assurance of protection of human research subjects and quality of clinical data. As support for this approach, the comment stated that clinical trials conducted in Europe must now meet the requirements of the EU Clinical Trials Directive and its implementing guidance for the conduct of clinical trials under GCP.

(Response) We believe that the supporting documentation required under § 312.120(b), combined with an onsite inspection if necessary, will provide us with the ability to determine if a foreign clinical investigation was conducted in accordance with GCP. If the country adheres to the principles of GCP and the study complied with those principles, this should be reflected in the documentation submitted to us. Therefore, it is not necessary to add a provision as suggested by the comment.

D. Acceptance of Studies

(Comment 15) One comment stated that the proposed rule should be consistent with FDA's 1998 guidance "FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products" (New Cancer Treatment Guidance). The comment stated that section III.B of the New Cancer Treatment Guidance allows certain data to be submitted to us without additional data collection, auditing, or analyses by a pharmaceutical company submitting a marketing application, depending on the quality and credibility of the institutions providing such data.

(Response) We do not agree that this rule and the New Cancer Treatment Guidance concern the same issues. Although the guidance addresses the submission of certain data without the applicant being subject to auditing, this is applicable only to data from studies conducted by independent cancer clinical trials organizations that have well-established and publicly available procedures for research data management, monitoring, and auditing, and a track record of high-quality research (e.g., U.S. National Cancer Institute-sponsored cooperative cancer research groups and other highly credible organizations that have no commercial interest in study outcomes). The guidance does not address the submission of foreign clinical data and is limited in scope to drugs for treating cancer. We will not accept foreign clinical studies in support of an IND or application for marketing approval except as set forth in § 312.120.

(Comment 16) One comment recommended including the following statement in § 312.120 to reduce the potential regulatory burden: "The information to be provided in support of the IND does not need to be submitted to FDA throughout the study. The supporting information may be provided at the time the clinical study report is filed to the FDA in support of an NDA and/or made available upon request."

(Response) We do not agree that including such a statement in § 312.120 is necessary because the submission and reporting requirements are already clear. Information required under § 312.120 to be submitted in support of an IND or application for marketing approval would be submitted at the time the application is submitted to the agency. Once an application is pending before the agency, the applicable reporting requirements for INDs, NDAs, ANDAs, or BLAs under part 312, 314, or 601 (21 CFR parts 314 and 601), apply.

E. Definition of Good Clinical Practice

For the purposes of § 312.120, we proposed, in § 312.120(a)(1)(i), to define GCP as a standard for the design, conduct, performance, monitoring, auditing, recording, analysis, and reporting of clinical trials in a way that provides assurance that the data and reported results are credible and accurate and that the rights, safety, and well-being of trial subjects are protected. We also proposed to require that GCP include oversight by an IEC and obtaining informed consent of subjects.

The final rule clarifies the limited circumstances in which GCP would not require informed consent. The proposed rule stated that GCP does not require informed consent in life-threatening situations when the IEC reviewing the study finds that the conditions present are consistent with those described in §§ 50.23 or 50.24(a) (21 CFR 50.23 or 50.24(a)), or when the measures described in the study protocol or elsewhere will protect the rights, safety, and well-being of subjects and ensure compliance with applicable regulatory requirements. We explained in the preamble that this provision would be consistent with the GCP guidance, which recommends that a legally authorized representative provide informed consent or that the requirement of informed consent be waived under such circumstances. In the final rule, we have made more explicit two conditions that were implicit in the proposed rule: The IEC review must occur before initiation of the study and the IEC must find that informed consent is not feasible.

In addition, we deleted the provision referring to the IEC ensuring compliance with applicable regulatory requirements. Upon reconsideration, we recognized that the reference to "applicable regulatory requirements" was not clear. We had not described the requirements we considered to be applicable, and without additional clarity, the phrase did not provide additional protections for subjects in the study. Therefore, we decided that the provision would be clearer without this phrase.

(Comment 17) Several comments requested confirmation that compliance with ICH E6 would be adequate to assure compliance with § 312.120 and questioned whether citing compliance with ICH E6, rather than submitting the supporting documentation required under 312.120(b), would be acceptable. One comment requested that we waive requirements in the proposed rule for any study conducted in EU member states, provided the member can submit a EudraCT (a database of clinical trials in the EU) number, and for any studies that have been conducted in Japan under Japanese Good Clinical Practices. One comment stated that the rule should explicitly require following ICH E6 because imposing a U.S. standard "consistent with" an international standard seemed insufficient. One comment recommended that if § 312.120 does not specifically require following ICH E6, we should acknowledge in the final rule or subsequent guidance that ICH E6 should be taken into account as one GCP

standard that we find acceptable, and describe in what ways the standard set forth in § 312.120 differs from that in ICH E6.

(Response) As noted in the preamble to the proposed rule, we have already incorporated many of the principles of GCP into our existing regulations. However, we have not specifically incorporated all of ICH E6 into our regulations, and we will not do so in § 312.120, for several reasons. First, for one of the same reasons that we deleted the reference to the Declaration from § 312.120, we do not believe that it is appropriate to reference in a regulation a document that is subject to change independent of our control. Second, although we adopted ICH E6 in 1997 for use as guidance for industry, there are other international documents that provide acceptable standards for GCP. Specific incorporation of ICH E6 into § 312.120 would constrain our ability to accept data from non-IND foreign clinical studies from countries that use other comparable GCP standards. Finally, ICH E6 contains a level of detail and specificity that is not appropriate for regulations. We believe that the GCP standard in § 312.120 is appropriate because it provides sufficient flexibility to accommodate differences in how countries regulate the conduct of clinical research, while still ensuring adequate and comparable human subject protection. Therefore, we do not require that sponsors or applicants follow ICH E6, but a study conducted in compliance with ICH E6 would meet the GCP requirements in § 312.120. However, for the agency to evaluate such a study, the information required under § 312.120(b) must be submitted. It would not be adequate to simply submit a statement that ICH E6 or Japanese GCP were followed, or to provide only a EudraCT number.

F. IEC Review and Approval

Proposed § 312.120(a)(1)(i) stated that GCP includes review and approval (or provision of a favorable opinion) by an IEC before initiating a study and continuing review of an ongoing study by an IEC.

(Comment 18) One comment stated that the requirement for review and approval by an IEC does not guarantee protection of the participants unless the guidelines that the IEC must follow are stated explicitly and are not weaker than the Declaration.

(Response) We disagree. Although § 312.120(a)(1)(i) requires review and approval of a clinical study before initiation, the regulation does not specify the procedures that the IEC must follow because different procedures offering equivalent human subject protection may be followed in different countries. As previously stated, we believe that the GCP standards in § 312.120, including the requirement for review and approval by an IEC, are and should be sufficiently flexible to accommodate differences in how countries regulate the conduct of clinical research, while ensuring adequate and comparable human subject protection.

G. Onsite Inspection

Proposed § 312.120(a)(1)(ii) would have required, as a condition of acceptance of a study submitted under this section, that we be able to validate the data from the study through an onsite inspection if we deem it necessary.

(Comment 19) One comment recommended that we give attention to the current development of national and regional (e.g., European Medicines Agency) inspections outside the United States and the role they might play in providing public assurance for the quality of data and the protection of human subjects.

(Response) Although this rule does not address the process for conducting inspections outside the United States, we can review and consider information from inspections by foreign authorities. However, if deemed necessary, we are also able, under § 312.120(a)(1)(ii), to conduct an onsite inspection to validate the data from a study.

H. Data From Studies Not Conducted in Accordance With GCP

Proposed § 312.120(a)(2) stated that although we will not accept as support for an IND , NDA, or BLA a study that does not meet the conditions of § 312.120(a)(i), we will examine data from such a study.

(Comment 20) One comment requested that we clarify the meaning of proposed § 312.120(a)(2). The comment asked if this provision means that a sponsor should submit studies conducted on the investigational product but differentiate studies that comply for FDA review of safety and efficacy, or that we will review noncompliant studies as supportive.

(Response) The provision states that we "will not accept as support" for an IND or application for marketing approval a study that does not meet the conditions of § 312.120(a)(1) (i.e., a "noncompliant" study). Nonetheless, a sponsor or applicant of an IND or application for marketing approval must submit all studies and other information required under applicable FDA regulations for drugs and biologics, including "noncompliant" studies. We would review information from "noncompliant" studies because they might have bearing on the safe use of the product. In the application, a sponsor or applicant should identify any studies that do not meet the conditions of § 312.120(a)(1).

I. Supporting Information

Proposed § 312.120(b) would have required a sponsor or applicant submitting a non-IND foreign clinical study in support of an IND, NDA, or BLA to submit, in addition to information required elsewhere in parts 312, 314, or 601, supporting information that describes the actions taken to ensure that the research conformed to GCP.

1. General Comments

(Comment 21) Some comments stated that certain of the proposed requirements for submission of supporting information in § 312.120(b) are not entirely consistent with guidance provided in other relevant ICH documents. One comment requested that we confirm that conducting a study in accordance with ICH E6 and reporting and submitting the study according to ICH E3 ("Structure and Content of Clinical Study Reports"), ICH M4 ("Common Technical Document for the Registration of Pharmaceuticals for Human Use"), and FDA's corresponding guidance documents satisfies all the requirements of proposed § 312.120(b). In addition, the comment requested that in cases where the requirements in § 312.120(b) differed from ICH E3 and M4 standards, we consider modifying the requirements, thereby allowing sponsors to submit IND and non-IND studies according to a single standard.

(Response) Conducting a study in accordance with ICH E6 and reporting and submitting the study according to ICH E3, ICH M4, and FDA's corresponding guidance documents would not satisfy all the requirements of § 312.120(b). The supporting documentation required in § 312.120(b) must describe the actions the sponsor or applicant took to ensure that the research conformed to GCP. This supporting documentation will supplement information required elsewhere in parts 312, 314, or 601. If any of the supporting information is already included in another section of the IND or application for marketing approval, the sponsor or applicant would not be required to submit this information more than once. We revised § 312.120(b) to clarify that, in submitting the description of the actions taken to ensure that research conformed

to GCP, the sponsor or applicant is not required to duplicate information already submitted in the IND or application for marketing approval. Instead, the description submitted must provide either the supporting information required in § 312.120(b)(1) through (b)(11) or a cross-reference to another section of the submission where the information is located.

In some cases, it would be necessary to supplement studies submitted according to ICH E3 and M4 with additional information to adequately describe the actions the sponsor or applicant took to ensure that research conformed to GCP. ICH E3 provides advice on structuring and reporting data from a clinical trial, and ICH M4 provides advice on the organization of information in an application. These documents, unlike ICH E6, were not developed to address GCP.

2. Investigator Qualifications and Description of Research Facilities

Proposed § 312.120(b)(1) would have required submission of the investigator's qualifications, and proposed § 312.120(b)(2) would have required submission of a description of the research facilities.

(Comment 22) One comment stated that we were imposing an additional regulatory burden by requiring a description of the investigator's qualifications and a description of the research facilities. The comment stated that the information provided should be similar to that currently provided to FDA by sponsors for studies conducted under an IND.

(Response) We do not agree that the rule would impose any additional regulatory burden related to investigator's qualifications and description of research facilities. Section 312.120(b)(1) and (b)(2) of the final rule are unchanged from previous § 312.120(b)(1) and (b)(2), so there is no greater or lesser regulatory burden compared to what was previously required. In addition, we believe that assessment of the qualifications of the investigators and the adequacy of the research facilities are important factors in determining the reliability of the data generated by the study. IND sponsors are required to submit information about investigator qualifications and the name and address of the research facilities (whether domestic or foreign) to be used for each protocol (§ 312.23(a)(6)(iii)(b)). This rule does not require more information about investigator qualifications from sponsors of non-IND foreign studies. However, we generally are less likely to be familiar with the research facilities in which those studies are conducted. Therefore, we believe that it is appropriate to require a description of the research facilities for these studies to help us determine the adequacy of the facilities and to prioritize the need for an onsite inspection.

3. Detailed Summary of Protocol and Results of the Study

Proposed § 312.120(b)(3) would have required submission of a detailed summary of the protocol and results of the study. In addition, the sponsor or applicant would have been required to submit case records maintained by the investigator or additional background data, such as hospital records or other institutional records, if requested by FDA.

(Comment 23) One comment recommended that we modify the requirement in proposed § 312.120(b)(3) to allow sponsors to follow ICH E3, in which annex I, "Synopsis," provides the template for the detailed summary of the protocol.

(Response) We do not agree that submitting only the Synopsis from annex I of ICH E3 would be adequate to meet the requirements in § 312.120(b)(3) because the synopsis would not provide sufficient detail about the study protocol or results. Therefore, we have not modified the requirement as suggested by the comment. Although following ICH E3 is not required, an integrated, full clinical study report submitted in accordance with ICH E3 would be acceptable for meeting the requirements for providing summaries of the study protocol and results in § 312.120(b)(3). In addition, sponsors and applicants must submit information required elsewhere in parts 312, 314, or 601.

(Comment 24) One comment indicated that the reference to "hospital records" in § 312.120(b)(3) suggests that we could request hospital records instead of a description of medical records maintained by an investigator, which might lead to data privacy concerns. One comment stated that the requirements for recordkeeping by investigators described in ICH E6, which it said were comparable to the requirements for investigator recordkeeping in § 312.62, should be included in the final rule.

(Response) Proposed § 312.120(b)(3) was unchanged from previous § 312.120(b)(3). If we need source documents such as hospital records to verify data, these records must be available during an onsite inspection or provided upon request. If the necessary records are not available, we might not accept the study as support for an IND or application for marketing approval. We believe that informed consent documents should notify subjects that regulatory authorities will have direct access to the subject's original medical records for verification of clinical trial procedures and data, which is consistent with ICH E6, section 4.8.10(n). However, if a sponsor or applicant cannot disclose foreign records because it is prohibited by foreign law, the sponsor or applicant and FDA would need to agree upon an alternative validating procedure if the agency is to rely on the data.

With respect to investigator recordkeeping, this rule does not address individual investigator responsibilities, but rather describes the requirements for sponsors or applicants who are submitting non-IND foreign clinical studies in support of an IND or application for marketing approval. Sponsors or applicants are responsible for ensuring that their investigators meet their responsibilities. As originally proposed, the retention requirements in § 312.57(c) for records and reports required under part 312 would have applied to records required under this rule. However, we decided to clarify the record retention requirements applicable to records required under this rule and incorporate the provision directly into § 312.120. Accordingly, we have added the following provision at § 312.120(d): A sponsor or applicant must retain the records required by this section for a foreign clinical study not conducted under an IND as follows: (1) If the study is submitted in support of an application for marketing approval, retain records for 2 years after an agency decision on that application; (2) if the study is submitted in support of an IND but not an application for marketing approval, retain records for 2 years after the submission of the IND. This record retention provision is similar to the requirements set forth in § 312.57(c).

4. Names and Qualifications of IEC Members

Proposed § 312.120(b)(6) would have required submission of the names and qualifications for the members of the IEC that reviewed the study.

(Comment 25) One comment stated that although the requirement to provide names and qualifications of IEC members is in current § 312.120(c)(3), the regulation should allow for situations where it is impossible for a sponsor or clinical investigator to obtain this information. One comment stated that because of privacy concerns, some IECs only provide sponsors with letters to confirm that the constitution of the IEC is in agreement with GCP. The

comment stated that ICH E6 requires that the investigator files include the IEC composition to document that the IEC is so constituted, and that this information is available in sponsor files. The comment recommended that as an alternative we consider requiring the name and address of each IEC that approved a study. One comment requested allowing a statement from the IEC that it is properly constituted within the applicable laws that they must follow. Another comment suggested that we change the requirement to "information on the composition (preferably names and qualifications, but at a minimum qualifications) of the IEC that reviewed the study to ensure that the IEC is duly constituted." Another comment recommended that we only require a statement from the IEC that it is organized and operates according to ICH E6 and the applicable laws and regulations, which the comment stated was consistent with ICH E6, section 5.11.1(b). Two comments stated that the proposed requirement deviated from ICH E3, which includes a list of IECs or IRBs (plus the name of the committee chair, if required by the regulatory authority). The comments recommended that the requirement be revised to be consistent with ICH E3.

(Response) Because oversight by an adequately constituted IEC is an essential component of human subject protection, it is critical that there be adequate documentation of the IEC composition. We believe that submission of the names and qualifications of the members of the IEC that reviewed the study, as proposed, is one way to document the adequacy of the committee. Nevertheless, in response to concerns raised by some of the comments, we have developed an alternative approach that provides comparable assurance. As revised, § 312.120(b)(6) requires submission of the name and address of the IEC that reviewed the study and a statement that the IEC meets the definition of IEC in § 312.3. Section 312.120(b)(6) also states that the sponsor or applicant must maintain records supporting the statement, including records of the names and qualifications of IEC members, and make these records available for agency review upon request. We specify that the retained records must include records of the names and qualifications of IEC members because we do not believe it is possible to verify that an IEC is adequately constituted without knowing about the IEC members. Because sponsors or applicants were already required under previous § 312.120(c)(3) to submit the names and qualifications of IEC members, this change lessens the burden on sponsors and applicants. In addition, sponsors or applicants who comply with ICH E6 would also obtain and retain records on the information required in § 312.120(b)(6) (see sections 3.4 and 5.5.11 of ICH E6).

(Comment 26) One comment recommended that we clarify the type of information that must be provided to document the qualifications of the IEC because it will be difficult to assess meaningfully the true qualifications of IEC members simply by review of their formal professional qualifications. One comment recommended that FDA clarify that "qualifications" means not only formal academic certifications but also evidence that the members of the IEC, individually and as a group, are competent to protect clinical trial participants and ensure that the study is conducted in compliance with GCP. The comment suggested that the sponsor be required to provide evidence that the IEC members received training in bioethics and the principles of GCP or provide evidence that the IEC was accredited.

(Response) We believe that submitting a statement that the IEC meets the definition in § 312.3 and maintaining the records specified in § 312.120(b)(6) will provide sufficient documentation that the committee is adequately constituted to provide assurance that the rights, safety, and well-being of human subjects are protected. We believe that it is appropriate to allow flexibility in the composition and training of the IEC. If we deem it necessary in a particular case, we will inspect the sponsor's or applicant's records. Therefore, we will not require sponsors and applicants to provide evidence of training or IEC accreditation.

5. Summary of the IEC's Decision

Proposed § 312.120(b)(7) would have required submission of a summary of the IEC's decision to approve or modify and approve the study, or to provide a favorable opinion.

(Comment 27) One comment requested clarification of the requirement to provide "a summary of the IEC's decision to approve or modify and approve the study, or to provide a favorable opinion." The comment asked if it would be acceptable to provide a general statement that the IEC approved the study protocol prior to its conduct, noting any modifications required by the IEC (along with such items as amendments and consent forms). One comment recommended that IEC review and approval should continue to be documented by receipt of the approval letter from the committee. The comment stated that these letters are usually issued in the local language of the country in which the study is conducted and official translations could be provided. If approval letters are acceptable, the comment requested clarification on whether we would expect approval letters for only the original protocol or for all protocol amendments as well. One comment recommended that the requirement under § 312.120(b)(7) also account for documenting continuing review by the IEC under § 312.120(a)(1)(i).

(Response) We agree that it would be sufficient to provide a brief summary of the IEC's actions to approve or modify and approve the study, prior to the initiation of the study. For example, it would be acceptable to provide the name of the IEC and a list of IEC actions and dates (e.g., initial approval date, date of approval of modification to study (if any)). Alternatively, it would be acceptable to provide approval letter(s) from the IEC, including those for protocol amendments. Although continuing review by the IEC is required under § 312.120(a)(1)(i), documentation of such review does not need to be submitted under § 312.120(b)(7).

6. Description of Informed Consent Process

Proposed § 312.120(b)(8) would have required submission of a description of how informed consent was obtained.

(Comment 28) Two comments recommended that we modify the requirement in § 312.120(b)(8) so that it is acceptable to follow ICH E3, section 5.3, which calls for a description of how and when consent was obtained (the representative written information for the research subject (if any), and the sample informed consent are provided in accordance with appendix 16.1.3). One comment stated that the proposed rule requests more stringent supporting information on how informed consent was obtained than what is currently required in part 314 for studies conducted under an IND and submitted in an NDA.

(Response) We do not believe it is necessary to modify the requirement as suggested. The requirement to provide a description of how informed consent was obtained allows for flexibility regarding the manner in which this information can be submitted. For example, ICH E6, section 4.8, provides standards for the informed consent process, including who obtains informed consent, as well as how and when it should be obtained. Submitting

documentation of this process would be acceptable to meet the requirement in § 312.120(b)(8). Likewise, it would be acceptable for sponsors or applicants to follow the relevant provisions in ICH E3 to meet the requirements. We do not agree that § 312.120(b)(8) is more stringent than the corresponding requirements in part 314 for studies conducted under an IND. Sponsors conducting studies under an IND would have to meet the requirements in parts 50, 56, and 312, which include detailed requirements for obtaining informed consent.

7. Description of Incentives to Subjects

Proposed § 312.120(b)(9) would have required submission of a description of what incentives, if any, were provided to subjects to participate in the study.

(Comment 29) Two comments recommended that we clarify the requirements of § 312.120(b)(9). One comment stated that it should be acceptable to provide a general statement in the protocol, study report, and sample consent that subjects were reimbursed for their time and travel costs or that subjects were paid for participation. Two comments stated that it should be adequate to follow ICH E3 (appendix 16.1.3), which includes providing a sample or model informed consent form, since it would describe any incentives.

(Response) We believe that there should be some flexibility in how sponsors or applicants comply with § 312.120(b)(9). If the sponsor or applicant follows ICH E6, informed consent would include an explanation of any incentives provided to subjects (section 4.8.10), so a sponsor or applicant could submit a model consent form to meet § 312.120(b)(9). Alternatively, we agree that following ICH E3 and providing a sample or model informed consent form that describes any incentives provided, as specified in appendix 16.1.3 of ICH E3, would be sufficient to satisfy § 312.120(b)(9). A sponsor or applicant could also satisfy § 312.120(b)(9) by submitting a brief description of any incentives provided to subjects to participate in the study.

8. Description of Study Monitoring

Proposed § 312.120(b)(10) would have required submission of a description of how the sponsor monitored the study and ensured that the study was carried out consistent with the study protocol.

(Comment 30) Two comments asked that we modify the requirements to state that it is acceptable to follow ICH E3, section 9.6, Data Quality Assurance, which would mean providing a description of any steps taken at the investigational sites or centrally to ensure the use of standard terminology and the collection of accurate, consistent, complete, and reliable data; steps might include training sessions, monitoring of investigators, use of centralized testing, and data audits. One comment recommended that the proposed rule be revised to allow the submission of a general description of what activities were used to ensure the quality of data (e.g., monitoring, investigator training), in keeping with part 314.

(Response) As with the other requirements for submission of supporting information, we believe that there should be some flexibility in how sponsors or applicants meet the requirements in § 312.120(b)(10). We agree that following ICH E3, section 9.6, would be acceptable to meet these requirements. Alternatively, sponsors or applicants could provide a description of how the study was monitored as specified in ICH E6, section 5.18. Although it is acceptable to follow these sections of ICH E3 or E6 to comply with § 312.120(b)(10), we will not require that they be followed, and a sponsor or applicant might use an alternative approach to comply with this provision.

9. Description of Investigator Training and Signed Written Commitments

Proposed § 312.120(b)(11) would have required submission of a description of how investigators were trained to comply with GCP and to conduct the study in accordance with the study protocol. In addition, the sponsor or applicant would have been required to submit copies of written commitments, if any, by investigators to comply with GCP and the protocol.

(Comment 31) Some comments requested that we clarify the requirements in § 312.120(b)(11). One comment asked if submission of a general statement in the study report that investigators were trained at an investigators meeting and/or during site initiation visits would be acceptable. Two comments stated that investigator training was included in ICH E3, section 9.6, and recommended that we modify the requirement so that it is acceptable to reference this section of the clinical study report.

(Response) We agree that submitting a statement in accordance with ICH E3, section 9.6 (i.e., whether investigator meetings or other steps were taken to prepare investigators and standardize performance), would be an acceptable means of complying with § 312.120(b)(11), provided that the description included how investigators were trained to comply with GCP and to conduct the study in accordance with the study protocol. As previously stated with respect to other supporting documentation requirements, a sponsor or applicant might use an alternative approach to meet this requirement.

(Comment 32) Several comments recommended that we eliminate the proposed requirement to submit copies of written commitments, if any, by investigators to comply with GCP and the protocol. Three comments stated that written investigator commitments are usually included on the investigator signature page of the study protocol. Under ICH E3, appendix 16.1.1, a blank copy of this page is provided with the protocol. In addition, ICH E6, section 8.2.2, advises sponsors to archive individual investigators' signature pages in the sponsor's trial master file. The comments stated that to comply with this part of § 312.120(b)(11), it should suffice to submit a description of how the investigator commitment to comply with GCP and the protocol was obtained, and we should eliminate the proposed requirement to submit an individual form for each participating investigator. Two comments requested that the proposed rule be revised to require that the signed investigator agreements be available in the sponsor's files, to be provided to us upon request. One comment stated that there is no need to submit an individual form for each investigator because this information has already been obtained by the sponsor. One comment recommended that we require sponsors to obtain written commitments from investigators to comply with GCP and the study protocol.

(Response) We agree that submitting individual copies of signed investigator agreements is unnecessary. We recognize that, for those sponsors following ICH E3 and E6, these documents would be either submitted with the clinical study report or kept on file with the sponsor. We believe that it would be acceptable to submit a statement indicating whether written commitments by investigators to comply with GCP and the protocol were obtained and, if so, to maintain such commitments on file to be provided upon the agency's request. Therefore, we revised § 312.120(b)(11) to require submission of such a statement instead of copies of signed investigator commitments. We believe that evaluation of the statements regarding commitments, combined with the availability of the signed commitments (if any) for our inspection, provides adequate assurance that investigators received GCP training and minimizes

the burden on sponsors and the agency. We disagree with the comment that recommended requiring signed investigator commitments. Although we encourage sponsors to obtain written commitments, such commitments may not be required in all countries, and we do not want to preclude submission of ethically conducted foreign clinical studies solely because a written commitment was not obtained.

J. Waivers

Proposed § 312.120(c) would have permitted sponsors or applicants to request that FDA waive any applicable requirements under § 312.120(a)(1) and (b). Under proposed § 312.120(c)(2), we could have granted a waiver if we found that doing so would be in the interest of the public health.

(Comment 33) One comment stated that proposed § 312.120(c)(2) could be construed as placing the interest of public health ahead of the need to protect trial participants in foreign countries. The comment recommended that we clarify the provision to indicate that a waiver would not be granted if this would compromise the sponsor's obligation to show that trial participants had been protected at all times, even though the waiver might be in the interest of public health.

(Response) In providing for this waiver, we are giving the agency a measure of discretion to avoid inappropriate results. We envision that we might use this provision to allow us to accept a non-IND foreign clinical study conducted before the effective date of this rule, if the study is in compliance with the provisions of § 312.120 prevailing at the time it was conducted, but out of technical compliance with the terms of this rule. Section 312.120(c)(2) allows us to decide whether to grant or deny waivers on a case-by-case basis, taking into account all appropriate circumstances.

IV. Implementation

The proposed effective date would have applied the rule, when final, to foreign clinical studies for which the first subject is enrolled 180 days after the date of publication of the final rule. As proposed, a clinical trial that is currently ongoing, which might not be completed and for which the results might not be submitted to FDA (in an IND or application for marketing approval) for several years, would be submitted under previous § 312.120.

We have determined that it is appropriate to make the rule effective 180 days after the date of publication in the **Federal Register** and applicable to foreign clinical studies regardless of the status of subject enrollment (e.g., ongoing, completed, not yet initiated). We have made this change to decrease the potential for confusion about which version of § 312.120 (new or previous) is applicable to ongoing clinical studies. We do not believe that this change will affect the ability of most sponsors or applicants to comply with § 312.120 because most foreign clinical trials are currently being conducted in accordance with GCP principles. If necessary, we can use the waiver provision under § 312.120(c) to accept studies initiated before the effective date of the rule if doing so would be in the interest of the public health.

V. Legal Authority

We are issuing this rule under the authority of the provisions of the act that apply to drugs (section 201 *et seq.* (21 U.S.C. 321 *et seq.*)) and section 351 of the PHS Act. These laws authorize the agency[3] to issue regulations to ensure the following: (1) Data that we review are of adequate quality to enable us to make appropriate regulatory decisions; (2) clinical investigators involved in developing data submitted to us are qualified to conduct such clinical investigations and are otherwise reliable; and (3) clinical investigations generating data submitted in support of applications are well designed and well conducted in a manner supporting the reliability of study results.

Section 505 of the act requires us to weigh evidence of effectiveness and safety to determine whether the evidence supports drug approval, whether data are adequate to permit a clinical investigation to proceed under the IND regulations, and/or whether a product is appropriately labeled, and to weigh evidence of bioequivalence for generic drug approvals. Section 505(d) of the act provides that we may approve an NDA only after finding substantial evidence "consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof."

When we review INDs, section 505(i) of the act requires us to determine whether the reports submitted in support of an application are "adequate to justify the proposed clinical testing" and whether the sponsor has submitted "adequate reports of basic information * * * necessary to assess the safety of the drug for use in clinical investigation."

The act also requires us to determine whether adequate and reliable studies are sufficient to support a drug's labeling. Under section 505(d)(5), evidence from clinical investigations of a drug's safety and effectiveness must support the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Section 505(j)(2)(A)(iv) of the act further requires us to assess information submitted in an ANDA demonstrating, among other things, that the ANDA drug is either bioequivalent to an already approved new drug which is the subject of an approved NDA, or can be expected to have the same therapeutic effect as such a drug, as determined by a petition submitted under section 505(j)(2)(C) of the act.

Section 701(a) of the act (21 U.S.C. 371(a)) authorizes the agency to issue regulations for the efficient enforcement of the act.

Section 351(a)(2)(C)(i)(I) of the PHS Act authorizes the agency to approve a BLA only if the applicant demonstrates that the product is safe, pure, and potent. Section 351(a)(2)(A) of the PHS Act authorizes the agency to establish, by regulation, requirements for the approval, suspension, and revocation of biologics licenses.

These statutory provisions authorize us to issue regulations describing when we may consider foreign clinical studies not conducted under the IND regulations as reliable evidence supporting an IND or application for marketing approval.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. The estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

[3] In light of section 903(d) of the act (21 U.S.C. 393(d)) and the Secretary of Health and Human Services' (the Secretary's) delegations to the Commissioner of Food and Drugs, statutory references to "the Secretary" in the discussion of legal authority have been changed to "FDA" or the "agency."

Title: Foreign Clinical Studies Not Conducted Under an IND

Description: Previous § 312.120 stated that we generally accept foreign clinical studies not conducted under an IND provided they are well designed, well conducted, performed by qualified investigators, and conducted in accordance with ethical principles. It further stated that such studies must be conducted in accordance with the 1989 Declaration or the laws of the country in which the research is conducted, whichever provides greater protection to subjects.

The final rule replaces the requirement that non-IND foreign studies be conducted in accordance with the 1989 Declaration with a requirement to conduct such studies in accordance with GCP, including review and approval by an IEC. We are making this change for the following reasons: (1) We want to provide greater assurance of the quality of data obtained from non-IND foreign studies; (2) standards for protecting human subjects have evolved considerably over the past decade and include the adoption of GCP; and (3) we want to eliminate the reference to the Declaration because that document is subject to change, independent of FDA authority, in a manner that might be inconsistent with U.S. laws and regulations, and referring to a superseded version of the Declaration could create the potential for confusion about the requirements for non-IND foreign studies.

Under revised § 312.120(a), we will accept as support for an IND or application for marketing approval a well-designed and well-conducted foreign clinical study not conducted under an IND if the study is conducted in accordance with GCP and we are able to validate the data from the study through an onsite inspection if necessary. GCP includes review and approval by an IEC before initiating a study, continuing review of an ongoing study by an IEC, and obtaining and documenting the freely given informed consent of the subject before initiating a study.

Previous § 312.120(b) required a sponsor of a non-IND foreign study who wanted to rely on that study as support for an IND or application for marketing approval to provide certain data to FDA. Revised § 312.120(b) requires this same information as well as the following: (1) The name and address of the IEC and a summary of its decision to approve, or modify and approve, the study; (2) a description of how informed consent was obtained and what incentives, if any, were provided to subjects to participate in the study; (3) a description of how the sponsor monitored the trial and ensured that it was carried out consistently with the study protocol; and (4) a description of how investigators were trained to comply with GCP and to conduct the trial in accordance with the protocol, as well as a statement on whether written commitments by investigators to comply with GCP and the protocol were obtained.

Revised § 312.120(c) specifies how sponsors or applicants can request a waiver for any of the requirements under § 312.120(a)(1) and (b). By permitting a waiver of certain requirements, this provision is not likely to increase the burden on a sponsor or applicant. Under revised § 312.120(c)(1), a waiver request must contain at least one of the following: (1) An explanation why the sponsor's or applicant's compliance with the requirement is unnecessary or cannot be achieved; (2) a description of an alternative submission or course of action that satisfies the purpose of the requirement; or (3) other information justifying a waiver. Under revised § 312.120(c)(2), FDA may grant a waiver if doing so would be in the interest of the public health.

Description of Respondents: Businesses.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden associated with the rule:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Hours
312.120	115	5	575	32	18,400
Total					18,400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate that, each year, 115 companies submit a total of approximately 575 non-IND foreign clinical studies in support of an IND or application for marketing approval for a drug or biological product. We conducted consultations with seven large and small companies that had submitted non-IND foreign clinical studies to us during 1998 through 2001. All respondents indicated that they currently conduct non-IND foreign clinical studies in conformance with GCP and generally document all the items listed in revised § 312.120(b). Sponsors often plan to obtain marketing approval in more than one country and often conduct studies with the intention to submit data for review in multiple countries that may require compliance with GCP. Companies previously were required (under previous § 312.120(b)(1) through (b)(5) and (c)(3)) to document the items in revised § 312.120(b)(1) through (b)(7) as well as to document how the research conformed to the ethical principles contained in the 1989 Declaration or the foreign country's standards, whichever represented the greater protection of the individual (previous § 312.120(c)(2)).

Hour burden estimates will vary due to differences in size, complexity, and duration across studies, because each of these factors affects the amount and intricacy of data collected. For example, the applicant of a study that involves five research sites, each with its own IEC, must submit documentation of review by all five committees. However, if the same study is performed with one IEC overseeing all five sites, the hour burden estimate would be less.

As previously stated in this document, the general position among the sponsors that we interviewed was that documenting their compliance with GCP would take between 18 and 32 hours annually for each non-IND foreign clinical trial. To provide a liberal estimate of costs to industry, we assumed that no companies currently document compliance with any component of GCP and that the documentation required under revised § 312.120(b) would require 32 hours to complete for each study submitted for a total of 18,400 annual burden hours (575 x 32 hours).

In addition to the reporting requirements set forth in table 1 of this document, the final rule includes a

provision, § 312.120(d), stating how long sponsors and applicants must retain records required by § 312.120. Under the proposed rule, the retention requirements in § 312.57(c), for records and reports required under part 312, would have applied to these records. However, we decided to clarify the recordkeeping requirements applicable to records required under this rule by establishing § 312.120(d). Under § 312.120(d), if a study is submitted in support of an application for marketing approval, records must be retained for 2 years after an agency decision on that application; if a study is submitted in support of an IND but not an application for marketing approval, records must be retained for 2 years after the submission of the IND. The recordkeeping requirements for studies under part 312 are approved under OMB control number 0910–0014 until May 31, 2009.

In compliance with the PRA (44 U.S.C. 3507(d)), we submitted a copy of this rule to OMB for its review and approval of these information collections.

The reporting requirements of this final rule have been approved under OMB control number 0910–0622. This approval expires on April 11, 2011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the information collection displays a currently valid OMB control number.

VII. Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies 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. Accordingly, we have concluded that the final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Analysis of Economic Impacts

We have examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not an economically significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities. Because the estimated impact of the final rule is not substantial and, in any event, clinical investigators generally follow GCP already, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is approximately $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product.

We do not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Objectives of the Final Rule

The objectives of the final rule are to ensure the quality and integrity of foreign clinical data supporting FDA decisionmaking on product applications and to help ensure the protection of human subjects participating in foreign clinical studies. High-quality data from foreign studies may be critical to our decisionmaking on applications and product labeling. By increasing our knowledge of a drug, including its effect in more diverse study populations, such data will help us better perform these review functions.

By incorporating the monitoring and reporting responsibilities under GCP, the final rule also will reduce the risk to subjects who take part in foreign clinical trials of investigational drug and biological products. Most investigations of new therapeutic products carry potential risks for trial subjects due to the investigational nature of the products. However, if trials are well designed and carefully monitored, these risks can be minimized.

B. Background on Current Situation Regarding Foreign Studies

The current process for marketing a new drug product or amending the conditions of use of an existing product requires us to review and approve the results of clinical investigations included in applications for marketing approval. These applications contain the results of clinical investigations that characterize the therapeutic benefit of the new product and assess its risks. We review the submitted data and decide whether there is sufficient evidence of safety and effectiveness to grant approval.

Clinical data included in an application for marketing approval usually are collected under an IND, for which protocols of the proposed clinical investigations are submitted for review. An IND is needed to lawfully administer an unapproved pharmaceutical or biological product to humans in the United States. However, not all clinical trials used to support an application for marketing approval take place in the United States. For a variety of reasons (e.g., foreign developer or manufacturer), there has been an increase in the number of foreign clinical investigations of potential new drug products. According to an analysis by the Department of Health and Human Services' Office of the Inspector General (OIG) (Ref. 1), the number of foreign clinical investigators that conducted drug research under INDs increased from 41 in 1980 to 271 in 1990 and 4,458 in 1999. Although trials not conducted in the United States are not required to be conducted under an IND, many sponsors submit an IND before initiating a foreign trial. However, we have always required and reviewed the safety results of non-IND foreign clinical trials of drug products considered for marketing approval in the United States.

According to estimates from the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER), approximately 650 clinical investigations of investigational products intended for commercial marketing were initiated each year from 1995 through 1999. In addition, commercial sponsors submitted approximately 2,600 new protocols each

year for new clinical trials under existing INDs. Therefore, in a typical recent year, we received approximately 3,250 new investigations (initial INDs and new protocols combined) for commercial development of new therapies.

A CDER study of the INDs submitted to support development of new molecular entities (NMEs) approved between 1995 and 1999 found that up to 35 percent of the trials that were conducted under an IND included foreign sites. Thus, in an average year, we estimate that approximately 1,140 foreign clinical trials (3,250 x 0.35) are conducted under IND review and oversight. However, this estimate does not include foreign clinical trials that were not subject to IND review. The CDER analysis indicates that as many as 15 percent of the trials submitted in NME marketing applications were not conducted under an IND. If this proportion holds with respect to all clinical trials, we estimate that approximately 3,825 clinical trials are conducted annually to develop data for submission to FDA in support of an application for marketing approval (assuming the 3,250 clinical trials conducted annually under an IND constitute only 85 percent of all trials conducted to develop data for such an application). We can then estimate that 575 non-IND foreign trials are conducted annually for eventual submission to FDA as part of an IND or application for marketing approval (3,825 - 3,250 = 575).

We also estimated the number of applications supported by data from foreign trials not conducted under an IND. According to CDER data, each application for marketing approval may cite an average of approximately five investigations that provide important information relative to approval decisions. Lacking data on INDs supported by data from non-IND foreign trials, we will assume the same ratio of investigations to applications is true. Based on these estimates, we estimate that the 575 foreign trials conducted annually are used to support 115 INDs or applications for marketing approval.

C. The Final Rule

Under the final rule, all non-IND foreign clinical studies submitted as support for an IND or application for marketing approval must be conducted under GCP as defined in the rule. Under previous § 312.120, we accepted as support for an IND or application for marketing approval foreign clinical studies not conducted under an IND provided they were well designed, well conducted, performed by qualified investigators, and conducted in accordance with ethical principles. Sponsors of non-IND investigations used in support of INDs or applications for marketing approval were required to follow either the principles of the 1989 Declaration for patient protection or national laws that provide even greater protection. The final rule is expected to provide greater assurance that such clinical investigations will provide results that are of satisfactory quality while ensuring that the investigations are conducted with subjects' informed consent and do not place subjects unduly at risk. We believe that this change is necessary to ensure that foreign clinical investigations that are intended to be used as support for an IND or U.S. application for marketing approval are well designed and well conducted and provide sufficient protection to subjects. Consequently, under the final rule, we will not accept any non-IND foreign clinical results as support for sponsor claims of efficacy unless the trials are conducted in conformance with GCP. The results of all clinical trials must in any case be submitted with new product applications to evaluate the safety of the new therapy.

D. Costs of the Final Rule

We interviewed seven pharmaceutical manufacturers that had submitted results from non-IND foreign clinical studies to us during 1998 through 2001. These firms indicated that they currently conduct all research, including investigations not conducted under an IND, in accordance with ICH standards for GCP. However, the final rule requires that an applicant submit a description of the actions taken to ensure that the research conformed to GCP. Several items included in GCP (as defined in the final rule) are not specifically required to be documented and submitted in an application for marketing approval for results to be accepted by FDA. In particular, documentation that includes attestations by investigators and evidence that study protocols have been reviewed and approved by an IEC is not always included in INDs and applications for marketing approval. For studies under an IND, there are specific regulatory requirements for obtaining informed consent, ensuring IRB review, and carrying out appropriate monitoring. The absence of these requirements for non-IND studies makes it difficult for us to determine the adequacy of pre-initiation review of study protocols. The final rule will help ensure that these documents are available for our inspection at research sites and that information on IEC review is included in INDs and applications for marketing approval.

The amount and detail of the necessary documentation will vary according to the size and complexity of the proposed clinical trial. The general position among the seven sponsors we interviewed was that providing a description of their compliance with GCP, including related documentation and recordkeeping, would take between 18 and 32 additional hours for each non-IND clinical trial.

We obtained information on typical nonproduction, salaried labor costs for the pharmaceutical industry from the Bureau of Labor Statistics (North American Industrial Classification System (NAICS) 325412). Including wages and benefits, the average cost for these labor resources is slightly more than $30 per hour. As noted previously in this document, we estimate that approximately 575 non-IND foreign commercial clinical trials are conducted annually. Using the high estimate of the additional hours of documentation needed for each non-IND clinical trial, this would result in a total annual cost of about $552,000 to the sponsoring firms (32 hours x 575 non-IND foreign trials x $30 = $552,000).

E. Benefits of the Final Rule

We believe that improvement in the conduct of clinical trials will improve the quality of clinical data submitted, allowing these data to provide support for applications for marketing approval. We further believe that the final rule will decrease the possibility that subjects in foreign clinical trials will be placed unnecessarily at risk.

We have not quantified the benefit of improvements in the data being included with applications for marketing approval resulting from the use of GCP in lieu of previous requirements. However, if these data were determined to be adequate to support an application, beneficial therapies could become available earlier. Similarly, we expect that the greater integrity of data from non-IND studies will result in an additional benefit, also difficult to quantify, due to better quality data about the safety and effectiveness of products and greater public confidence in the scientific basis for FDA decisions.

F. Small Business Impact

The final rule is not expected to have a significant impact on a substantial number of small entities. Nevertheless, we have prepared a voluntary regulatory flexibility analysis.

1. Nature of the Impact

As discussed previously in this document, we estimate that the final rule will increase total costs to sponsors of foreign clinical studies by approximately $552,000 per year. The increased costs will be due to greater costs of review and documentation of the approval of study protocols by IECs. The resources needed to comply with this rule are not specialized. Assuming, for purposes of this calculation, that each of the approximately 115 INDs or applications for marketing approval submitted annually (in which are reported approximately 575 non-IND foreign clinical studies) is submitted by a different sponsor, each sponsor would incur costs of approximately $4,800 per year to comply with the final rule ($552,000 ÷ 115 = $4,800).

2. The Affected Industry

The Census of Manufacturers defines the pharmaceutical preparations industry in NAICS 325412. This industry consists of 712 companies and 837 establishments. Average revenues per company are over $100 million annually.

However, the Small Business Administration has defined any entity with 750 or fewer employees as a small entity. According to the Census of Manufacturers, approximately 95 percent of the industry establishments would meet this criterion. With the industry-wide average of approximately 1.2 establishments per company, it is likely that at least 90 percent of the companies would be considered small entities.

On the other hand, the proportion of sponsors that submit original applications for marketing approval is markedly different from the general industry. We examined the characteristics of sponsors of new drug product applications for marketing approval between October 1996 and October 1999 (Ref. 2). Of the 158 firms that had sponsored applications for marketing approval during that period, 56 (or about 33 percent) were considered domestic small entities (750 or fewer employees). The remaining firms were either foreign sponsors or large innovating enterprises. The 56 small firms submitted a total of 76 NDAs during that period, which is about 1.5 applications each over a 3-year period (or 0.5 annually per small entity).

The 76 NDAs submitted by small domestic entities represented about 20 percent of all applications. Using this proportion, we estimate that 20 percent of the 575 annual non-IND foreign clinical trials to develop data for submission in an FDA application for marketing approval (approximately 115 studies) could be sponsored by small entities. If these trials were distributed equally among each sponsoring small entity, each sponsor would be expected to conduct two non-IND clinical trials per year. If so, the compliance costs would equal about $9,600 annually per small entity ($4,800 x 2 = $9,600).

The Census of Manufacturers also reports that a sizable proportion of the industry has an annual value of shipments of approximately $1 million. For example, a reported 494 of the 837 establishments had total shipments of approximately $480 million during 1997. The expected cost of $9,600 per small firm would not represent a significant impact.

3. Alternatives to the Final Rule

We considered several alternatives to the final rule. We rejected leaving § 312.120 unchanged because it would not meet the objectives of enhancing standards for study conduct and ensuring data integrity. We rejected other regulatory options to increase our oversight of foreign clinical investigations because they would be either too costly or unenforceable. We considered changing the inspection strategy for foreign clinical trials, but this option would not ensure GCP compliance, a process that makes all parties to a study responsible for patient safety and study quality. We considered but rejected allowing an exemption from the requirements in the final rule for small entities. We must have confidence that all clinical investigations submitted as support for an IND or application for marketing approval meet basic standards of reliability, patient safety, and data quality.

4. Outreach

We received 32 comments on the proposed rule. There were no comments on the "Analysis of Impacts" discussion.

5. Conclusion

For the reasons stated previously, we conclude that the final rule will not result in a significant impact on a substantial number of small entities.

G. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Department of Health and Human Services, Office of the Inspector General, "The Globalization of Clinical Trials: A Growing Challenge in Protecting Human Subjects," OEI–01–00–00190, September 2001.

2. FDA, "Who Submits NDAs and ANDAs," unpublished document, October 1999.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 312 is amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 371, 381, 382, 383, 393; 42 U.S.C. 262.

■ 2. Section 312.3 is amended in paragraph (b) by alphabetically adding a definition for "Independent ethics committee" to read as follows:

§ 312.3 Definitions and interpretations.

* * * * *

(b) * * *

Independent ethics committee (IEC) means a review panel that is responsible for ensuring the protection of the rights, safety, and well-being of human subjects involved in a clinical investigation and is adequately constituted to provide assurance of that protection. An institutional review board (IRB), as defined in § 56.102(g) of this chapter and subject to the requirements of part 56 of this chapter, is one type of IEC.

* * * * *

■ 3. Section 312.120 is revised to read as follows:

§ 312.120 Foreign clinical studies not conducted under an IND.

(a) *Acceptance of studies.* (1) FDA will accept as support for an IND or application for marketing approval (an application under section 505 of the act or section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262)) a well-designed and well-conducted foreign clinical study not conducted under an IND, if the following conditions are met:

(i) The study was conducted in accordance with good clinical practice (GCP). For the purposes of this section, GCP is defined as a standard for the design, conduct, performance, monitoring, auditing, recording,

analysis, and reporting of clinical trials in a way that provides assurance that the data and reported results are credible and accurate and that the rights, safety, and well-being of trial subjects are protected. GCP includes review and approval (or provision of a favorable opinion) by an independent ethics committee (IEC) before initiating a study, continuing review of an ongoing study by an IEC, and obtaining and documenting the freely given informed consent of the subject (or a subject's legally authorized representative, if the subject is unable to provide informed consent) before initiating a study. GCP does not require informed consent in life-threatening situations when the IEC reviewing the study finds, before initiation of the study, that informed consent is not feasible and either that the conditions present are consistent with those described in § 50.23 or § 50.24(a) of this chapter, or that the measures described in the study protocol or elsewhere will protect the rights, safety, and well-being of subjects; and

(ii) FDA is able to validate the data from the study through an onsite inspection if the agency deems it necessary.

(2) Although FDA will not accept as support for an IND or application for marketing approval a study that does not meet the conditions of paragraph (a)(1) of this section, FDA will examine data from such a study.

(3) Marketing approval of a new drug based solely on foreign clinical data is governed by § 314.106 of this chapter.

(b) *Supporting information.* A sponsor or applicant who submits data from a foreign clinical study not conducted under an IND as support for an IND or application for marketing approval must submit to FDA, in addition to information required elsewhere in parts 312, 314, or 601 of this chapter, a description of the actions the sponsor or applicant took to ensure that the research conformed to GCP as described in paragraph (a)(1)(i) of this section. The description is not required to duplicate information already submitted in the IND or application for marketing approval. Instead, the description must provide either the following information or a cross-reference to another section of the submission where the information is located:

(1) The investigator's qualifications;

(2) A description of the research facilities;

(3) A detailed summary of the protocol and results of the study and, should FDA request, case records maintained by the investigator or additional background data such as hospital or other institutional records;

(4) A description of the drug substance and drug product used in the study, including a description of the components, formulation, specifications, and, if available, bioavailability of the specific drug product used in the clinical study;

(5) If the study is intended to support the effectiveness of a drug product, information showing that the study is adequate and well controlled under § 314.126 of this chapter;

(6) The name and address of the IEC that reviewed the study and a statement that the IEC meets the definition in § 312.3 of this chapter. The sponsor or applicant must maintain records supporting such statement, including records of the names and qualifications of IEC members, and make these records available for agency review upon request;

(7) A summary of the IEC's decision to approve or modify and approve the study, or to provide a favorable opinion;

(8) A description of how informed consent was obtained;

(9) A description of what incentives, if any, were provided to subjects to participate in the study;

(10) A description of how the sponsor(s) monitored the study and ensured that the study was carried out consistently with the study protocol; and

(11) A description of how investigators were trained to comply with GCP (as described in paragraph (a)(1)(i) of this section) and to conduct the study in accordance with the study protocol, and a statement on whether written commitments by investigators to comply with GCP and the protocol were obtained. Any signed written commitments by investigators must be maintained by the sponsor or applicant and made available for agency review upon request.

(c) *Waivers.* (1) A sponsor or applicant may ask FDA to waive any applicable requirements under paragraphs (a)(1) and (b) of this section. A waiver request may be submitted in an IND or in an information amendment to an IND, or in an application or in an amendment or supplement to an application submitted under part 314 or 601 of this chapter. A waiver request is required to contain at least one of the following:

(i) An explanation why the sponsor's or applicant's compliance with the requirement is unnecessary or cannot be achieved;

(ii) A description of an alternative submission or course of action that satisfies the purpose of the requirement; or

(iii) Other information justifying a waiver.

(2) FDA may grant a waiver if it finds that doing so would be in the interest of the public health.

(d) *Records.* A sponsor or applicant must retain the records required by this section for a foreign clinical study not conducted under an IND as follows:

(1) If the study is submitted in support of an application for marketing approval, for 2 years after an agency decision on that application;

(2) If the study is submitted in support of an IND but not an application for marketing approval, for 2 years after the submission of the IND.

Dated: April 21, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–9200 Filed 4–25–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 24, and 27

[Docket No. TTB–2007–0006; T.D. TTB–70; Re: T.D. TTB–31 and Notice No. 51]

RIN 1513–AB00

Certification Requirements for Imported Natural Wine (2005R–002P)

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

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is adopting as a final rule, without changes, the temporary regulations implementing the certification requirements regarding production practices and procedures for imported natural wine. These requirements were adopted in section 2002 of the Miscellaneous Trade and Technical Corrections Act of 2004 as an amendment to section 5382 of the Internal Revenue Code of 1986.

DATES: *Effective Date:* This final rule is effective on May 28, 2008.

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

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for

the administration of Chapter 51 of the Internal Revenue Code of 1986 (IRC) which includes provisions relating to the taxation of wine. Section 5382(a) of the IRC (26 U.S.C. 5382(a)) sets forth standards regarding what constitutes proper cellar treatment of natural wine.

On December 3, 2004, the President signed into law the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108–429, 118 Stat. 2434 ("the Act"), which revised section 5382(a) of the IRC to accommodate two new provisions. The first new provision was paragraph (1)(B), which provides that, in the case of wine produced and imported subject to an international agreement or treaty, proper cellar treatment of natural wine includes those practices and procedures acceptable to the United States under the agreement or treaty. The second new provision was paragraph (3), which sets forth a new certification requirement regarding production practices and procedures for imported natural wine produced after December 31, 2004.

Under section 5382(a)(3) the Secretary of the Treasury shall accept the practices and procedures used to produce wine in another country if, at the time of importation of the wine, one of the following conditions is met:

- The Secretary has on file or is provided with a certification from the government of the producing country, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment under regulations prescribed by the Secretary;
- The Secretary has on file or is provided with a certification required by an international agreement or treaty covering proper cellar treatment, or the wine is covered by an international agreement or treaty covering proper cellar treatment that does not require a certification; or
- In the case of an importer that owns or controls or that has an affiliate that owns or controls a winery operating under a basic permit issued by the Secretary, the importer certifies that the practices and procedures used to produce the wine constitute proper cellar treatment under regulations prescribed by the Secretary.

In addition, for purposes of the certification requirement, section 5382(a)(3) defines "affiliate" as having the meaning contained in section 117(a)(4) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)(4)), and as including "a winery's parent or subsidiary or any other entity in which the winery's parent or subsidiary has an ownership interest."

Temporary Rule and Notice of Proposed Rulemaking

On August 24, 2005, TTB published in the **Federal Register** (70 FR 49479) a temporary rule, T.D. TTB–31, which implemented the above described certification requirements by amending 27 CFR parts 4, 24, and 27. In conjunction with the publication of T.D. TTB–31, TTB published a notice of proposed rulemaking, Notice No. 51, in the **Federal Register** (70 FR 49516) on August 24, 2005, referencing and inviting comments on T.D. TTB–31. The comment period closed October 24, 2005.

Comments and TTB Analysis

TTB received four comments during the comment period. Below, we summarize and respond to the four comments.

Comment

The Embassy of Switzerland commented that requiring certification for shipments of limited quantities could create impediments to the introduction of new products. It therefore urged TTB to exempt from certification shipments of limited quantities and non-commercial shipments intended for trade fairs or exhibits.

TTB Response

The implementing regulations include an exemption for importations of commercial samples of natural wine. Under 27 CFR 27.140(b)(2)(ii)(C), commercial samples include sales samples, samples for trade shows, and samples imported for laboratory analysis. We believe this provision addresses the commenter's concern regarding shipments for trade shows and exhibits. We also believe that 27 CFR 27.140(b)(2)(ii)(B), which exempts importations of a personal, non-commercial nature, could apply to many of the shipments of limited quantities mentioned by the commenter.

Comment

The National Association of Beverage Importers, Inc. (NABI), in its comment, stated that TTB did not define the word "importer" in the temporary regulations, making it unclear who must retain a copy of the certification. It stated that in the industry, "importer" could mean either the "authorized importer" or the "importer of record." According to NABI, the "authorized importer" is authorized by the foreign supplier to import the supplier's wine into the U.S., whereas the "importer of record" is the importer that physically imports the wine (sic), usually using a certificate of label approval (COLA) owned by the authorized importer. NABI therefore asked which type of importer must maintain a copy of the certification in their records. NABI believes that the COLA owner should be required to retain the certification. NABI also requested clarification regarding wine that is a blend of wines from multiple suppliers, asking if the importer must obtain certifications for all the wines used in a blend or only for the finished wine.

TTB Response

"Importer" is defined in § 27.140 of the implementing regulations as "any person importing wine who must obtain a permit as provided in § 27.55." Under § 27.55, any person who intends to engage in the business of importing wines must obtain a permit from TTB. If a COLA holder is also the actual importer, that COLA holder would have to both obtain a permit and retain the certification, a copy of which is sufficient for this purpose. TTB believes the regulations are sufficiently clear on this point.

With regard to NABI's second point, we note that the certification requirement applies to the wine that is imported into the United States, that is, the certification is required only for the finished wine if that is the wine that is imported. If the component wines were imported into the United States for blending here, then the certification requirement would apply to each of the component wines that is imported. If the wine is blended before importation, a certificate is required only for the finished, blended wine. We believe the regulatory language is also sufficiently clear on this point.

Comment

The Wine Institute filed a comment disagreeing with the position taken by TTB in the temporary rule regarding self-certification, that is, that the statute does not allow self-certification by a winery when the winery owns or controls an importer rather than the other way around. The Wine Institute stated that a winery operating under a basic permit is the more qualified of the two entities to make this certification. The Wine Institute contends that TTB has the authority to infer that Congress did not intend to make this exclusion and that TTB should therefore revise the temporary regulations to allow a winery owning or controlling an importer to self-certify its imports.

TTB Response

TTB notes that the statutory language contained in 26 U.S.C. 5382(a)(3)(A)(iii)

very specifically refers only to an importer that owns or controls a winery or that has an affiliate that owns or controls a winery operating under a basic permit. The statutory language does not suggest that Congress intended the statute also to allow self-certification by a winery that owns or controls an importer or that has an affiliate to that owns or controls an importer. Accordingly, we do not believe Congress intended the interpretation suggested in this comment.

Comment

The Government of Canada submitted a comment requesting that certain types of Canadian wines—non-grape wines, cider, and wines containing less than 7 percent alcohol by volume—be exempt from the certification requirements. These wines are outside the scope of the "Agreement on Mutual Acceptance of Oenological Practices" (MAA) signed by several nations including Canada and the United States, which covers only natural grape wines that are at least 7 percent alcohol by volume, and are therefore subject to the certification requirements. Canada contends that an exemption would be justified because Canadian regulations require that fruit wines (other than cider) and wines containing less than 7 percent alcohol by volume must be produced in accordance with the same standards as wines covered by the MAA.

Canada also requested consideration of an exemption from the certification requirements for the importation of small quantities of non-grape natural wine from Canada in order to mitigate the potential economic impact on small exporters. Canada stated that because these wines are exported in limited quantities by small exporters the cost of complying with the requirements will be prohibitive and may shut these products out of the U.S. market. Finally, Canada requested that we delay the implementation of the certification requirements until the United States and Canada can reach an agreement on an import certification regime covering these wines.

TTB Response

We are unable to provide the two requested exemptions. The non-grape wines and other products described by Canada clearly fall within the certification requirements of the statute. The fact that they are produced in accordance with the same standards as wine covered by the scope of the MAA or are only exported in limited quantities cannot override the clear wording of the statute.

Regarding the request for a delay in the implementation date, TTB does not have the authority to change the implementation date of the certification requirements, which is prescribed by the statute.

TTB Finding

Based on the reasons set forth above and on the comments received, we believe it is appropriate to adopt the temporary rule as a final rule without change.

Regulatory Flexibility Act

We certify that this regulation will not have a significant impact on a substantial number of small entities. This regulation adopts without change a temporary rule that incorporated some reporting and recordkeeping requirements. It was previously concluded that those requirements were expected to be of minimal burden, and we have received no information that contradicts that previous determination. Therefore, no regulatory flexibility analysis is required. Additionally, pursuant to section 7805(f) of the Internal Revenue Code, we submitted the temporary rule to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact to small businesses. That office did not comment on the temporary rule.

Paperwork Reduction Act

The collections of information contained in this final regulation have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned OMB control number 1513–0119. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This final rule restates the collection of information without substantive change.

Comments concerning suggestions for reducing the burden of the collections of information should be directed to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Executive Order 12866

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

Drafting Information

The principal author of this document was Jennifer K. Berry, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau. Other personnel also participated in its development.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

The Regulatory Amendment

For the reasons stated in the preamble, the temporary rule published in the **Federal Register** at 70 FR 49479 on August 24, 2005, is adopted as a final rule without change.

Signed: January 2, 2008.

John J. Manfreda,

Administrator.

Approved: March 24, 2008.

Timothy E. Skud,

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

[FR Doc. E8–9173 Filed 4–25–08; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2007–0510; FRL–8556–1]

Withdrawal of Federal Implementation Plans for the Clean Air Interstate Rule in 12 States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is withdrawing Federal Implementation Plans (FIPs) for the

Clean Air Interstate Rule (CAIR) in Alabama, Arkansas, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana (SO_2 FIP trading program only), Massachusetts, Mississippi, Missouri, and Virginia because these 12 states have previously submitted and received EPA approval of full state implementation plans (SIPs) to meet the CAIR requirements. When EPA issued the CAIR FIPs on April 28, 2006, it stated that it would withdraw the FIPs in a state in coordination with the approval of the CAIR SIP for that state. Also, when EPA approved the CAIR SIPs for these states, it explained that it would take a separate action to remove the CAIR FIPs for those states. EPA is now acting to formally withdraw the FIPs for 12 states. This action is necessary because EPA's approval of those states' CAIR SIPs corrected the deficiency that provided the basis for EPA's promulgation of the FIPs.

EPA is also removing the CAIR FIP regulatory text for Connecticut and New York. The FIPs for these states have already been automatically withdrawn pursuant to a rulemaking published on November 2, 2007. This ministerial action is necessary to correct the regulatory text.

DATES: This final rule is effective on April 28, 2008.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID number EPA–HQ–OAR–2007–0510. (The docket for the CAIR FIP rulemaking is EPA–HQ–OAR–2004–0076 and the docket for the CAIR is EPA–HQ–OAR–2003–0053.) All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center 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 EPA Docket Center is (202) 566–1742.

Rulemaking actions for the CAIR and CAIR FIPs are also available at EPA's CAIR Web site at *http://www.epa.gov/cair*. The **Federal Register** citations for the SIP approval actions for the states addressed in this rule are provided in section III below.

FOR FURTHER INFORMATION CONTACT: Carla Oldham, Air Quality Planning Division, Office of Air Quality Planning and Standards, mail code C539–04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919–541–3347; fax number: 919–541–0824; e-mail address: *oldham.carla@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline

I. General Information

A. Does This Action Apply to Me?

This action does not establish any control requirements. It withdraws the CAIR FIPs in Alabama, Arkansas, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana (SO_2 FIP trading program only), Massachusetts, Mississippi, Missouri, and Virginia because these states previously have submitted and received full EPA approval of SIPs to meet the CAIR requirements. EPA promulgated the CAIR FIPs on April 28, 2006 (71 FR 25328). Categories and entities potentially regulated by the CAIR FIPs include the following:

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

[1] North American Industry Classification System.
[2] Federal, state, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the CAIR FIPs in states that continue to be affected by the FIPs. To determine whether your facility is affected by the CAIR FIPs, in states where the FIP still applies, you should examine the definitions and applicability criteria in 40 CFR 97.102, 97.104, 97.105, 97.202, 97.204, 97.205, 97.302, 97.304, and 97.305.

B. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before June 27, 2008. Moreover, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. What Is the Background for This Rule?

In a final rule published on April 25, 2005 (70 FR 21147), effective May 25, 2005, EPA made national findings that states had failed to submit SIPs required under section 110(a)(2)(D)(i) of the Clean Air Act (CAA) to address interstate transport with respect to the $PM_{2.5}$ and 8-hour ozone national ambient air quality standards (NAAQS). These SIPs were due in July 2000, 3 years after the promulgation of the $PM_{2.5}$ and 8-hour ozone NAAQS. The findings started a 2-year clock for EPA to promulgate FIPs to address the requirements of section 110(a)(2)(D)(i). Under section 110(c)(1), EPA may issue a FIP any time after such findings are made and must do so unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On May 12, 2005 (70 FR 25162), EPA issued the CAIR, which established the levels of NO_X and SO_2 emission reduction requirements necessary for CAIR-affected states to address their significant 8-hour ozone and $PM_{2.5}$ interstate transport. (*See also* CAIR revisions on April 28, 2006; 71 FR 25288 and December 13, 2006; 71 FR 74792.) NO_X emissions are precursors to

8-hour ozone and $PM_{2.5}$; SO_2 emissions are precursors to $PM_{2.5}$. The CAIR affects 28 states and the District of Columbia (collectively, CAIR states) in the eastern half of the country. All CAIR states were required to submit their CAIR SIPs by September 11, 2006. For states subject to the CAIR requirements, an approved CAIR SIP corrects the section 110(a)(2)(D)(i) deficiency identified in the April 25, 2005 findings action.

In a final rule published on April 28, 2006 (71 FR 25328), EPA promulgated FIPs as a backstop to implement the CAIR requirements in all CAIR states. As the control requirement for the FIPs, EPA adopted the model trading rules for electric generating units (EGUs) that EPA provided in CAIR as a control option for states, with minor changes to account for Federal rather than state implementation. The FIPs were promulgated to regulate EGUs in the affected states and achieve the emissions reduction requirements established by the CAIR until states promulgated and received EPA approval of SIPs to achieve the reductions. In the FIP preamble, EPA stated it would withdraw the FIP in a state in coordination with the approval of the CAIR SIP for that state. Because EPA's authority to issue the FIPs was premised on the section 110(a)(2)(D)(i) deficiency identified in the April 25, 2005, findings action, once EPA fully approves a full SIP [1] to correct that deficiency for a state, EPA no longer has the authority for the FIP in that state.

On November 2, 2007 (72 FR 62338), EPA published a final rule to amend the CAIR FIPs to make FIP withdrawal automatic upon the effective date of EPA's approval of a full SIP revision meeting the CAIR requirements. This rule became effective on January 16, 2008. For full CAIR SIPs whose EPA approvals are effective on or after that date, EPA will not need to take further action to withdraw the FIP. However, the automatic CAIR FIP withdrawal provisions do not apply retroactively. Therefore, EPA is issuing this separate final rule to withdraw the CAIR FIPs in states whose full CAIR SIP approvals have effective dates prior to January 16, 2008.

[1] The CAIR FIPs also provide that states may submit "abbreviated" SIP revisions to replace or supplement specific elements of the FIPs, leaving the remainder of the overall FIPs in place, rather than submitting "full" CAIR SIP revisions that replace the FIPs. The abbreviated SIP revisions, when approved, will automatically replace or supplement the corresponding CAIR FIP provisions. (See 71 FR at 25345–25346 for further details.) This rule only addresses States that submitted full CAIR SIPs.

III. What Is This Final Action?

A. Withdrawal of CAIR FIPs in 12 States

In this final action, EPA is withdrawing CAIR FIPs in the 12 states listed below because the states previously have submitted and received EPA approval of full SIPs to meet the CAIR requirements and the SIP approvals are effective. These SIP approvals became effective prior to January 16, 2008. Therefore, as discussed above, the automatic FIP withdrawal provisions, which became effective on January 16, 2008, do not apply. EPA promulgated the FIPs based on findings that the affected states had failed to submit SIPs to address the requirements of CAA 110(a)(2)(D)(i). EPA's approval of the full CAIR SIPs corrects the 110(a)(2)(D)(i) deficiency for the listed states and thus also removes the basis for the FIPs in that state.

All of these 12 states have chosen to participate in the EPA-administered trading programs that EPA provided in the CAIR as highly cost-effective options for meeting the CAIR requirements. The SIP approval actions provide details on the states' trading programs. Except for Louisiana, the full SIPs address all of the CAIR requirements in the state. Louisiana adopted a full SIP to address the SO_2 requirements for $PM_{2.5}$, but adopted an abbreviated SIP to address the annual and ozone season NO_X requirements for $PM_{2.5}$ and ozone. Therefore, EPA is only withdrawing the FIP SO_2 requirements in Louisiana. The EPA has not yet taken any action under the relevant FIP trading programs for these states, such as recording the initial set of NO_X allocations, that would preclude EPA from fully withdrawing the FIPs in these states.

The final CAIR SIP approvals were published in the **Federal Register** on the dates given below.

Alabama

EPA's full approval of Alabama's CAIR SIP for the 8-hour ozone and $PM_{2.5}$ NAAQS was published on October 1, 2007 (72 FR 55659) and effective on October 31, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Alabama under 40 CFR 52.54 for annual and ozone season NO_X emissions and under 40 CFR 52.55 for to SO_2 emissions.

Arkansas

EPA's full approval of Arkansas's CAIR SIP for the 8-hour ozone NAAQS was published on September 26, 2007 (72 FR 54556) and effective November 26, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Arkansas under 40 CFR 52.184 for ozone season NO_X emissions.

Florida

EPA's full approval of Florida's CAIR SIP for the 8-hour ozone and $PM_{2.5}$ NAAQS was published October 12, 2007 (72 FR 58016) and effective November 13, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Florida under 40 CFR 52.540 for annual and ozone season NO_X emissions and under 40 CFR 52.541 for SO_2 emissions.

Georgia

EPA's full approval of Georgia's CAIR SIP for the $PM_{2.5}$ NAAQS was published on October 9, 2007 (72 FR 57202) and effective November 8, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Georgia under 40 CFR 52.584 for annual NO_X emissions and under 40 CFR 52.585 for SO_2 emissions.

Illinois

EPA's full approval of Illinois' CAIR SIP for the 8-hour ozone and $PM_{2.5}$ NAAQS was published on October 16, 2007 (72 FR 58528) and effective December 17, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Illinois under 40 CFR 52.745 for annual and ozone season NO_X emissions and under 40 CFR 52.746 for SO_2 emissions.

Iowa

EPA's full approval of Iowa's CAIR SIP for the 8-hour ozone and $PM_{2.5}$ NAAQS was published August 6, 2007 (72 FR 43539) and effective September 5, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Iowa under 40 CFR 52.840 for annual and ozone season NO_X emissions and under 40 CFR 52.841 for SO_2 emissions.

Kentucky

EPA's full approval of Kentucky's CAIR SIP for the 8-hour ozone and $PM_{2.5}$ NAAQS was published October 4, 2007 (72 FR 56623) and effective December 3, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Kentucky under 40 CFR 52.940 for annual and ozone season NO_X emissions and under 40 CFR 52.941 for SO_2 emissions.

Louisiana

EPA's approval of Louisiana's full CAIR SO_2 SIP for the $PM_{2.5}$ NAAQS was published on July 20, 2007 (72 FR 39741) and effective on September 18, 2007. Therefore, EPA is withdrawing the FIP requirements for Alabama under 40 CFR part 52.985 for SO_2 emissions. (Louisiana adopted an abbreviated SIP for annual and ozone season NO_X

emissions for the $PM_{2.5}$ and 8-hour ozone NAAQS, respectively (72 FR 55064; September 28, 2007).)

Massachusetts

EPA's approval of Massachusetts's CAIR SIP for the ozone NAAQS was published on December 3, 2007 (72 FR 67854) and effective on December 3, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Massachusetts under 40 CFR 52.1140 for ozone season NO_X emissions.

Mississippi

EPA's approval of Mississippi's CAIR SIP for the 8-hour ozone and $PM_{2.5}$ NAAQS was published October 3, 2007 (72 FR 56268) and effective on November 2, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Mississippi under 40 CFR 52.1284 for annual and ozone season NO_X emissions and under 40 CFR 52.1285 for SO_2 emissions.

Missouri

EPA's approval of Missouri's CAIR SIP for the 8-hour ozone and $PM_{2.5}$ NAAQS was published on December 14, 2007 (72 FR 71073) and effective on December 14, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Missouri under 40 CFR 52.1341 for annual and ozone season NO_X emissions and under 40 CFR 52.1342 for SO_2 emissions.

Virginia

EPA's approval of Virginia's CAIR SIP for the 8-hour ozone and $PM_{2.5}$ NAAQS was published on December 28, 2007 (72 FR 73602) and effective on December 28, 2007. Therefore, EPA is withdrawing the CAIR FIP requirements for Virginia under 40 CFR 52.2440 for annual and ozone season NO_X emissions and under 40 CFR 52.2441 for SO_2 emissions.

B. Removal of CAIR FIP Regulatory Text for New York and Connecticut

EPA is also taking ministerial action to remove the CAIR FIP regulatory text for Connecticut and New York. The CAIR SIP approvals for these states became effective after the January 16, 2008 effective date of EPA's automatic FIP withdrawal rule (72 FR 62338; November 2, 2007). Therefore, the FIPs for these states were automatically withdrawn pursuant to that rule. This current action removes the associated FIP regulatory text to reflect that the FIPs have been withdrawn.

EPA's approval of Connecticut's CAIR SIP for the 8-hour ozone NAAQS was published and effective on January 24, 2008 (73 FR 4105). Therefore, the CAIR FIP for Connecticut was withdrawn on January 24, 2008 and EPA is removing the CAIR FIP regulatory text for Connecticut under 40 CFR 52.386 for ozone season NO_X emissions.

EPA's approval of New York's CAIR SIP for the 8-hour ozone and $PM_{2.5}$ NAAQS was published and effective on January 24, 2008 (73 FR 4109). Therefore, the CAIR FIPs for New York were withdrawn on January 24, 2008 and EPA is removing the CAIR FIP regulatory text for New York under 40 CFR 1684 for annual and ozone season NO_X emissions and under 40 CFR 52.1685 for SO_2 emissions. To meet the CAIR requirements, Connecticut and New York both chose to participate in the EPA-administered cap and trade programs that EPA provided in the CAIR.

In the future, EPA will be removing the CAIR FIP regulatory text for a state in the context of the CAIR SIP approval action for the state. Thus, a separate action to remove the CAIR FIP regulatory text will not be needed.

C. Updating the CAIR FIP Regulatory Text

This action updates the regulatory text in 40 CFR part 52 to reflect the withdrawal of the FIPs for the states discussed above. In some instances, EPA is not only removing the regulatory text, but also reserving the section where the regulatory text had been. This has no substantive impact and is being done solely to preserve the numbering of sections in the Code of Federal Regulations according a protocol established by the Office of the Federal Register.

IV. What Is the Rulemaking Procedure?

The EPA is taking this action as a final rule without providing an additional opportunity for public comment or a public hearing because EPA finds that the Administrative Procedure Act (APA) good cause exemption applies here. Section 553 of the APA, 5 U.S.C. 553(b)(B), provides that when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to public interest, the Agency may issue a rule without providing notice and an opportunity to comment.

The EPA has determined that it is not necessary or in the public interest to provide a public hearing or an additional opportunity for public comment on this action because the withdrawal of the FIPs in these states is a necessary ministerial act. As explained above, once EPA fully approves a CAIR SIP for a state and that approval is effective, EPA no longer has the authority for the CAIR FIPs in that state. Therefore, EPA is taking this action to remove the regulatory text that applies the FIP requirements to sources in states listed above. Since the SIPs are already effective and sources in these states are subject to the requirements of the SIP for their state, EPA's withdrawal of the FIPs has no practical consequences. Further, since the SIP approvals remove EPA's authority for the FIPs, EPA believes it has no option but to withdraw the FIPs. If EPA were to decide to reconsider or reverse a SIP approval action, it would take any appropriate action with regard to the FIP at that time. For these reasons, it would serve no useful purpose to provide an additional opportunity for public comment or a public hearing on this issue.

EPA also finds that it would be contrary to the public interest to delay issuing this rule in order to offer additional comment opportunities. Promulgation of this rule as soon as possible following the SIP approval serves to clarify that sources initially covered by the FIPs in these states are now covered by the requirements of the SIPs in these states.

For these reasons, EPA hereby finds for good cause, pursuant to section 553 of the APA, 5 U.S.C. 553(b)(B), that it would be unnecessary and contrary to public interest for EPA to offer an additional opportunity for public comment and a public hearing on this rule. Therefore, pursuant to CAA 307(d)(1) the requirements of 307(d), including the requirement for a public hearing, do not apply to this action.

Further, EPA previously provided public notice that the withdrawal of the FIP would be a necessary consequence of the SIP approval. In the CAIR FIP rulemaking, EPA explained that it would withdraw the FIP in a state in coordination with the CAIR SIP approval. In developing the FIP, EPA provided an opportunity for comment and held two public hearings. Further, in proposing to approve each SIP, EPA noted that the FIP withdrawal would be one necessary consequence of the SIP approval. This process provided the public with ample opportunity to comment on the substantive issues related to the SIP approval. To provide an additional opportunity for public comment and a public hearing on the FIP withdrawal action, which cannot alter or affect the terms of the SIP approval, would serve no useful purpose and is thus unnecessary.

EPA has also determined that it is appropriate for this rule to become effective immediately upon publication. Section 553(d) of the APA allows the

agency to give a rule an effective date that is less than 30 days after the rules publication date in certain circumstances, two of which apply here. First, section 553(d)(1) allows the effective date to be less than 30 days after the publication date if the rule is "a substantive rule which * * * relieves a restriction." This action withdraws a federal regulation for 12 states and thus qualifies as a substantive rule which relieves a restriction within the meaning of 553(d)(1). Second, section 553(d)(3) also allows the effective date to be less than 30 days after the publication date "as otherwise provided by the agency for good cause found and published with the rule." As explained above, promulgation of this rule as soon as possible following the SIP approval serves to clarify that sources initially covered by the FIPs in these states are now covered by the requirements of the states' SIP.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The FIP withdrawal does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because EPA has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104B4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

This FIP withdrawal rule does not have substantial direct effects on the states, or 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, Federalism (64 FR 43255, August 10, 1999).

This action also does not significantly or uniquely affect the communities of Tribal governments, as specified in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The FIP withdrawal rule is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because this action is not economically significant.

The FIP withdrawal rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under Executive Order 12866.

The FIP withdrawal rule does not involve changes to technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The FIP withdrawal rule also does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 of the CRA provides an exception to this requirement. For any rule for which an agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the rule may take effect on the date set by the Agency. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on April 28, 2008.

The EPA's compliance with the above statutes and Executive Orders for the underlying rules are discussed in section X of the CAIR at 70 FR 25305 and in section IX of the CAIR FIPs at 71 FR 25365.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 16, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

§ 52.54 [Removed and reserved]

■ 2. Section 52.54 is removed and reserved.

§ 52.55 [Removed and reserved]

■ 3. Section 52.55 is removed and reserved.

Subpart E—Arkansas

§ 52.184 [Removed]

■ 4. Section 52.184 is removed.

Subpart H—Connecticut

§ 52.386 [Removed]

■ 5. Section 52.386 is removed.

Subpart K—Florida

§ 52.540 [Removed]

■ 6. Section 52.540 is removed.

§ 52.541 [Removed]

■ 7. Section 52.541 is removed.

Subpart L—Georgia

§ 52.584 [Removed]

■ 8. Section 52.584 is removed.

§ 52.585 [Removed]

■ 9. Section 52.585 is removed.

Subpart O—Illinois

§ 52.745 [Removed]

■ 10. Section 52.745 is removed.

§ 52.746 [Removed]

■ 11. Section 52.746 is removed.

Subpart Q—Iowa

§ 52.840 [Removed]

■ 12. Section 52.840 is removed.

§ 52.841 [Removed]

■ 13. Section 52.841 is removed.

Subpart S—Kentucky

§ 52.940 [Removed]

■ 14. Section 52.940 is removed.

§ 52.941 [Removed]

■ 15. Section 52.941 is removed.

Subpart T—Louisiana

§ 52.985 [Removed and reserved]

■ 16. Section 52.985 is removed and reserved.

Subpart W—Massachusetts

§ 52.1140 [Removed and reserved]

■ 17. Section 52.1140 is removed and reserved.

Subpart Z—Mississippi

§ 52.1284 [Removed]

■ 18. Section 52.1284 is removed.

§ 52.1285 [Removed]

■ 19. Section 52.1285 is removed.

Subpart AA—Missouri

§ 52.1341 [Removed]

■ 20. Section 52.1341 is removed.

§ 52.1342 [Removed]

■ 21. Section 52.1342 is removed.

Subpart HH—New York

§ 52.1684 [Removed]

■ 22. Section 52.1684 is removed.

§ 52.1685 [Removed]

■ 23. Section 52.1685 is removed.

Subpart VV—Virginia

§ 52.2440 [Removed and reserved]

■ 24. Section 52.2440 is removed and reserved.

§ 52.2441 [Removed and reserved]

■ 25. Section 52.2441 is removed and reserved.

[FR Doc. E8–9219 Filed 4–25–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0855; FRL–8360–5]

Metconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of metconazole in or on wheat, barley, rye, oat, sugar beet, and soybeans. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also establishes tolerances for residues of metconazole in or on stone fruit, tree nuts, and peanuts. Valent U.S.A. Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 28, 2008. Objections and requests for hearings must be received on or before June 27, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0855. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0855 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before June 27, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0855, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of February 13, 2008 (73 FR 8307) (FRL–8351–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7094) by BASF Corporation, 26 Davis Dr., P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR 180.617 be amended by establishing tolerances for residues of the fungicide metconazole, 5-[(4-chlorophenyl)-methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, measured as the sum of *cis*- and *trans*-isomers in or on food commodities barley, grain at 2.0 parts per million (ppm); barley, hay at 7.0 ppm; barley straw at 7.0 ppm; beet, sugar, root at 0.1 ppm; beet, sugar, tops at 2.0 ppm; beet, sugar, pulp, dry at 1.9 ppm; beet, sugar, molasses at 0.2 ppm; beet, sugar, raw at 0.25 ppm; oat, grain at 1.0 ppm; oat, straw at 6.0 ppm; oat, hay at 17 ppm; rye, grain at 0.25 ppm; rye, straw at 14.0 ppm; soybean, forage at 3.0 ppm; soybean, hay at 6.0 ppm; soybean, seed at 0.10 ppm; soybean, aspirated grain fractions at 1.0 ppm; soybean, hulls at 0.2 ppm; triticale at 0.25 ppm, wheat, grain at 0.15 ppm; wheat, hay at 16.0 ppm; wheat, straw at 18.0 ppm; wheat, aspirated grain fractions at 10.0 ppm; wheat, milled byproducts at 1.0 ppm. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Additionally, in the **Federal Register** of February 13, 2008 (73 FR 8307) (FRL–8351–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7095) by Valent U.S.A. Company, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596–8025. The petition requested that 40 CFR 180.617 be amended by establishing tolerances for residues of the fungicide metconazole, 5-[(4-chlorophenyl)-methyl]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, measured as the sum of *cis*- and trans-isomers in or on food commodities fruits, stone (crop group 12) at 0.2 ppm; nuts, tree (crop group 14) including pistachio at 0.02 ppm; almond hulls at 5.0 ppm; and peanut at 0.02 ppm. That notice referenced a summary of the petition prepared by Valent U.S.A. Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the proposed tolerance levels as follows: Almond, hulls at 4.0 ppm; barley, grain at 2.5 ppm; beet, sugar, dried pulp at 0.70 ppm; beet, sugar, molasses at 0.08 ppm; beet, sugar, roots at 0.07 ppm; grain, aspirated grain fractions at 7.0 ppm; nut, tree, group 14 at 0.04 ppm; oat, grain at 1.0 ppm; peanut at 0.04 ppm; peanut, refined oil at 0.05 ppm; pistachio at 0.04 ppm; soybean, hulls at 0.08 ppm; soybean, seed at 0.05 ppm; wheat, milled byproducts at 0.20 ppm; and meat byproducts of cattle, goat, horse, and sheep at 0.04 ppm. Additionally, EPA is not establishing the tolerances requested for beet, sugar; sugar beet tops; and soybean meal. Finally, EPA has added tolerances for peanut, refined oil; for meat byproducts of cattle, goat, horse, and sheep. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Acute oral and dermal toxicities to metconazole are moderate, while acute inhalation toxicity is low. Metconazole is a moderate eye irritant and a mild skin irritant. It is not a skin sensitizer. The liver is the primary target organ in the mouse, rat and dog following oral exposure to metconazole via subchronic or chronic exposure durations. Developmental studies in rats and rabbits show some evidence of developmental effects, but only at dose levels that are maternally toxic. Metconazole did not demonstrate the potential for neurotoxicity in the four species (mouse, rat, dog and rabbit) tested. Metconazole is considered nongenotoxic and liver tumors seen in chronic mouse study appear to have been formed via a mitogenic mode of action and therefore, metconazole is classified as "not likely to be carcinogenic to humans" at levels that do not cause mitogenesis. The chronic

reference dose (RfD) would be protective of mitogenesis/carcinogenesis.

Specific information on the studies received and the nature of the adverse effects caused by metconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* under docket ID number EPA–HQ–OPP–2005–0016.

B. Toxicological Endpoints

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

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

A summary of the toxicological endpoints for metconazole used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 27, 2006 (71 FR 6383) (FRL–8085–2).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to metconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing metconazole tolerances in (40 CFR 180.617). EPA assessed dietary exposures from metconazole in food as follows:

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

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

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

iii. *Cancer.* Metconazole is classified as "not likely to be carcinogenic to humans" at levels that do not cause mitogenesis. The chronic RfD would be protective of mitogenesis/carcinogenesis and the chronic exposure assessment is appropriate for evaluating cancer risk.

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

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of metconazole for acute exposures are estimated to be 45.48 parts per billion (ppb) for surface water and 0.384 ppb for ground water. The EECs for chronic exposures are estimated to be 31.25 ppb for surface water and 0.384 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 45 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 31 ppb was used to assess the contribution to drinking water.

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

Metconazole is currently registered for the following residential non-dietary sites: Turf and ornamentals. Adult residential handlers may be exposed to metconazole as a result of applying metconazole to turf and ornamentals. Because dermal toxicity endpoints for the appropriate duration of exposure were not identified, only residential handler short-term inhalation exposures were assessed. Additionally, adults and adolescents may experience short-term and intermediate-term dermal post-application exposure from golfing and other activities on treated turf. Toddlers may experience short-term and intermediate-term dermal and incidental oral exposure from activities on treated turf. However, because dermal toxicity endpoints for the appropriate durations of exposure were not identified, and because inhalation exposure is considered to be insignificant for post-application exposures, only toddler incidental oral post-application exposures were assessed.

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

Metconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of

major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Triazole-derived pesticides can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazole alanine and triazole acetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including metconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide as of September 1, 2005. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's September 1, 2005 risk assessment can be found in the propiconazole reregistration docket at *http://www.regulations.gov* (Docket ID EPA–HQ–OPP–2005–0497). An addendum to the risk assessment, *Dietary Exposure Assessments for the Common Triazole Metabolites 1,2,4-triazole, Triazolylalanine, Triazolylacetic Acid and Triazolylypyruvic Acid; Updated to Include New Uses of Fenbuconazole, Ipconazole, Metconazole, Tebuconazole, and Uniconazole* can be found at *http://www.regulations.gov* in docket ID EPA–HQ–OPP–2006–0855.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* Acceptable developmental toxicity studies are available in the rat and rabbit as well as a 2-generation reproductive toxicity study in the rat. There is no evidence of susceptibility following *in utero* exposure in the rabbit. In the rat there is qualitative evidence of susceptibility, however the concern is low since the developmental effects are characterized as variations (not malformations), occur in the presence of maternal toxicity, the NOAELs are well defined, and the dose/endpoint is used for acute dietary risk assessment for the sensitive population. There is no evidence of increased susceptibility in the offspring based on the result of the 2-generation reproduction study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for metconazole is complete.

ii. There was no evidence of neurotoxicity observed in the toxicology database and there is no need for a developmental neurotoxicity study or additional uncertainty factors to account for neurotoxicity.

iii. There is no evidence of susceptibility following *in utero* exposure in the rabbit or in young rats in the 2-generation reproduction study. In the rat there is qualitative evidence of susceptibility, however the concern is low since the developmental effects are characterized as variations (not malformations), occur in the presence of maternal toxicity, the NOAELs are well defined, and the dose/endpoint is used for acute dietary risk assessment for the sensitive population.

iv. Dietary exposure assessments were conducted using tolerance level residues and assumed 100% crop treated (CT). Therefore, the acute and chronic dietary, food only, exposure is considered an upper bound conservative estimate. Acute and chronic exposure estimates in this analysis are unlikely to underestimate actual exposure.

v. The drinking water component of the dietary assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

vi. While there is potential for post application residential exposure, the Agency used the current conservative approaches for residential assessment. The Agency believes that the calculated risks represent conservative estimates of exposure because maximum application rates are used to define residue levels upon which the calculations are based.

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to metconazole from food and water will utilize 4% of the cPAD for the U.S. population and 9% of the cPAD for the most highly exposed population group (infants less than 1–year old).

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

Metconazole is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for metconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that short-term aggregate MOEs from dietary exposure (food + drinking water) and non-occupational/residential handler exposure (inhalation) for adults are 2,700; the children's residential combined short-term MOE from treated turf is 810. The lowest MOE for residential handler short-term inhalation risks is 71,000. These MOEs are not of concern to the Agency, since they are greater than the level of concern MOE of 100.

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

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that intermediate-term aggregate MOEs from dietary exposure (food + drinking water) and non-occupational/residential handler exposure (inhalation) for adults are 2,700; the children's residential combined short-term risk from treated turf are 1,000. These MOEs are not of concern to the Agency, since they are greater than the level of concern MOE of 100.

5. *Aggregate cancer risk for U.S. population.* Metconazole is classified as "not likely to be carcinogenic to humans" at levels that do not cause mitogenesis. As explained in Unit III.E2, the cPAD is protective of mitogenesis and because the chronic risk assessment for metconazole shows exposure to be below the cPAD, there is no cancer concern.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

The following adequate enforcement methodologies are available to enforce the tolerance expression:

1. A liquid chromatography/mass spectrometry method (LC/MS) (method D0508) along with multi-residue methods serving as a confirmatory method are adequate to enforce tolerances for residues in small grain, soybean, and sugarbeet agricultural and processed commodities.

2. A gas chromatography/nitrogen-phosphorus detection method (GC/NPD) (method RM-41C-1-1) is adequate to enforce tolerances for residues in stone fruit, tree nuts, and peanut commodities.

3. A German multi-residue method (method DFG S19) is adequate for enforcing tolerances for residues in livestock commodities. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are currently no Codex, Canadian, or Mexican MRLs established for metconazole.

C. Response to Comments

There were no comments received in response to the notice of filing.

D. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA determined that the proposed tolerances should be revised as follows: Almond, hulls decreased from 5.00 ppm to 4.0 ppm; barley, grain increased from 2.0 ppm to 2.5 ppm; beet, sugar, dried pulp reduced from 1.9 ppm to 0.70 ppm; beet, sugar, molasses reduced from 0.2 ppm to 0.08 ppm; beet, sugar, roots reduced from 0.1 ppm to 0.07 ppm; nut, tree, group 14 increased from 0.02 to 0.04 ppm; oat, grain increased from 0.1 ppm to 1.0 ppm; peanut increased from 0.02 ppm to 0.04 ppm; pistachio increased from 0.02 ppm to 0.04 ppm; soybean, hulls decreased from 0.2 ppm to 0.08 ppm; soybean, seed reduced from 0.1 ppm to 0.05 ppm; and wheat, milled byproducts reduced from 1.0 ppm to 0.20 ppm. The wheat, aspirated grain fraction and soybean, aspirated grain fraction proposals at 10.0 ppm and 1.0 ppm, respectively, should be expressed as grain, aspirated grain fractions and revised to 7.0 ppm. EPA revised the tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data* Standard Operating Procedure (SOP). No tolerances are needed for beet sugar and soybean meal since metconazole does not increase in these commodities on processing. The tolerance on sugar beet root covers sugar. No tolerance is needed for sugar beet tops since this commodity is no longer a significant feed item. Separate tolerances are being established for meat byproducts of cattle, goat, horse, and sheep at 0.04 ppm based on a cattle feeding study in which dairy cattle were fed metconazole at levels corresponding to 1.3x, 3.9x, and 12x, respectively, the dietary burden for beef cattle and 0.54x, 1.7x, and 5.2x, respectively, the dietary burden for dairy cattle. In liver, residues of *cis* and *trans*-metconazole were <0.02-0.021 ppm and <0.02 ppm, respectively, in samples from the high-dose group and below the LOQ (both isomers) in samples from the low-dose and mid-dose groups. Maximum total metconazole residues (sum of *cis* and *trans* isomers) in liver were 0.041 ppm from the high-dose group. Because quantifiable residues of *cis*-metconazole were observed in liver (0.021 ppm) at the highest dosing level, tolerances are needed for meat byproducts at the limit of quantitation of the enforcement method (0.04 ppm).

V. Conclusion

Therefore, the tolerances are established for residues of metconazole, 5-[(4-chlorophenyl)-methyl]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol, in or on almond, hulls at 4.0 ppm; barley, grain at 2.5 ppm; barley, hay at 7.0 ppm; barley, straw at 7.0 ppm; beet, sugar, dried pulp at 0.70 ppm; beet, sugar, molasses at 0.08 ppm; beet, sugar, roots at 0.07 ppm; cattle, meat byproducts at 0.04 ppm; fruit, stone, group 12 at 0.20 ppm; goat, meat byproducts at 0.04 ppm; grain, aspirated grain fractions at 7.0 ppm; horse, meat byproducts at 0.04 ppm; nut, tree, group 14 at 0.04 ppm; oat, grain at 1.0 ppm; oat, hay at 17 ppm; oat, straw at 6.0 ppm; peanut at 0.04 ppm; peanut, refined oil at 0.05 ppm; pistachio at 0.04 ppm; rye, grain at 0.25 ppm; rye, straw at 14 ppm; sheep, meat byproducts at 0.04 ppm; soybean, forage at 3.0 ppm; soybean, hay at 6.0 ppm; soybean, hulls at 0.08

ppm; soybean, seed at 0.05 ppm; wheat, grain at 0.15 ppm; wheat, hay at 16 ppm; wheat, milled byproducts at 0.20 ppm; wheat, straw at 18 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 15, 2008.

Daniel Kenny,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.617 is amended by alphabetically adding the following commodities to the table in paragraph (a) and by removing and reserving paragraph (b) with heading to read as follows:

180.617 Metconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	4.0
* * *	* *
Barley, grain	2.5
Barley, hay	7.0
Barley, straw	7.0
Beet, sugar, dried pulp	0.70
Beet, sugar, molasses	0.08
Beet, sugar, roots	0.07
Cattle, meat byproducts	0.04
Fruit, stone, group 12	0.20
Goat, meat byproducts	0.04
Grain, aspirated grain fractions	7.0
Horse, meat byproducts	0.04
Nut, tree, group 14	0.04
Oat, grain	1.0
Oat, hay	17
Oat, straw	6.0
Peanut	0.04
Peanut, refined oil	0.05
Pistachio	0.04
Rye, grain	0.25
Rye, straw	14
Sheep, meat byproducts	0.04
Soybean, forage	3.0
Soybean, hay	6.0
Soybean, hulls	0.08
Soybean, seed	0.05
Wheat, grain	0.15
Wheat, hay	16
Wheat, milled byproducts	0.20
Wheat, straw	18

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

* * * * *

[FR Doc. E8–8971 Filed 4–25–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0011; FRL–8558–5]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Seneca Army Depot Activity Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) Region 2 announces the deletion from the National Priorities List (NPL) of the following two specific parcels of real property located at the Seneca Army Depot Activity (SEDA) Superfund Site (Site), Romulus, New York: Real Estate Parcel 1, except for a portion of this parcel known as SEAD–24; and the entirety of Real Estate Parcel 2. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, which is an appendix to the National

Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion of SEDA parcels is done in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (Nov. 1, 1996). This deletion pertains to all media (surface soils, subsurface soils, structures, surface water, and ground water) within Parcel 1, excluding the SEAD–24 portion of Parcel 1, and Parcel 2.

Parcel 1, also known as the Empire Biofuels Redevelopment area, is located midway on the western edge of SEDA. Most of this Parcel did not require remedial investigations under CERCLA. The two areas within Parcel 1 that were investigated under CERCLA are known as SEAD–58 and SEAD–24. SEAD–58 includes two debris disposal areas that have been found to require no active remediation under CERCLA. SEAD–24 is a two-acre area which underwent a soil removal action in 2004 and is awaiting a determination by EPA that all appropriate response actions have been implemented. SEAD–24 is not included in this deletion and will remain on the NPL.

Parcel 2, also known as the Seneca County Public Safety Building and Jail area, is located along the eastern perimeter of SEDA in the southeast quadrant. The parcel encompasses two sub-parcel areas designated as SEAD–50 and SEAD–54, both of which have been remediated. Subsequent sampling of these two areas confirmed that all appropriate CERCLA response actions were performed. However, SEAD–50 and 54 are subject to institutional controls in the form of deed restrictions which prohibit residential use and use of the groundwater as they are part of the encompassing Planned Industrial Development area.

The rest of SEDA will remain on the NPL, and response activities will continue at the remaining areas determined to be in need of response actions. The EPA and the State of New York, through the New York State Department of Environmental Conservation, have determined that all appropriate response actions under CERCLA have been completed at the parcels proposed for deletion. However, the deletion of these parcels does not preclude future actions under Superfund.

DATES: This rule will be effective April 28, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1990–0011. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

Regional Repository, U.S. EPA Region 2 Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, Hours: 9 a.m. to 5 p.m.—Monday through Friday. (212) 637–4308.

Local Site Repository, Seneca Army Depot Activity, 5786 State Route 96, Building 123, Romulus, NY 14541, Hours: 9 a.m. to 3:30 p.m.—Monday through Thursday. (607) 869–1494.

FOR FURTHER INFORMATION CONTACT: Mr. Julio F. Vazquez, Remedial Project Manager, U.S. EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4323.

SUPPLEMENTARY INFORMATION: The parcels to be deleted from the NPL are Parcel 1, excluding SEAD–24, and the entirety of Parcel 2 of SEDA. A notice of intent for partial deletion for this site was published in the **Federal Register** on September 11, 2007.

The closing date for comments on the notice of intent for partial deletion was October 20, 2007. Eleven public comments were received, and all the comments relate to the construction of an ethanol plant on Parcel 1. This issue is not related to our finding that Parcel 1, excluding SEAD–24, and Parcel 2 do not present any threat to human health or the environment. A responsiveness summary was prepared and placed in both the docket, EPA–HQ–SFUND–1990–0011, on *http://www.regulations.gov* and in the local repositories listed above.

EPA identifies sites that may present a significant risk to public health, welfare and the environment. The NPL is a list of releases or threatened releases which EPA has determined to be a priority. Deletion of a portion of a site from the NPL does not preclude further remedial action. If a significant release occurs at a site, or any portion thereof, which has been deleted from the NPL, the deleted portions of the site may be restored to the NPL without application of the Hazard Ranking System. Deletion of any portion of a site from the NPL does not affect responsible party liability for further remedial actions, in the unlikely event that future conditions warrant such actions.

Responsiveness Summary

Introduction

A Notice of Intent of Partial Deletion for the Seneca Army Depot Activity (SEDA) Superfund Site was published in the **Federal Register** on September 11, 2007 (72 FR 51758–51762). The publication of this notice was intended to inform the public that EPA planned to delete two specific parcels from the National Priorities List: Real Estate Parcel 1, except for a portion of that parcel known as SEAD–24; and the entirety of Real Estate Parcel 2. The notice also provided a 30-day public comment period on the proposed partial deletion. The closing date for comments on the Notice of Intent to Partially Delete was October 11, 2007. Eleven written comments were received (these comments are available in the Information Repositories); therefore EPA has prepared this Responsiveness Summary. In addition, all public comments were considered in EPA's final decision to delete these parcels (as identified above) of the Site from the NPL.

Responsiveness Summary

This Responsiveness Summary has been prepared to provide responses to comments submitted to EPA during the 30-day public comment period regarding the Notice of Intent to Partially Delete (72 FR 51762) a portion of Real Estate Parcel 1 and Real Estate Parcel 2 of the SEDA. The original comments are summarized below and available at *http://www.regulations.gov*, Docket ID No. EPA–HQ–SFUND–1990–0001, with the support materials under document type "public submissions" and at the information repositories at the following addresses: U.S. EPA Region 2 Records Center, 290 Broadway—18th Floor, New York, NY 10007–1866, Hours: 9 a.m. to 5 p.m.—Monday through Friday, (212) 637–4308; and Seneca Army Depot Activity, 5786 State Route 96, Building 123, Romulus, NY 14541, Hours: 9 a.m. to 3:30 p.m.—Monday through Thursday, (607) 869–1494.

Summary of Comment from Mary Anne Kowalski: The commenter is opposed to the deletion of Parcel 1 because this land is proposed to be used for an ethanol plant that is proceeding without an environmental impact statement, expressing the view that without an environmental impact statement the residents of Seneca

County have no way of determining the impact of this construction on the hazardous materials already there. This deletion action would remove another impediment to construction.

Response: In the summer of 2003, EPA concurred with the Finding of Suitability to Transfer (FOST) for the Conservation/Recreation Area. This Area included Parcel 1, except for SEAD–58 and SEAD–24. In 2006, EPA determined that no action under CERCLA was necessary for SEAD–58. Therefore, EPA's determination is that soils in the Parcel 1 area proposed for deletion do not present an unacceptable threat to human health or the environment. Note that a delisting action has no significant effect upon redevelopment activities. An ethanol plant may or may not be constructed regardless of whether the parcel remains listed on the NPL.

Summary of Comment from Sandra L. Dranias: The commenter expressed concern regarding the potential health hazards that will be unleashed by the premature disturbance of these heavily contaminated soils in the parcels being proposed for deletion. Documents list hazardous materials removed from the site listed as SEAD–24. SEAD–24 is located directly nearby the proposed location of the ethanol refinery. None of the soil surrounding SEAD–24 was ever tested to see if any of these chemicals leached beyond the borders drawn by the Government.

Response: SEAD–24, the abandoned powder burning pit, underwent a time-critical removal action between 2004 and 2006. EPA has not made its final determination on the ultimate adequacy of this action. Therefore, this area is retained by the Army until a final determination is made whether this area no longer presents a significant threat to human health or the environment. SEAD–24 is not the subject of this de-listing from the NPL.

Summary of Comment from Tom and Nancy Hooser: The commenters noted that, if their information is correct, this deletion means that no additional cleanup is necessary at the parcel where an ethanol plant is to be built. We have been provided no environmental impact study, and the prospect of what could happen down the line is enormous. The parcel in question needs to be thoroughly cleaned up before anything as hazardous as an ethanol plant is built in our backyards.

Response: It is correct that it has been determined that no additional action is deemed necessary at both Parcel 1, except SEAD–24 (which is not being deleted) and Parcel 2. They do not present an unacceptable threat to human health or the environment. Parcel 1, SEAD–58, after remedial investigation activities, was found to require no active remediation under CERCLA. Parcel 2, including SEAD–50 and SEAD–54, underwent remediation.

Summary of Comment from Bobbi Clifford: The commenter pointed out that 8,300 acres were identified for conservation/recreation uses according to the Preferred Land Use Plan/Seneca Army Depot Reuse Plan. On page 21–7, under 9(c), Environmental: the State criteria require that a "proposed site not contain any wetlands." In the February, 1998 report of the Administrative Final Environmental Impact Statement, the SEDA Wetlands, Fish and Wildlife Plan identifies "87 distinct wetlands on the depot lands." In the Environmental Assessment Form of 11/06 for the ethanol/biomass project, Malcolm Pirnie identified the following: "sixteen wetlands and eight streams were delineated for the ethanol/biomass project site, with the main site having eleven wetlands and two streams. Within the main site, a large wetland system is approximately 60 acres in size." This comment implies that redevelopment of the property proposed for deletion may negatively impact wetlands.

Additionally, the commenter pointed out that during the 1950s and 1960s, classified metallic parts were buried at the Miscellaneous Components burial Site. Because the documentation of the disposal is considered classified by the Army, the exact nature of the buried material has not been disclosed. Results of site investigations indicate that previous activities may have adversely impacted soil and groundwater. The commenter implies that contamination may exist at the parcel proposed for deletion could pose a threat to human health and the environment.

Response: In 2003, EPA concurred with the Finding of Suitability to Transfer for the Conservation/Recreation Area. This document served as the basis for the transfer of the 8,300 acre parcel. EPA concurred with this transfer because it had been determined that no further remediation was warranted at this parcel, and none of the investigation performed at this area identified contaminants that would present an unacceptable risk under any land use scenario. The wetlands issue is not related to this de-listing action. EPA's role to oversee the suitability of the property to be de-listed does not include approving any specific redevelopment.

There are many other areas within SEDA that are undergoing investigation and other CERCLA-related efforts, including the Miscellaneous [illegible] Components Burial Site. These areas are under the control of the Army and will remain on the NPL until all appropriate response actions are implemented or it is determined that the areas pose no significant threat to public health or the environment.

Summary of Comment from John Ghidiu: This commenter objected to the delisting because it was his understanding that solid waste and incinerator ash were disposed of intermittently for 30 years between 1941 and 1979, that radioactive materials were stored in several of the igloos on the south end of SEDA, and herbicides and pesticides were stored there as well. Demilitarization of munitions had also been conducted for forty years by open burning of fuses, projectiles, explosives and propellants directly upon the ground surface. Burial of laboratory wastes occurred between 1940 and 1980 at the Radioactive Waste Burial Sites and the Pitchblende Storage Igloos.

Response: The areas to be de-listed are not included in any of the areas of concern identified by the commenter. Since 1984, when SEDA was proposed to be included on the NPL, EPA, the Army and the State of New York have been working on various areas of concern including the Ash Landfill (SEAD–03, 06, 08, 14 and 15), the Pitchblende Ore Storage (SEAD–48), and the Radioactive Burial Sites (SEAD–12). Although some of the work is still in progress at these Army-retained areas, the parcels proposed to be de-listed from the NPL are areas where either all appropriate response actions have been implemented or there is no significant threat to public health or the environment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 14, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ For the reasons set forth in the preamble, 40 part 300 is amended as follows.

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 2 of appendix B to part 300 is amended by revising the entry under New York for "Seneca Army Depot" to read as follows:

Appendix B to Part 300—National Priorities List

* * * * *

TABLE 2.—FEDERAL FACILITIES SECTION

St	Site name	City/County	Notes [a]
*	*	*	*
NY	Seneca Army Depot	Romulus	P
*	*	*	*

(a) * * *
P = Sites with partial deletion(s).

[FR Doc. E8–9077 Filed 4–25–08; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071128763–8490–02]

RIN 0648–AW33

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 5 to the Monkfish Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements new management measures for the monkfish fishery recommended in Framework Adjustment 5 (Framework 5) to the Monkfish Fishery Management Plan (FMP), which has been submitted jointly by the New England (NEFMC) and Mid-Atlantic Fishery Management Councils (Councils). This action approves and implements revised biological reference points in the FMP to be consistent with the recommendations resulting from the most recent stock assessment for this fishery (Northeast Data Poor Stocks Working Group (DPWG, July 2007)), and approves and implements revised management measures to ensure that the monkfish management program succeeds in keeping landings within the target total allowable catch (TAC) levels.

DATES: This rule is effective May 1, 2008.

ADDRESSES: Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for Framework 5 are available upon request from Paul Howard, Executive Director, NEFMC, 50 Water Street, Newburyport, MA, 01950. The document is also available online at www.nefmc.org. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 2298, and on the Northeast Regional Office's website at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, e-mail *Tobey.Curtis@noaa.gov*, phone (978) 281–9273, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the Councils, with the NEFMC having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA).

In July 2007, the DPWG completed and accepted a new monkfish assessment. The results of this assessment indicate that neither stock is overfished, overfishing is no longer occurring, and both stocks are rebuilt based on a new modeling approach and newly recommended biological reference points. In addition to the fact that this assessment was the first to use a new analytical model, the July 2007 assessment report emphasizes the high degree of uncertainty in the analyses due to the dependence on assumptions about natural mortality, growth rates, and other model inputs. The report concluded that the data-poor nature of this species and the significant uncertainty in assessing the stocks should be considered when developing management measures. Framework 5 implements the revised biological reference points recommended by the DPWG and makes other modifications to the regulations to ensure that the management program succeeds in keeping landings within the target TACs implemented in Framework Adjustment 4 (72 FR 53942; September 21, 2007). The management measures contained in Framework 5 are described in detail in the following paragraphs.

Framework 5 Management Measures

1. Revision to Biological Reference Points

This action revises the biological reference points contained in the FMP to be consistent with those recommended in the July 2007 assessment report. In that report, the DPWG recommended that B_{target} for both management areas be set equivalent to the average of the total biomass from 1980 through 2006. Therefore, this final rule establishes a B_{target} of 92,200 mt for the NFMA and 122,500 mt for the SFMA. In addition, the DPWG recommended that $B_{threshold}$ for both management areas be set equivalent to the lowest value of total biomass from 1980 through 2006. As a result, this final rule establishes a $B_{threshold}$ of 65,200 mt for the NFMA and 96,400 mt for the SFMA. The most recent estimate of biomass for each management area (B_{2006}) is 118,700 mt for the NFMA and 135,500 mt for the SFMA. Therefore, based upon the revised biological reference points being implemented in

this final rule, both monkfish stocks are no longer overfished (B_{2006} above $B_{threshold}$), and are rebuilt (B_{2006} above B_{target}).

2. Reduction in Carryover Days-at-Sea (DAS)

This action reduces the number of unused monkfish DAS that a limited access monkfish vessel is allowed to carry over from one fishing year into the next from 10 to 4 DAS. Carryover DAS are intended to enhance safety at sea by allowing a vessel, at the end of a fishing year, to avoid the predicament of using or losing DAS in the event of bad weather or mechanical problems. However, Framework 5 brought into question whether 10 carryover DAS were really needed, especially since the use of carryover DAS contributed to a substantial overage (60 percent) in the target TAC for the SFMA during FY 2006, when vessels in this area were only allocated 12 DAS for the fishing year. During that fishing year, carryover DAS represented over an 80–percent increase above a limited access monkfish vessel's base allocation of monkfish DAS. As a result, NMFS approved and the Councils recommended a reduction in carryover DAS because it better reflects an amount that is commensurate to a vessel's base DAS allocation, thereby helping to ensure that the target TACs are not exceeded, while still providing members of the fishing industry with some carryover DAS to enhance safety at the end of the fishing year. Since most monkfish trips are less than four days in duration, the reduction to 4 carryover DAS is not expected to undermine the promotion of safe fishing practices at the end of a fishing year. This final rule implements the Councils' recommendation.

3. Revision to DAS Accounting Provision for Gillnet Vessels

This action changes the manner in which DAS are counted for monkfish gillnet vessels. The FMP currently states that monkfish gillnet vessels are charged actual time fished on trips less than 3 hours or greater than 15 hours in duration, but are charged a minimum of 15 hours for trips from 3 to 15 hours in duration. The original intent of this regulation was to adjust gillnet effort to be more equivalent to trawl effort, but allow vessels that run into bad weather or experience mechanical difficulties at the beginning of a trip to return to port and only be charged actual time at sea (i.e., trips less than 3 hours in duration). However, as monkfish DAS have been reduced in recent years, some vessels have begun to exploit this 3-hour window and use it to catch and land monkfish. As a result, an allocation of 23 monkfish DAS, for example, would normally allow a vessel to take approximately 36 15-hour trips. If that vessel exploited the 3-hour provision, the number of potential trips could increase to as many as 184. It appears that only a few vessels are currently exploiting this provision, but there is potential for increased usage, which then increases the probability that the target TACs will be exceeded. As a result, the Councils recommended that the 3-hour provision be eliminated, requiring all monkfish gillnet trips of less than 15 hours in duration to be charged 15 hours. Although removal of this provision reduces some flexibility for gillnet vessels, NMFS approved this recommendation because of the potential negative impacts on the monkfish resource from exploitation of the status quo alternative outweigh the original flexibility and safety intentions of this infrequently invoked provision. Under this action, vessels with VMS will still have the ability to return to port, prior to crossing the VMS demarcation line at the start of a trip, if they experience bad weather or mechanical issues and not be charged DAS. This final rule implements the Councils' recommendation.

This action also adds a sentence to the section of the regulations concerning the monkfish gillnet accounting rules, found at § 648.92 (b)(8)(v), to clarify that a monkfish gillnet vessel fishing under a joint monkfish and NE multispecies DAS, that is declared as a trip gillnet vessel under the NE Multispecies FMP, must remove its gillnet gear from the water prior to calling out of the DAS program. The language contained in this section was recently clarified in a letter from the Regional Administrator to limited access monkfish permit holders, dated August 13, 2007.

4. Revision to the Incidental Catch Limit in the SFMA

This action revises the monkfish incidental catch limit applicable to large-mesh vessels fishing in the Southern New England Regulated Mesh Area (SNE RMA), as defined under the Northeast (NE) multispecies regulations, east of 72°30′ W long., but not under a monkfish, NE multispecies, or scallop DAS, or vessels fishing under a Skate Bait Letter of Authorization (LOA) in the SNE RMA east of 74°00′ W long., to be 5 percent (tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight per day, up to 150 lb (68 kg) tail weight per trip. The Councils recommended this change to the incidental catch limit in response to reports that vessels fishing for skate as bait in the SNE RMA, using mesh larger than the multispecies minimum mesh size (i.e., large mesh), are targeting monkfish using the existing incidental catch limit; which is 5 percent (tail weight) of the total weight of fish on board with no limit on the amount of monkfish that the vessel can land. This behavior could undermine the FMP's ability to prevent overfishing. The landings cap recommended by the Councils in this action is equivalent to the incidental catch limit applicable to vessels not fishing under a DAS in the SNE RMA with small-mesh, hook gear, or dredge gear. This final rule implements the Councils' recommendation.

5. Revision to Monkfish LOA Requirement

This action eliminates the requirement to obtain a Monkfish LOA to fish under the less restrictive management measures of the NFMA for vessels using a vessel monitoring system (VMS). Monkfish vessels using the interactive voice response (IVR) call-in system, however, will still be required to obtain a Monkfish LOA. The Councils recommended this action because requiring an LOA was determined to be burdensome and unnecessary, given that VMS screens were recently revised to enable limited access monkfish vessels to declare the management area in which they are fishing when declaring a monkfish DAS. In addition, the VMS system enables NMFS to monitor where these vessels are fishing. Conversely, although vessels using the IVR call-in system can now declare the management area in which they are fishing through that system, NMFS cannot monitor where these vessels are fishing in the same manner as VMS vessels. In this final rule, NMFS approves the Councils recommendation that the Monkfish LOA requirement be eliminated for VMS vessels, but retained for vessels using the IVR call-in system.

Technical Corrections to Monkfish FMP Regulations

Two corrections to the regulations implementing the Monkfish FMP are included in this final rule. The first correction removes a duplicate paragraph concerning the impact of leasing NE multispecies DAS on a vessel's monkfish DAS allocation (§ 648.92(b)(2)(iii)). This paragraph should have been removed in the final rule implementing Framework 4. The second set of corrections corrects the cross-references to the regulations implementing the Atlantic Sea Scallop FMP concerning accrual of DAS and the

Good Samaritan credit found at § 648.92(b)(3) and (4). It appears that the final rule implementing Amendment 10 to the Atlantic Sea Scallop FMP (69 FR 35215; June 23, 2004) revised § 648.53, thereby inadvertently impacting these cross-references in the monkfish regulations.

Comments and Responses

The public comment period on the proposed rule ended on March 25, 2008, with three comments received.

Comment 1: The commenter suggested that Framework 5 would allow overfishing of monkfish to continue, and more restrictive measures should be implemented.

Response: There is no scientific basis for the commenter's statements, as monkfish are not currently subject to overfishing, nor in an overfished condition based on the best scientific information available. Measures more restrictive than those implemented under prior actions in the monkfish fishery and in this final rule are not justified at this time.

Comment 2: The commenter supported some Framework 5 measures, but disagreed with others. Specifically, the commenter supported the measures to revise the biological reference points, eliminate the 3-hour provision for gillnet vessels, revise the incidental catch limits, and revise the LOA requirements in the NFMA. The commenter disagreed with the measure to reduce carryover DAS from 10 to 4. The commenter stated that such restrictions were no longer justified given the positive change in monkfish stock status.

Response: The reduction of carryover DAS would, to some extent, reduce flexibility for industry members that were unable to use all of their allotted DAS due to poor weather or mechanical problems. However, the use of carryover DAS contributed to a substantial overage (60 percent) in the target TAC for the SFMA during FY 2006, when vessels in this area were only allocated 12 DAS for the fishing year. During that fishing year, carryover DAS represented over an 80–percent increase above a limited access monkfish vessel's base allocation of monkfish DAS. Therefore, NMFS approved the Councils' recommended reduction in carryover DAS because it better reflects an amount of DAS that is commensurate to a vessel's annual DAS allocation, thereby helping to ensure that the target TACs are not exceeded, without compromising the safety benefits of being able to defer some fishing days to the next fishing year. Additionally, a significant amount of uncertainty remains in the results of the DPWG stock assessment. Changes to monkfish management strategies should, therefore, be precautionary, and significant liberalization of measures are not justified at this time.

Comment 3: The commenter was concerned about the dramatic change in monkfish stock status resulting from the revised biological reference points. The commenter was supportive, however, of all the measures included in Framework 5, since they are intended to keep monkfish landings within the target TACs.

Response: NMFS is confident that the revised biological reference points proposed by the DPWG represent the best available science on monkfish stock status. The measures included in Framework 5, however, remain appropriately precautionary due to some level of uncertainty in the assessment.

Classification

The Administrator, Northeast Region, NMFS, determined that Framework 5 is necessary for the conservation and management of the monkfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Assistant Administrator for Fisheries (AA) finds good cause under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this final rule. The need to implement these measures in a timely manner to reduce the risk of overfishing in the monkfish fishery, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after date of publication. If Framework 5 measures are not in place at the start of the new fishing year (May 1, 2008), continuation of the less restrictive measures currently in place would increase the likelihood that the target TACs would be exceeded, potentially leading to overfishing if the target TACs are exceeded by a substantial amount. For example, gillnet vessels could continue to exploit the 3-hour provision to bypass effort controls, and certain large-mesh vessels in the SFMA would be able to continue fishing for monkfish without a sufficient cap on their incidental trip limits.

This action could not be implemented earlier due to the fact that this rulemaking could not be completed until the predicate Council actions were completed. The final approval of Framework 5 by the Councils did not occur until their November 2007 and December 2007 meetings, respectively. The NEFMC submitted this action to NMFS on January 16, 2008, which did not allow sufficient time for review and publication of proposed and final rules prior to the start of the fishing year. In order to implement this final rule for the start of FY 2008, and prevent any negative impacts to the monkfish resource, such as overharvesting of the target TACs, resulting from a delay in implementation, the AA finds that there is good cause to waive the 30-day delay in effectiveness.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are contained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Three comments were submitted on the proposed rule, but none were specific to the IRFA or the economic effects of the rule. NMFS has responded to the comments in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

Description and Estimate of Number of Small Entities to Which the Rule will Apply

The Small Business Administration (SBA) defines small businesses in the commercial fishing and recreational fishing sectors as firms with receipts (gross revenues) of up to $4.0 million and $6.5 million, respectively. No large entities participate in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate impacts between large and small vessels. As of November 30, 2007, there were 765 limited access monkfish permit holders and 2,142 vessels holding an open access Category E

permit. In FY 2006, there were 616 limited access permits holders that participated in the monkfish fishery based on vessel trip report (VTR) records. During the same period, 574 Category E permit holders reported landing monkish. Based on VTR information from FY 2006 (the most recent FY for which complete information is available) this action would affect up to 194 limited access monkfish vessels with carryover DAS; 101 limited access monkfish gillnet vessels landing monkfish on trips less than 3 hours in duration; 3 vessels using large mesh (and not on a DAS) or under a Skate Bait LOA in the SNE RMA and landing monkfish above the proposed 50 lb (23 kg) per day, up to 150 lb (68 kg) per trip incidental catch limit; and 525 vessels with a VMS that fish in the NFMA.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule. This rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

The effort controls and possession limits modified by this rule are constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. However, steps were taken to minimize economic impacts on small entities by selecting measures that have less of an economic impact than the other alternatives considered, to the extent possible.

The preferred alternative to reduce carryover DAS from 10 to 4 (alternative 2) does not have a substantially different economic impact than the alternative to reduce carryover DAS from 10 to 6 (alternative 1) since only a small number of vessels appear to be constrained by the current DAS allocations. However, by further restricting the amount of carryover DAS a vessel can carryover from on fishing year to the next, the preferred alternative would have a greater probability of keeping landings within the target TAC than the other DAS carryover alternative or the no action alternative. Allowing up to 4 carryover DAS allows limited access monkfish vessels some flexibility to make up for missed fishing opportunities, but addresses the Councils' concern that the use of these carryover DAS has resulted in overages in the target TAC in the SFMA in recent years, which is why this was selected as the preferred alternative.

The preferred alternative to eliminate the 3-hour gillnet provision would affect approximately 100 monkfish gillnet vessels that have historically taken trips less than 3 hours in duration. However, only those vessels that take more trips than available, if using a 15-hour DAS (e.g. dividing total DAS by 0.625) could likely be impacted by this action. Only 5 monkfish gillnet vessels met this criteria. The preferred alternative (alternative 3B) is functionally equivalent from an economic impact perspective to the alternative to prohibit the landing of monkfish on trips less than 3 hours in duration (alternative 1) since under either alternative, a limited access monkfish vessel would be required to take a 15 hour DAS charge (0.625 DAS) in order to land monkfish. However, there were enforceablility concerns with alternative 1, which is why alternative 3B was selected as the preferred alternative. Alternative 2, which would allow vessels to land monkfish on one 3-hour trip per calendar day, would have an even smaller economic impact than alternatives 1 and 3B. If more than one 3-hour trip is taken in a calendar day, all but one trip would no longer be allowed, resulting in economic loss to the vessel. However, less than 1 percent of 3-hour trips in FY 2006 were the result of more than one trip within a calendar day. Similar to alternative 1, this alternative was not selected due to enforceability concerns.

The revision to the incidental catch limit applicable to non-DAS vessels in the SFMA affects a relatively small number (3) of vessels. In fact, the economic analysis contained in Framework 5 indicates that alternative 1A and the no action alternative are functionally the same from an economic perspective, but that the preferred alternative (1B) would have a marginal affect on revenues for the affected vessels in comparison to the other two alternatives. Given the fact that there is a minimal difference in economic impacts among the 3 alternatives, alternative 1B was selected because it is the more restrictive of the 3 alternatives; therefore, providing a greater likelihood that this measure will help keep monkfish landings within the target TACs.

In comparison to the no action alternative, the preferred alternative to remove the requirement to obtain a Monkfish LOA to fish in the NFMA for vessels using a VMS would reduce the administrative burden and potentially increase flexibility for limited access monkfish vessels, particularly those that fish in both the NFMA and SFMA. Although the positive economic effects associated with the preferred alternative are likely small, this alternative was selected because it would reduce administrative burden and increase flexibility.

Overall, Framework 5 is expected to have long-term positive impacts on affected small entities. Under the new biological reference points implemented by this action, monkfish are no longer considered overfished, which eliminates the potential need for further management restrictions. Continued stability in the management program will potentially allow for higher and sustainable yields from the monkfish resource. The negative economic impacts from this action are estimated to be relatively minor, short-term, and affect comparatively few vessels.

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. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the monkfish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.nero.noaa.gov.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 21, 2008

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.92, paragraphs (a)(1), (b)(3), (b)(4), and (b)(8)(v) are revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(a) * * *

(1) *End of year carryover.* With the exception of a vessel that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carryover year, a limited access monkfish vessel that has unused monkfish DAS on the last day of April of any year may carry over a maximum of 4 unused monkfish DAS into the next fishing year. A vessel whose DAS have been sanctioned through enforcement proceedings shall be credited with unused DAS based on its DAS allocation minus any DAS that have been sanctioned.

* * * * *

(b) * * *

(3) *Accrual of DAS.* Same as § 648.53(f).

(4) *Good Samaritan credit.* Same as § 648.53(g).

(8) * * *

(v) *Method of counting DAS.* A vessel fishing with gillnet gear under a monkfish DAS shall accrue 15 hours monkfish DAS for all trips less than or equal to 15 hours in duration. Such vessels shall accrue monkfish DAS based on actual time at sea for trips greater than 15 hours in duration. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the requirements and conditions of paragraphs (b)(8)(i)–(v) of this section. A vessel fishing with gillnet gear under a joint monkfish and NE multispecies DAS, as required under § 648.92(b)(2)(i), that is declared as a trip gillnet vessel under the NE Multispecies FMP, must remove its gillnet gear from the water prior to calling out of the DAS program, as specified at § 648.82(j)(2).

* * * * *

■ 3. In § 648.94, paragraphs (c)(3) and (f) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(c) * * *

(3) *Vessels fishing with large mesh and not fishing under a DAS*—(i) A vessel issued a valid monkfish incidental catch limit (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs with mesh no smaller than specified at § 648.80(a)(3)(i) and (a)(4)(i), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at § 648.80(b)(2)(i), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA under a Skate Bait Letter of Authorization, as authorized under § 648.322(b), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(iv) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE or MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.104(a)(1) while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, but not to exceed 450 lb (204 kg) tail weight or 1,494 lb (678 kg) whole weight of monkfish, unless that vessel is fishing under a Skate Bait Letter of Authorization in the SNE RMA. Such a vessel is subject to the incidental catch limit specified under paragraph (c)(3)(iii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

(f) *Area declaration requirement for a vessel fishing exclusively in the NFMA.* A vessel intending to fish for, or fishing for, possessing or landing monkfish under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish exclusively in the NFMA for the entire trip. In addition, a vessel fishing under a monkfish DAS must declare its intent to fish in the NFMA through the vessel's VMS unit. A vessel that is not required to and does not possess a VMS unit, such as a vessel that declares DAS through the call-in system, must declare its intent to fish in the NFMA by obtaining a letter of authorization from the Regional Administrator, for a period of not less than 7 days. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

* * * * *

[FR Doc. E8–9116 Filed 4–25–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 82
Monday, April 28, 2008

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 705

RIN 3133–AC98

The Low-Income Definition

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA is proposing to use median family income (MFI) to determine if a credit union qualifies for a low-income designation and assistance from the Community Development Revolving Loan Fund (CDRLF). The proposed rule will eliminate the confusion associated with adjusting median household income (MHI) in metropolitan areas with higher costs of living. Additionally, it will better align NCUA criteria for a low-income designation with the criteria for the addition of an underserved area to a federal credit union (FCU) field of membership and certification as a Community Development Financial Institution (CDFI).

DATES: Comments must be received on or before June 27, 2008.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Proposed Rule Parts 701 and 705" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Moisette Green, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Federal Credit Union Act (Act) authorizes the NCUA Board to define "low-income members" so that credit unions with a membership predominantly consisting of low-income members can benefit from certain statutory relief and receive assistance from the CDRLF. 12 U.S.C. 1752(5), 1757a(b)(2)(A), 1752a(c)(2)(B), 1772c–1. NCUA defines "low-income members" in parts 701 and 705 of its regulations generally as meaning members whose annual household income falls at or below 80% of the national MHI, but provides a differential for certain geographic areas with higher costs of living. 12 CFR 701.34(a)(2), 705.3(a)(1).

In 2006, NCUA's Member Service Assessment Pilot Program (MSAP) recommended the Board consider reassessing the formula for determining if an FCU qualifies for a low-income designation. According to MSAP, using MFI would be more reflective of the regional economic diversity of the United States and of the circumstances in which FCU members live. The NCUA Outreach Task Force evaluated the MSAP recommendation, identified concerns with the current low-income formula, and agreed with MSAP that the standard for designating low-income credit unions should change from MHI to MFI.

Specifically, NCUA proposes to revise the definition of "low-income members" in §§ 701.34(a)(2) and 705.3(a)(1) to base the determination on an "income standard" that relies on MFI or the alternative of median earnings. For metropolitan areas, the proposal defines low-income members as those living in an area, within the metropolitan area, where the standard is at or below 80% of either the standard for the entire metropolitan area or the national standard, whichever is greater. For members living outside a metropolitan area, the proposal defines low-income members as those living in an area where the standard is at or below 80% of either the statewide non-metropolitan area standard or the national non-metropolitan area standard, whichever is greater.

The Census Bureau designates Metropolitan Areas in accordance with the standards developed by the U.S. Office of Management and Budget. Metropolitan Areas contain a core urban area of 50,000 or more in population and one or more counties, including the counties containing the core urban area and adjacent counties with a high degree of social and economic integration with the urban core. U.S. Census Bureau, *http://www.census.gov/population/www/estimates/metroarea.html* (April 7, 2008).

The proposed rule will eliminate the confusion associated with adjusting the national MHI for metropolitan areas with higher costs of living. Additionally, it will better align the criteria for a low-income designation with the criteria adding an underserved area to an FCU field of membership (FOM) and certification as a CDFI under Treasury Department regulations. *See* Interpretive Rulings and Policy Statement (IRPS) 03–1, 68 FR 18334 (April 15, 2003) (as amended by IRPS 06–1, 71 FR 36667 (June 28, 2006)); 12 CFR 1805.201(b)(3)(ii)(D)(2)(i)–(ii).

The proposed amendment includes a five-year grandfather provision to allow existing low-income credit unions (LICUs) to qualify under the new MFI standard or adequate transition time if they no longer qualify for the low-income designation. The proposed rule is not changing or removing other current standards, which credit unions can use to qualify for a low-income designation, based on serving members who are enrolled as students in a college, university, high school, or vocational school. 12 CFR 701.34(a)(2)(ii).

Median Household Income Standard

MHI divides the income distribution into two equal groups, half having household incomes above the median, half having incomes below the median. The Census Bureau defines "household" as all the people who occupy a housing unit, such as a house, an apartment or other group of rooms established as separate living quarters. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated

people sharing a housing unit such as partners or roomers, is also counted as a household. Households do not include group quarters such as dormitories.

In determining MHI for members of credit unions applying for a low-income designation, NCUA currently applies allowances to the national MHI for geographical areas with higher costs of living. The geographical differentials are based on data from the Employment and Training Administration of the Department of Labor. The differentials are outdated and do not account for all national high-cost areas defined in the current lower living standard income level differentials. *See* 71 FR 31215 (June 1, 2006). Consequently, some credit unions may not be eligible for low-income designation due to the outdated geographical area differentials in the current regulation.

In addition to the outdated differentials, two concerns related to using MHI as a standard to determine low-income eligibility exist. First, using MHI is inconsistent with the standard NCUA uses to assess whether an area is underserved and has caused confusion between the definitions of "low income" and "underserved." Second, NCUA's use of the MHI standard is not consistent with the qualification standard used by other federal agencies with policies to foster low-income initiatives, specifically the Treasury Department's CDFI Fund.

Median Family Income Standard

The Board believes MFI should be the standard used to determine whether a credit union qualifies for a low-income designation. MFI is the amount that divides the income distribution into two equal groups, half having family incomes above the median, half having incomes below the median. The median is based on family members 16 years old and over with income. The Census Bureau defines a "family" as a group of two or more people related by birth, marriage, or adoption and residing together. MFI is available from the U.S. Census Bureau for both non-metropolitan and metropolitan areas. This is an advantage because it eliminates the need to adjust the income standard for areas with higher costs of living.

Inconsistency With Underserved Area Definition

NCUA's low-income definition using the MHI standard preceded amendments to FOM provisions in the FCU Act regarding underserved areas. NCUA began using MHI to determine if a credit union qualified for a low-income designation in 1993. 56 FR 21645 (April 23, 1993). In 1998, the FCU Act was amended to permit multiple common-bond FCUs to add underserved areas if, among other requirements, the area met the definition of an "investment area," as defined in § 103(16) of the Community Development Banking and Financial Institutions Act of 1994. Credit Union Membership Access Act (CUMAA), Public Law 105–219, § 101, 112 Stat. 913, 915 (1998) (codified at 12 U.S.C. 1759(c)(2)(A)(i)); Public Law 103–325, § 103(16), 108 Stat. 2163 (1994).

Treasury Department regulations, implementing the Community Development Banking and Financial Institution Act of 1994, include an MFI at or below 80 percent of the MFI for corresponding metropolitan area as a factor supporting the determination that an area is an investment area. 12 CFR 1805.201(b). As required by CUMAA, NCUA implemented the authority for service to underserved areas by looking to the definition of investment area and included the 80 percent of MFI standard among the criteria that can be used to qualify an underserved area as an investment area. NCUA Chartering and Field of Membership Manual, Chapter 3, II.A., Interpretive Rulings and Policy Statement (IRPS) 03–1, 68 FR 18334 (April 15, 2003) (as amended by IRPS 06–1, 71 FR 36667 (June 28, 2006)). While the 80 percent of MFI standard is among the criteria that can be used to qualify an underserved area as an investment area, an FCU that adds an underserved area does not automatically qualify for the low-income designation.

The low-income formula, however, did not change with the FOM amendments, causing inconsistency within NCUA regulations and creating confusion between the benchmarks used for determining low-income designation and if an area is underserved. The use of MFI as a standard to determine low-income status will bring uniformity and consistency to the regulations, and should eliminate industry confusion regarding the low-income designation and application for an underserved area.

Inconsistency With the Community Development Financial Institutions Fund

Generally, the current MHI standard differs from the standard other federal agencies use to promote outreach programs, most importantly the Treasury Department's CDFI Fund. The CDFI Fund, through monetary awards and other benefits, helps promote access to capital and local economic growth in urban and rural low-income communities across the nation. Qualifying credit unions obtain assistance from the CDFI Fund to offer financial services to and further economic development of low-income members.

The CDFI Fund uses MFI to implement the Community Development Banking and Financial Institutions Act of 1994, as previously discussed. This has created confusion and, in many instances, placed additional and unnecessary burdens on credit unions attempting to qualify for a low-income designation and assistance from the CDFI Fund.

The CDFI Fund defines "low income" as an income, adjusted for family size, of not more than 80 percent of the metropolitan area MFI or, if appropriate, non-metropolitan area MFI. 12 CFR 1805.104(ee). Because credit unions may apply for financial assistance from the CDFI Fund, the Board believes it would be beneficial to align the low-income formula with the CDFI Fund criteria. This would reduce the regulatory burden on federally-insured credit unions attempting to qualify for benefits of a low-income designation and from the CDFI Fund.

Proposed Rule

The proposed rule amends the definition of "low-income members" to use the MFI as an income standard instead of MHI. NCUA recognizes not all credit union members meet the Census Bureau's definition of "family." Therefore, the proposed rule permits credit unions to use the median earnings for individuals reported by the Census Bureau as an alternate income standard for MFI. It also defines the geographic areas NCUA will consider when determining whether a credit union qualifies for a low-income designation.

Additionally, the proposed rule clarifies the process for removing a low-income designation. If a credit union no longer qualifies for the designation, a regional director will give the credit union written notice. Loss of the designation may result for various reasons, including changes in FOM or as a result of mergers, assumptions of member shares from liquidating credit unions, or other similar occurrences. A credit union will have five years after the date of the written notice to come into compliance with regulations applicable to credit unions that do not have a low-income designation. A credit union may appeal the loss of its low-income designation to the Board; an appeal must be filed within 60 days of the date of the written notice of loss of the designation. A credit union will submit its appeal through the appropriate regional office.

The five-year period provides LICUs that lose their low-income designation adequate time to comply with regulatory requirements regarding secondary capital (§ 701.34 and part 702), member business loans (§ 723.17), nonmember deposits (§ 701.32), and CDRLF financial assistance (12 CFR part 705). The reasons for a five-year period include the fact that NCUA regulations require a minimum maturity of five years for secondary capital, 12 CFR 701.31(b)(4)), and CDRLF loans have a maximum maturity of five years, 12 CFR 705.7(c). If a LICU loses its designation under the MFI standard and must repay secondary capital, a CDRLF loan, nonmember deposits, or reduce its member business loans, the five-year period should provide adequate time to make the necessary adjustments.

Finally, the proposed rule makes a conforming amendment to § 705.3, namely, that the meaning of low-income members will be the same in that section as in § 701.34 and will clarify that credit unions qualifying for the low-income designation under § 701.34 may apply for assistance from the CDRLF. Part 705 and § 701.34 would continue to apply to state-chartered credit unions in accordance with § 741.204.

Five-Year Grandfather Provision for Current LICUs

The Board does not anticipate changing from MHI to MFI will have a significant impact on the number of credit unions qualifying for a low-income designation. To offset any potential adverse impact from the change to the MFI standard, the proposed rule includes a grandfather provision to permit current LICUs not meeting the new standard to retain the designation for a five-year period after a final rule becomes effective. During this five-year period LICUs may take advantage of the benefits associated with a low-income designation, including continuing to be eligible for CDRLF program. The reasons for a five-year period for a grandfather provision are the same as those noted above for a five-year period following a loss of the designation for other reasons. By the end of five years after the effective date of a final rule, all LICUs must qualify for the designation using the MFI standard. Any LICU failing to qualify under the MFI standard would automatically lose the low-income designation at the end of this five-year period. Loss of the low-income designation for failure to meet the MFI standard within five years of the effective date of a final rule would not be appealable to the Board.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. 5 U.S.C. 603(a). For purposes of this analysis, NCUA considers credit unions having under $10 million in assets small entities. Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003). As of December 31, 2007, out of approximately 8,410 federally insured credit unions, 3,599 had less than $10 million in assets.

This proposed rule directly affects all low-income credit unions, of which there are approximately 1,087. NCUA estimates approximately 692 low-income credit unions are small entities. Therefore, NCUA has determined this proposed rule will have an impact on a substantial number of small entities.

NCUA has determined, however, the economic impact on entities affected by the proposed rule will not be significant. The proposed rule will better align criteria for a low-income designation with the criteria for the addition of an underserved area to a federal credit union field of membership under IRPS 03–1 (as amended by 06–1) and certification as a CDFI. The proposed rule will establish one income standard for determining a low-income designation, underserved areas, and investment areas. It will also eliminate the confusion within the credit union industry due to the use of different income standards. NCUA believes the proposed rule will reduce the regulatory burden for LICUs and any economic impact will be minimal. Additionally, NCUA has proposed a five-year period for LICUs affected to make necessary adjustments. Accordingly, the Board certifies this rule will not have a significant economic impact on a substantial number of small entities. NCUA invites comment from the public on whether the proposal will have a significant economic impact on small entities.

Paperwork Reduction Act

The proposed rule does not contain a "collection of information" within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502(3)) and would not increase paperwork requirements under the Paperwork Reduction Act of 1995 or regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 701

Credit unions, Low income, Nonmember deposits, Secondary capital, Shares.

12 CFR Part 705

Community development, Credit unions, Loans, Low income, Technical assistance.

By the National Credit Union Administration Board, on April 17, 2008.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR parts 701 and 705 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Public Law 109–351, 120 Stat. 1966.

2. Amend § 701.34 by revising paragraph (a) to read as follows:

§ 701.34 Designation of low income status; Acceptance of secondary capital accounts by low-income designated credit unions.

(a) *Designation of low-income status.* (1) A regional director will designate a federal credit union as a low-income credit union if a majority of its membership qualifies as low-income members. As provided in § 701.32, low-income credit unions may receive shares from nonmembers.

(2) A regional director will remove the designation if the federal credit union no longer meets the criteria of this section and will give the credit union written notice. The credit union will have five years after the date of the written notice to come into compliance with regulatory requirements applicable to credit unions that do not have a low-income designation. A federal credit union may appeal the loss of its designation as a low-income credit union to the Board within 60 days of the date of the notice from the regional director. An appeal must be submitted to the regional director.

(3) *Definitions.* The following definitions apply to this section:

Geographic area means an area within the United States, including any State, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands, or any territory of the United States or a geographic unit that is a county or equivalent area, a unit of a local government, incorporated place, census tract, block numbering area, Zip Code Tabulation Area, block group, or Native American, American Indian, or Alaskan Native area, as such units are defined or reported by the U.S. Census Bureau.

Income standard means the median income for families or median earnings for individuals, as reported by the U.S. Census Bureau.

Low-income members means those members: enrolled as students in a college, university, high school, or vocational school; living in a geographic area within a Metropolitan Area, where the median income is at or below 80% of the greater of the Metropolitan Area income standard or the national Metropolitan Area income standard; or living in a geographic area outside a Metropolitan Area, where the median income is at or below 80% of the greater of the statewide, non-Metropolitan Area income standard or the national non-Metropolitan Area income standard.

(4) Any credit union designated as a low-income credit union on the [EFFECTIVE DATE OF THE FINAL RULE] will have five years from that date to meet the criteria for low-income designation under paragraph (a)(1) of this section.

* * * * *

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN FUND FOR CREDIT UNIONS

3. The authority citation for part 705 continues to read as follows:

Authority: 12 U.S.C. 1772c–1; 42 U.S.C. 9822 and 9822 note.

4. Amend § 705.3 by revising paragraph (a) to read as follows:

§ 705.3 Definitions.

(a) The term "low-income members" means those members defined in § 701.34 of this chapter.

* * * * *

[FR Doc. E8–8968 Filed 4–25–08; 8:45 am]
BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133–AD45

The Official Advertising Statement

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rulemaking.

SUMMARY: The NCUA Board proposes revising the requirements for use of the official insurance sign and official advertising statement to permit insured credit unions to use the basic form of the official advertising statement, a shortened form, or the official sign in advertisements. The proposed rule will give credit unions added flexibility in advertisements. As compared to the current requirement, credit unions will be able to use the shortened form or the official insurance sign in advertisements as alternatives to the basic official advertising statement; under the current rule, credit unions may only use the shortened form if they also include the official sign.

DATES: Comments must be received on or before June 27, 2008.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Proposed Part 740" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Moisette I. Green, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: NCUA continually reviews its regulations to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. Under IRPS 87–2, NCUA conducts a rolling review of one-third of its regulations every year, involving both internal review and public comment. As a part of its 2007 regulatory review, NCUA identified an improvement for part 740, the regulation governing notice of insured status, providing insured credit unions greater flexibility in how they meet the requirement of giving notice of their insured status.

The Federal Credit Union Act (Act) requires insured credit unions to display signs at their places of business indicating accounts are insured and also to include in all advertisements a statement to the effect that accounts are insured. 12 U.S.C. 1785(a). The Act authorizes the NCUA Board to promulgate regulations governing the substance of the official insurance sign and the manner it is displayed or used and, also, to address the practicality of including the official statement on insured status in advertisements. *Id.*

NCUA implements this authority in part 740 of its regulations and, in § 740.5, NCUA requires insured credit unions to include the official advertising statement in all advertisements, including on their main internet pages, with certain exceptions. The basic form of the official statement is "This credit union is federally insured by the National Credit Union Administration." Currently, the regulation permits shortening the official statement to "Federally insured by NCUA" if used with a reproduction of the official sign in § 740.4(b).

NCUA proposes to revise § 740.5(b) to permit insured credit unions to use, in addition to the basic form of the official advertising statement, the shortened form *or* the official sign in their advertisements. In other words, the proposed rule will permit insured credit unions, in addition to using the official advertising statement in its advertisements, to use the shortened statement alone or the official sign alone in advertisements. The flexibility this would provide is currently available under the Federal Deposit Insurance Corporation's rule regarding disclosure of insured status in advertisements. 12 CFR 328.3.

Additionally, the proposed amendment clarifies the font of the text in the official sign may be altered as described in § 740.4(b)(2) when it is used as the official advertising statement. 12 CFR 740.4(b)(2).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (those under $10 million in assets). The proposed amendment merely expands the options credit unions have to comply with the requirement to notify members and the public of their insured status in advertisements. Accordingly, the NCUA has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The proposed rule does not contain a "collection of information" within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502(3)) and would not increase paperwork requirements under the Paperwork Reduction Act of 1995 or regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

By the National Credit Union Administration Board on April 17, 2008.

Mary F. Rupp,

Secretary of the Board.

For the reasons set forth above, it is proposed that 12 CFR part 740 be amended as follows:

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

1. The authority citation for part 740 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1785, and 1789.

2. Section 740.5 is amended by revising paragraph (b) to read as follows:

§ 740.5 Requirements for the official advertising statement.

* * * * *

(b) The official advertising statement is in substance as follows: "This credit union is federally insured by the National Credit Union Administration." Insured credit unions, at their option, may use the short title "Federally insured by NCUA" or a reproduction of the official sign, as described in § 740.4(b), as the official advertising statement. The official advertising statement must be in a size and print that is clearly legible. If the official sign is used as the official advertising statement, an insured credit union may alter the font size to ensure its legibility as provided in paragraph (b)(2) of § 740.4.

* * * * *

[FR Doc. E8–8967 Filed 4–25–08; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0415; Directorate Identifier 2007–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 737 airplanes. This proposed AD would require repetitive inspections, lubrications, and repetitive repairs/overhauls of the ball nut and ballscrew and attachment (Gimbal) fittings for the trim actuator of the horizontal stabilizer; various installation(s); and corrective actions if necessary; as applicable. This proposed AD results from a report of extensive corrosion of a ballscrew used in the drive mechanism of the horizontal stabilizer trim actuator (HSTA). We are proposing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the HSTA and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by June 12, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0415; Directorate Identifier 2007–NM–256–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On January 31, 2000, there was an accident involving a McDonnell Douglas Model DC–9–83 (MD–83) airplane. The National Transportation Safety Board (NTSB) determined that the probable cause of the accident was a loss of airplane pitch control resulting from the in-flight failure of the acme nut threads of the jackscrew assembly of the horizontal stabilizer trim system. The NTSB concluded that the thread failure was caused by excessive wear, resulting from insufficient lubrication of the jackscrew assembly. The drive mechanism of the horizontal stabilizer on Model MD–83 airplanes has a jackscrew assembly with an acme screw. The drive mechanism of the horizontal stabilizer on Boeing Model 737 airplanes has a horizontal stabilizer trim actuator (HSTA) with a ballscrew. Acme screws and ballscrews have some differences in design, but perform similar functions and have the same airplane-level effect following failure.

In response to this accident, Boeing initiated a design review and safety analysis of the primary and secondary load paths of the ballscrew assembly used on the HSTA of their airplanes. During this review, one operator of a Model 757 airplane reported extensive corrosion of a ballscrew assembly of the HSTA. Investigation revealed extensive corrosion of the primary load path ball bearings in the ballscrew assembly. This condition, if not corrected, could result in an undetected failure of the primary load path for the ballscrew in the drive mechanism of the HSTA and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

The ballscrew assembly on Model 757 airplanes is similar to those on the affected Model 737 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Other Relevant Rulemaking

We are considering additional rulemaking to address the identified unsafe condition on Model 757 airplanes.

Relevant Service Information

We have reviewed the following Boeing Service Bulletins:

TABLE—PRIMARY SERVICE BULLETINS

Boeing Alert Service Bulletin—	Describes the following procedures for the trim actuator of the horizontal stabilizer (depending on the airplane configuration)—	And recommends that those actions be done—
737–27A1277, Revision 1, dated July 25, 2007 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes).	Repetitive detailed and general visual inspections to detect discrepancies (e.g., metal particles or corrosion in grease, damage, cracks, corrosion, worn areas, grease leakage, and loose ball bearings) of the ball nut and ballscrew.	Within 6,400 flight hours or 18 months from the last detailed inspection, whichever occurs first, and thereafter at intervals not to exceed 6,400 flight hours or 2 years, whichever occurs first.
	Repetitive lubrications of the ball nut and ballscrew.	Within 1,600 flight hours or 1 year from the last lubrication, whichever occurs first, and thereafter at intervals not to exceed 1,600 flight hours or 1 year, whichever occurs first.
	Repetitive repair/overhaul	Before the accumulation of 25,000 flight hours since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 25,000 flight hours since the last overhaul of the trim actuator of the horizontal stabilizer, whichever occurs first, and thereafter at intervals not to exceed 25,000 flight hours.

TABLE—PRIMARY SERVICE BULLETINS—Continued

Boeing Alert Service Bulletin—	Describes the following procedures for the trim actuator of the horizontal stabilizer (depending on the airplane configuration)—	And recommends that those actions be done—
	Installation of tube retainers on the ball nut	Before the accumulation of 25,000 flight hours since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 25,000 flight hours since the latest overhaul of the trim actuator of the horizontal stabilizer, whichever occurs later.
	Applicable corrective actions. The corrective actions include repairing/replacing discrepant parts.	Before further flight.
737–27A1278, dated May 24, 2007 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes).	Repetitive detailed and general visual inspections to detect discrepancies (e.g., metal particles or corrosion in grease, damage, cracks, corrosion, worn areas, grease leakage, and loose ball bearings) of the ball nut and ballscrew and attachment (Gimbal) fittings.	Within 2,000 or 4,000 flight hours or 12 or 18 months from the last detailed inspection, whichever occurs first, and thereafter at intervals not to exceed 2,000 or 4,000 flight hours or 1 or 2 years, whichever occurs first (depending on the airplane configuration).
	Repetitive lubrications of the ball nut and ballscrew and attachment (Gimbal) fittings.	Within 500 or 2,000 flight hours or 2 months or 1 year from the last lubrication, whichever occurs first, and thereafter at intervals not to exceed 500 or 2,000 flight hours or 2 months or 1 year, whichever occurs first (depending on the airplane configuration).
	Repetitive repair/overhaul	Before the accumulation of 20,000 flight hours or 24,000 flight hours since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 20,000 flight hours or 24,000 flight hours since the last overhaul of the trim actuator of the horizontal stabilizer, whichever occurs first (depending on the airplane configuration); and thereafter at intervals not to exceed 20,000 or 25,000 flight cycles (depending on the airplane configuration).
	Installation of tube retainers on the ball nut	Before the accumulation of 24,000 flight hours since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 24,000 flight hours since the last overhaul of the trim actuator of the horizontal stabilizer, whichever occurs first.
	Installation of a grease fitting	Before the accumulation of 20,000 flight hours since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 20,000 flight hours since the last overhaul of the trim actuator of the horizontal stabilizer, whichever occurs first.
	Installation of new ball deflectors and guide clamps for the ball return.	Before the accumulation of 24,000 flight hours since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 24,000 flight hours since the last overhaul of the trim actuator of the horizontal stabilizer, whichever occurs first.
	Installation of new return tube clamps	Before the accumulation of 20,000 flight hours since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 20,000 flight hours since the last overhaul of the trim actuator of the horizontal stabilizer, whichever occurs first.

TABLE—PRIMARY SERVICE BULLETINS—Continued

Boeing Alert Service Bulletin—	Describes the following procedures for the trim actuator of the horizontal stabilizer (depending on the airplane configuration)—	And recommends that those actions be done—
	Applicable corrective actions. The corrective actions include repairing/replacing discrepant parts.	Before further flight.

TABLE.—SECONDARY SERVICE BULLETINS

Boeing Alert Service Bulletin—	Refers to—
737–27A1277, Revision 1, dated July 25, 2007 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes). 737–27A1278, dated May 24, 2007 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes).	UMBRA CUSCINETTI Service Bulletin 07322–27–01, dated December 21, 2004, as an additional source of service information for installing tube retainers on the ball nut. UMBRA CUSCINETTI Service Bulletin 07322–27–01, dated December 21, 2004, as an additional source of service information for installing tube retainers on the ball nut. Boeing 737 Service Bulletin 27–1046, Revision 1, dated April 5, 1974, as an additional source of service information for installing a grease fitting. Linear Motion Service Bulletin 7901708, Revision A, dated July 26, 2005, as an additional source of service information for installing new ball deflectors and guide clamps for the ball return. SKYTRONICS Service Bulletin 93004, dated September 1, 2005, as an additional source of service information for installing new return tube clamps.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require accomplishing the actions specified in the primary service bulletins described previously.

Clarification of Applicability of This AD

Boeing has informed us that Model 737–900ER series airplanes were not specifically identified by model name in the Effectivity section of Boeing Alert Service Bulletin 737–27A1277. However, those airplanes are identified by variable numbers in the Effectivity section. Therefore, this AD refers to Model 737–900ER series airplanes where appropriate.

Costs of Compliance

We estimate that this proposed AD would affect 1,602 Model 737 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action [1]	Work hours [1]	Average labor rate per hour	Parts	Cost per product [1]	Number of U.S.-registered airplanes	Fleet cost [1]
Detailed inspections	2 or 4	$80	None	$160 or $320, per inspection cycle.	1,602	Between $256,320, and $512,640 per inspection cycle.
Lubrications	1 or 3	80	None	$80 or $240, per lubrication cycle.	1,602	Between $128,160, and $384,480 per lubrication cycle.
Repairs/overhauls	40	80	None	$3,200 per repair/overhaul	1,602	$5,126,400 per repair/overhaul cycle.
Installations	Between 1 and 3.	80	$2,200	Between $2,280 and $2,440	1,320	Between $3,009,600 and $3,220,800.

[1] Depending on airplane configuration.

The number of work hours, as indicated above, is presented as if the accomplishment of the actions in this proposed AD is to be conducted as new "stand alone" actions. However, in actual practice, the lubrications, detailed inspections, and overhauls are currently being done as part of normal airplane maintenance. The repair can be done coincidentally or in combination with the normally scheduled HSTA and ballscrew overhaul. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Boeing: Docket No. FAA–2008–0415; Directorate Identifier 2007–NM–256–AD.

Comments Due Date

(a) We must receive comments by June 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Boeing model—	As identified in Boeing Alert Service Bulletin—
(1) 737–100, –200, –200C, –300, –400, and –500 series airplanes	737–27A1278, dated May 24, 2007.
(2) 737–600, –700, –700C, –800, –900, and –900ER series airplanes ..	737–27A1277, Revision 1, dated July 25, 2007.

Unsafe Condition

(d) This AD results from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer trim actuator (HSTA). We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the HSTA and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Service Bulletins

(f) The term "service bulletin," as used in this AD, means the applicable service bulletins specified in Table 2 of this AD.

TABLE 2.—SERVICE BULLETINS

Boeing Alert Service Bulletin—	For model—
(1) 737–27A1278, dated May 24, 2007	737–100, –200, –200C, –300, –400, and –500 series airplanes.
(2) 737–27A1277, Revision 1, dated July 25, 2007	737–600, –700, –700C, –800, –900, and –900ER series airplanes.

Note 1: The service bulletins refer to UMBRA CUSCINETTI Service Bulletin 07322–27–01, dated December 21, 2004; Linear Motion Service Bulletin 7901708, Revision A, dated July 26, 2005; Boeing 737 Service Bulletin 27–1046, Revision 1, dated April 5, 1974; and/or SKYTRONICS Service Bulletin 93004, dated September 1, 2005, as applicable, as additional sources of service information for accomplishing the specified actions.

Inspections, Lubrications, Repairs/Overhauls, and Applicable Corrective Actions

(g) At the applicable compliance time and repeat intervals listed in Tables 1 and 2 of paragraph 1.E., "Compliance," of the service bulletin, do the inspections, lubrications, repairs/overhauls, installation(s), and applicable corrective actions by accomplishing all the applicable actions specified in the Accomplishment Instructions of the service bulletin; except as provided by paragraphs (g)(1) through (g)(3) of this AD.

(1) Where paragraph 1.E., "Compliance," of the service bulletin specifies an initial compliance time for accomplishing the initial inspection, lubrication, or repair/overhaul, this AD requires doing the applicable initial action(s) at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) At the applicable compliance time specified in paragraph 1.E., "Compliance," of the service bulletin.

(ii) Within the applicable compliance time specified in paragraph (g)(1)(ii)(A), (g)(1)(ii)(B), or (g)(1)(ii)(C) of this AD.

(A) For the initial detailed inspection and lubrication: Within 6 months after the effective date of this AD.

(B) For the initial repair/overhaul: Within 12 months after the effective date of this AD.

(C) For the installation(s): Within 12 months after the effective date of this AD.

(2) Where Table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–27A1277, Revision 1, dated July 25, 2007, specifies a compliance time of "* * * within 25,000 Flight Hours since the latest horizontal stabilizer trim actuator (HSTA) Overhaul from the date of Revision 1 of this Service Bulletin * * *," this AD

requires compliance "* * * within 25,000 flight hours since the last overhaul of the trim actuator of the horizontal stabilizer."

(3) Where Work Package 4, paragraphs 1.a., 2.a., and 3.a., of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1278, dated May 24, 2007, specifies to identify the HSTA name plate "* * * AS GIVEN IN SB 737–27A1278, WORK PACKAGE 3," this AD requires that identification "* * * AS GIVEN IN SB 737–27A1278, WORK PACKAGE 4."

(4) Where Note (b) of Figures 7 through 9 of Boeing Alert Service Bulletin 737–27A1278, dated May 24, 2007, specifies to do a "* * * Backlash Inspection as given in AMM 27–41–81/606," this AD requires an "* * * End Play Test as given in OHM 27–45–11 page 701."

(h) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–27A1277, dated July 21, 2005, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office, FAA, ATTN: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on April 17, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9193 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0414; Directorate Identifier 2007–NM–095–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747 series airplanes. The existing AD currently requires repetitive inspections for cracking and corrosion of all exposed surfaces of the carriage spindles (including the inner bore and aft links) of the trailing edge flaps, and additional inspection and corrective action if necessary. The existing AD also requires repetitive overhaul of the carriage spindle and aft link, which terminates the repetitive inspections. This proposed AD would add a repetitive inspection to detect broken parts, and revise the overhaul threshold and repetitive intervals. This proposed AD results from analysis that showed additional inspections should be done to prevent the loss of a flap, and that the flight-hour-based interval should be revised to a flight-cycle-based interval, because the greatest loads on the spindles happen during takeoff and landing. We are proposing this AD to detect and correct failed carriage spindles or aft links for the inboard or outboard trailing edge flaps. Such failure could cause the flap to depart the airplane, reducing the flightcrew's ability to maintain the safe flight and landing of the airplane.

DATES: We must receive comments on this proposed AD by June 12, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0414; Directorate Identifier 2007–NM–095–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On August 6, 1990, we issued AD 90–17–19, amendment 39–6705 (55 FR 33280, August 15, 1990), for all Boeing Model 747 series airplanes, except the Model 747SP. That AD requires repetitive inspections for cracking and corrosion of all exposed surfaces of the carriage spindles (including the inner bore and aft links) of the trailing edge flaps, and additional inspection and corrective action if necessary. The existing AD also requires repetitive overhaul of the carriage spindle and aft link, which terminates the repetitive inspections. That AD resulted from a report of failure of two aft links in the spindles on one flap, causing control problems during approach and landing. We issued that AD to prevent failure of the trailing edge flaps' carriage spindles, which could result in reduced controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 90–17–19, the manufacturer conducted a dynamic aerodynamic analysis, which showed that the airplane might not have

sufficient roll authority to overcome loss of lift caused by a departure of a single left- or right-hand inboard or outboard trailing edge flap. The manufacturer then conducted a structural analysis of the flap attach structure and fail-safe components, which showed that additional inspections should be done to prevent the loss of a flap, and that the flight-hour-based interval required by AD 90–17–19 should be revised to a flight-cycle-based interval because the greatest loads on the spindles happen during takeoff and landing and not during flight.

Relevant Service Information

We have reviewed Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008. We referred to Boeing Service Bulletin 747–27–2280, Revision 3, dated November 30, 1989, as the appropriate source of service information for accomplishing the actions required by AD 90–17–19. Revision 6 adds a repetitive inspection of all eight carriage spindles and aft links to detect a broken carriage spindle or aft link, and corrective action if necessary. The remaining procedures in Revision 6 of the service bulletin are unchanged from Revision 3 of the service bulletin. The corrective action is replacing the broken part before further flight.

Revision 6 of the service bulletin also revises the overhaul threshold and the repetitive overhaul interval as follows (AD 90–17–19 required the repetitive overhaul):

- The initial overhaul threshold is the earlier of 8 years or a specified number of flight cycles. The number of flight cycles is either 6,000 or 9,000, depending on the airplane group specified in the service bulletin and the type and location of carriage originally installed.
- The repetitive overhaul interval is also the earlier of 8 years or the same specified number of flight cycles based on the same variables.

We have also reviewed Boeing Service Bulletin 747–27–2371, dated December 20, 2000, which applies only to Group 1 and Group 3 airplanes identified in Boeing Service Bulletin 747–27–2280, Revision 6. Boeing Service Bulletin 747–27–2371 describes procedures for replacing the link assemblies with new link assemblies made from improved corrosion-resistant steel (CRES) that has a bearing race that is machined into the link. Doing this replacement eliminates the need for the repetitive overhauls specified in Boeing Service Bulletin 747–27–2280, Revision 6, for that aft link only.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 90–17–19 and would retain certain requirements of the existing AD at revised intervals. This proposed AD would also require a repetitive inspection to detect a broken carriage spindle or broken aft link, and corrective action if necessary. The proposed AD would also include, for certain airplanes, procedures for replacing the link assemblies with new link assemblies made from improved CRES that has a bearing race that is machined into the link, which would end the need for the repetitive overhauls specified in Boeing Service Bulletin 747–27–2280, Revision 6, for that aft link only.

Changes to Existing AD

This proposed AD would retain certain requirements of AD 90–17–19. Since AD 90–17–19 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 90–17–19	Corresponding requirement in this proposed AD
paragraph A.	paragraph (f).
paragraph A.1.	paragraph (f).
paragraph A.2.	paragraph (f)(1).
paragraph A.3.	paragraph (f)(2).
paragraph A.4.	paragraph (f)(3).
paragraph A.5.	paragraph (f)(4).
paragraph B.	paragraph (g).

We have revised paragraph A.5. of AD 90–17–19 (paragraph (f)(4) of this proposed AD) to allow any part of both carriage spindle/aft link assemblies to be repaired according to data that conform to the airplane's type certificate and that are approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make such findings.

In this proposed AD, the "detailed visual inspection" specified in AD 90–17–19 is referred to as a "detailed inspection." We have included the definition for a detailed inspection in Note 1 of the proposed AD. We have also included the definition of a general visual inspection in Note 2 of this AD. That definition was not included in AD 90–17–19.

Costs of Compliance

There are about 925 airplanes of the affected design in the worldwide fleet, which includes 160 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Inspection and overhaul (required by AD 90–17–19).	Between 120 and 140, per flap per cycle.	$0	Between $9,600 and $11,200, per flap per overhaul cycle.	Between $1,536,000 and $1,792,000, per flap per cycle.
Repetitive inspection for broken parts (new proposed action).	2, per inspection cycle	0	$160, per inspection cycle	$25,600, per inspection cycle.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–6705 (55 FR 33280, August 15, 1990) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2008–0414; Directorate Identifier 2007–NM–095–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 12, 2008.

Affected ADs

(b) This AD supersedes AD 90–17–19.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from analysis that showed that additional inspections should be done to prevent the loss of a flap, and that the flight-hour-based interval should be revised to a flight-cycle-based interval, because the greatest loads on the spindles happen during takeoff and landing. We are issuing this AD to detect and correct failed carriage spindles or aft links for the inboard or outboard trailing edge flaps. Such failure could cause the flap to depart the airplane, reducing the flightcrew's ability to maintain the safe flight and landing of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Requirements of AD 90–17–19

Repetitive Inspections

(f) For all airplanes except those airplanes on which the repetitive overhauls required by paragraph B. of AD 90–17–19 are being accomplished as of the effective date of this AD: Prior to the accumulation of 30,000 flight hours or 8 years on each new or previously overhauled flap carriage spindle, whichever occurs first, remove the aft link and thrust collars from the trailing edge flaps' carriage spindles and perform a detailed inspection of all exposed surfaces of the carriage spindles, including inner bore, and aft links to detect cracking and corrosion, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2280, Revision 3, dated November 30, 1989.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

(1) If no cracking or corrosion is found, repeat the inspections required by paragraph (f) of this AD at intervals not to exceed 12 months until the carriage spindles are overhauled in accordance with paragraph (g) of this AD.

(2) If a cracked carriage spindle or aft link is found, prior to further flight, replace the part(s) in accordance with the service bulletin.

(3) If corrosion is found on any part of the carriage spindle/aft link assembly, but not on the other assembly on the same flap, perform a repetitive general visual inspection in accordance with the service bulletin at intervals not to exceed 2 months. Overhaul or replace corroded parts in accordance with the service bulletin within 36 months after detection of the corrosion.

(4) If corrosion is found on any part of both carriage spindle/aft link assemblies on the same flap, prior to further flight, overhaul or replace the part(s) in accordance with the service bulletin or repair in accordance with the procedures specified in paragraph (m) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Initial and Repetitive Overhauls

(g) *For all airplanes:* Prior to the accumulation of 8 years or 30,000 flight hours on any new or previously overhauled flap carriage spindle, whichever occurs later, remove the carriage spindle and aft link, and overhaul in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2280, Revision 3, dated November 30, 1989. Repeat the overhaul thereafter at intervals not to exceed 8 years or 30,000 flight hours, whichever occurs earlier. Accomplishment of initial overhaul required by this paragraph terminates the requirements of paragraph (f) of this AD.

New Requirements of This AD

Terminating Requirements

(h) The actions specified in paragraphs (i) and (j) of this AD must be accomplished in their entirety, at the specified compliance times, to terminate the requirements of paragraphs (f) and (g) of this AD. There is no terminating action for the requirements of paragraphs (i) and (j) of this AD.

Repetitive Inspection for Broken Parts

(i) *For all airplanes:* Within 12 months or 400 flight cycles after the effective date of this AD, whichever occurs earlier, do a general visual inspection of all eight carriage spindles and aft links to detect a broken carriage spindle or broken aft link, and do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 400 flight cycles. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008. For airplanes identified in Note (d) of Table 1 in paragraph 1.E., "Compliance," of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008, the initial compliance

time and repetitive interval for a flap may be extended to 1,000 flight cycles when new carriages are installed at both the inboard and outboard carriage locations on the flap.

Repetitive Overhauls

(j) *For all airplanes:* At the later of the times specified in paragraph (j)(1) or (j)(2) of this AD, remove the carriage spindle and aft link, and overhaul in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008. Repeat the overhaul thereafter at the applicable repeat interval specified in paragraph 1.E., "Compliance," of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008.

(1) The applicable threshold specified in paragraph 1.E. "Compliance," of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008.

(2) Within 48 months after the effective date of this AD.

Optional Terminating Action

(k) For Groups 1 and 3 airplanes identified in Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008: Replacing the existing 4340M aft link with a new corrosion resistant steel (CRES) aft link in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2371, dated December 20, 2000, terminates the repetitive inspection requirements of paragraph (f) of this AD, and the repetitive overhaul requirements of paragraphs (g) and (j) of this AD for that aft link only. The repetitive inspections for broken parts required by paragraph (i) of this AD cannot be terminated.

Credit for Previous Revision of Service Bulletin

(l) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 747–27–2280, Revision 4, dated April 26, 2001, are acceptable for compliance with the corresponding requirements of paragraphs (f) and (g) of this AD. Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 747–27–2280, Revision 5, dated April 5, 2007, are acceptable for compliance with the corresponding requirements of paragraphs (i) and (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) AMOCs approved previously in accordance with AD 90–17–19 are approved as AMOCs for the corresponding provisions of this AD.

(4) Adjustments to the compliance times approved previously in accordance with AD 90–17–19 are not approved for the corresponding provisions of this AD.

(5) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on April 18, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9122 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Jewelry, Precious Metals, and Pewter Industries

AGENCY: Federal Trade Commission (FTC or Commission)

ACTION: Extension of deadline for submission of public comments.

SUMMARY: The FTC is extending the deadline for filing public comments on a proposed amendment to the platinum section of the Guides for the Jewelry, Precious Metals, and Pewter Industries for an additional ninety (90) days.

DATES: Written comments must be received on or before August 25, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Jewelry Guides, Matter No. G711001" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two copies, to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H (Annex E), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area, and at the Commission, is subject to delay due to heightened security precautions.

Because U.S. postal mail is subject to delay due to heightened security measures, please consider submitting your comments in electronic form. Comments filed in electronic form (except comments containing any confidential material) should be submitted by clicking on the following: *https://secure.commentworks.com/ftc-jewelry* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at *https://secure.commentworks.com/ftc-jewelry*. If this Notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments will be available to the public on the FTC website, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, Attorney, (202) 326-3740, or Janice Podoll Frankle, Attorney, (202) 326-3022, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On February 26, 2008, the Commission published a request for comment on a proposed amendment to the platinum section of the Guides for the Jewelry, Precious Metals, and Pewter Industries[2] (Jewelry Guides or Guides). The

[1] Commission Rule 4.2(d), 16 CFR 4.2 (d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] 73 FR 10190 (February 26, 2008).

proposed amendment provides guidance on how to mark or describe non-deceptively products that contain at least 500 parts per thousand, but less than 850 parts per thousand, pure platinum and do not contain at least 950 parts per thousand platinum group metals. The Commission also sought comment on whether it should revise the Guides to provide guidance on how to mark or describe platinum-clad, filled, plated, or overlay products. The notice designated May 27, 2008 as the deadline for filing public comments.

Two trade associations that represent jewelry industry members, Platinum Guild International (PGI) and Jewelers Vigilance Committee (JVC), request a 90-day extension of the comment period. The associations explain that the Commission requested responses to 19 questions, that include over 20 subparts, and expressly requested submission of empirical data.[3] PGI states that the current deadline does not provide sufficient time to develop its comments and generate data to address the questions. JVC explains that the current period does not allow sufficient time for its Platinum Task Force[4] to collect the information required to fully address the issues.

Karat Platinum LLC, a marketer of platinum/base metal alloys, filed a comment opposing the request for extension. Karat Platinum asserts that additional time is not needed in order to fully and completely respond to the Commission's request for comment and that a delay will perpetuate market confusion. Karat Platinum states that the issues surrounding the appropriate terminology for this alloy are not new and many of the questions in the request for comment overlap with those posed in the Commission's 2005 FRN requesting comment on this issue.[5]

The Commission is mindful of the need to deal with this matter expeditiously. However, the Commission also recognizes that its proposal raises complex issues and believes that extending the comment period to facilitate the creation of a more complete record outweighs any harm that might result from any delay. Accordingly, the Commission has decided to extend the comment period to August 25, 2008.

[3] The notice includes 19 questions that have 27 sub-parts. *Id.*

[4] The JVC co-chairs this task force with two other industry trade associations, Manufacturing Jewelers and Suppliers of America and Jewelers of America.

[5] 70 FR 38836 (July 6, 2005).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–9171 Filed 4–25–08; 8:45 am]

[Billing Code 6750–01–S]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05–5–005]

Standards for Business Practices and Communication Protocols for Public Utilities

Issued April 21, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to incorporate by reference in its regulations the latest version (Version 001) of certain standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). NAESB's standards revise its Open Access Same-Time Information Systems (OASIS) business practice standards and four business practice standards relating to reliability issues, add new standards on transmission loading relief for the Eastern Interconnection and public key infrastructure, and add a new OASIS implementation guide.

DATES: Comments on the proposed rule are due May 28, 2008.

ADDRESSES: You may submit comments identified by Docket No. RM05–5–005, by one of the following methods:

- *Agency Web site: http://ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

Kay Morice (technical issues), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6507.

Ryan M. Irwin (technical issues), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6454.

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations under the Federal Power Act[1] to incorporate by reference the latest version (Version 001) of certain business practice standards concerning the Open Access Same-Time Information Systems (OASIS) and four business practice standards relating to reliability issues adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). These revised standards update earlier versions of these standards that the Commission previously incorporated by reference into its regulations at 18 CFR 38.2 in Order Nos. 676 and 676–B.[2] In addition, we propose to incorporate by reference NAESB's new standards on transmission loading relief for the Eastern Interconnection and public key infrastructure, and add a new OASIS implementation guide.

I. Background

NAESB

2. NAESB is a non-profit standards development organization established in January 2002 that serves as an industry forum for the development and promotion of business practice standards that promote a seamless marketplace for wholesale and retail natural gas and electricity.[3] Since 1995, NAESB and its predecessor, the Gas Industry Standards Board, have been accredited members of the American National Standards Institute (ANSI), complying with ANSI's requirements that its standards reflect a consensus of the affected industries.[4]

3. NAESB's standards include business practices that streamline the

[1] 16 U.S.C. 791a, *et seq.*

[2] *Standards for Business Practices and Communicotion Protocols for Public Utilities*, Order No. 676, 71 FR 26199 (May 4, 2006), FERC Stats. & Regs., Regulations Preambles ¶ 31,216 (Apr. 25, 2006), *reh'g denied*, Order No. 676–A, 116 FERC ¶ 61,255 (2006), Order No. 676–B, 72 FR 21095 (Apr. 30, 2007), FERC Stats. & Regs. ¶ 31,246 (Apr. 19, 2007).

[3] *See Standards for Business Practices ond Communication Protocols for Public Utilities*, Notice of Proposed Rulemaking, 72 FR 8318 (Feb. 27, 2007), FERC Stats. & Regs. ¶ 32,612 at P 3 (Feb. 20, 2007).

[4] *Id.*

transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports all four quadrants of the gas and electric industries—wholesale gas, wholesale electric, retail gas, and retail electric. All participants in the gas and electric industries are eligible to join NAESB and participate in standards development.[5]

4. NAESB's procedures are designed to ensure that all industry members can have input into the development of a standard, whether or not they are members of NAESB, and each standard NAESB adopts is supported by a consensus of the relevant industry segments.[6]

Order Nos. 676 and 676–B

5. In Order No. 676, with certain specified exceptions, the Commission incorporated by reference into its regulations at 18 CFR 38.2 the Version 000 OASIS Business Practice Standards adopted by NAESB in January 2005. In Order No. 676, the Commission also incorporated by reference into its regulations at 18 CFR 38.2 NAESB's OASIS Standards & Communication Protocols, OASIS Data Dictionary and four business practice standards related to reliability issues. Specifically, the business practice standards related to reliability issues are: Coordinate Interchange, WEQ–004, Version 000; Area Control Error (ACE) Equation Special Cases, WEQ–005, Version 000; Manual Time Error Correction, WEQ–006, Version 000; and Inadvertent Interchange Payback, WEQ–007, Version 000.

6. In Order No. 676, the Commission not only adopted business practice standards and communication protocols for the wholesale electric industry, it also established a formal ongoing process for reviewing and upgrading the Commission's OASIS standards and other wholesale electric industry business practice standards.[7]

7. In Order No. 676–B, the Commission incorporated by reference into its regulations at 18 CFR 38.2 the revised Coordinate Interchange Standards adopted by NAESB in June 2005.

NAESB's Version 001 Report

8. On December 26, 2007, NAESB filed a report informing the Commission that the NAESB WEQ had ratified WEQ Version 001 of its standards. These standards include several modifications to the existing business practice standards that the Commission incorporated by reference in Order Nos. 676 and 676–B, as well as creating new standards to provide additional functionality for OASIS transactions, transmission loading relief for the Eastern Interconnection, and public key infrastructure. Some of the standards subsequently were corrected by the WEQ and these minor corrections were applied to the Version 001 standards on November 16, 2007.[8] NAESB's WEQ Version 001 includes the following standards:

- Business Practices for Open Access Same-Time Information Systems (OASIS), Version 1.4 (WEQ–001);[9]
- Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communications Protocols, Version 1.4 (WEQ–002);
- OASIS Data Dictionary, Version 1.4 (WEQ–003);
- Coordinate Interchange (WEQ–004);[10]
- Area Control Error (ACE) Equation Special Cases (WEQ–005);
- Manual Time Error Correction (WEQ–006);
- Inadvertent Interchange Payback (WEQ–007);
- Transmission Loading Relief—Eastern Interconnection (WEQ–008);[11]
- Standards of Conduct for Electric Transmission Providers (WEQ–009);
- Contracts Related Standards (WEQ–010);
- Gas/Electric Coordination (WEQ–011);[12]
- Public Key Infrastructure (PKI) (WEQ–012); and
- Business Practices for Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.4 (WEQ–013).

II. Discussion

9. We propose generally to incorporate by reference the NAESB WEQ standards.[13] While many of the standards simply revise or update existing standards, some of the standards address new business practices. For example, NAESB adopted new business practice standards for Resales and Transfers to standardize

[5] *Id.* at P 4.

[6] *Id.* at P 5.

[7] In developing the original OASIS standards and communications protocols adopted in Order No. 889, and revised in subsequent orders, the Commission enlisted the assistance of two *ad hoc* industry working groups (the "How" Group and the "What" Group) that developed proposals for OASIS standards and communications protocols that the Commission reviewed, modified where appropriate, and ultimately adopted as Commission regulations and requirements. *See Open Access Same-Time Information System (OASIS) and Standards of Conduct*, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 at 31,588–89 & n. 13 (Apr. 24, 1996). In Order No. 676, this informal process was replaced by the more formal NAESB process, where NAESB, as an ANSI-approved standards development organization, adopted standards and requirements that were then reported to the Commission to consider and, following public comment, incorporate by reference into its regulations, where appropriate.

[8] The Version 001 standards do not include modifications of existing standards or new standards to support Order No. 890, the Commission's Final Rule amending the Commission's *pro forma* Open Access Transmission Tariff, *Preventing Undue Discrimination and Preference in Transmission Service*, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (Feb. 16, 2007), *order on reh'g*, Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (Dec. 28, 2007), *reh'g pending*, with the exception of modifications to resales and transfers to address the Commission's rules for resales described in Order No. 890 in P 815 and footnote 496.

[9] The WEQ Version 001 package of standards includes Version 1.4 of the OASIS Standards. The reference to Version 1.4 is based on the fact that this is the fourth set of revisions to the Version 1.0 OASIS Standards that the Commission adopted in Order No. 889. The Version 1.4 reference appears in Standards WEQ–001, WEQ–002, WEQ–003, and WEQ–013.

[10] In a Notice of Proposed Rulemaking (NOPR), being issued contemporaneously by the Commission in Docket No. RM08–7–000, the Commission proposes, pursuant to section 215 of the Federal Power Act, to approve six modified Reliability Standards submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). In the proceeding in Docket No. RM08–7–000, the Commission is addressing modified Reliability Standards, while in the instant proceeding, in Docket No. RM05–5–005, the Commission is addressing, among other matters, the business practice standards related to these Reliability Standards. Five of the modified Reliability Standards being addressed in the proceeding in Docket No. RM08–7–000 pertain to interchange scheduling and coordination and one pertains to transmission loading relief procedures. In addition, the Commission proposes, in the NOPR being issued in RM08–7–000, to approve NERC's proposed interpretation of five specific Requirements of Commission-approved Reliability Standards.

[11] *Id.*

[12] These standards are identical to the standards the Commission incorporated by reference into its regulations at 18 CFR 38.2 in Order No. 698. *Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities*, Order No. 698, 72 FR 38757 (July 16, 2007), FERC Stats. & Regs., Regulations Preambles 2006–2007 ¶ 31,251 (June 25, 2007), *order on clarification and reh'g*, Order No. 698–A, 121 FERC ¶ 61,264 (2007).

[13] We do not propose to incorporate by reference in the Commission's regulations the following standards: Standards of Conduct for Electric Transmission Providers (WEQ–009) and Contracts Related Standards (WEQ–010). We do not propose to incorporate these standards into the Commission's regulations because WEQ–009 contains no substantive standards and merely serves as a placeholder for future standards while WEQ–010 contains an optional NAESB contract regarding funds transfers. The Commission does not require utilities to use such contracts and thus, the Commission does not propose to incorporate this standard by reference. In addition, as discussed more specifically in note 22, *infra*, we do not propose to incorporate by reference certain portions of WEQ–001.

secondary transmission service on OASIS. These standards also standardize how Resales and Transfers are conducted off OASIS. NAESB also adopted public key infrastructure standards to create greater security for business transactions taking place over the Internet. In addition, NAESB has revised and added standards establishing business practices related to the NERC reliability standards.[14] In particular, NAESB has adopted standards governing transmission loading relief (TLR) that specify business practices for cutting transmission services in the event of a TLR, consistent with the NERC reliability standards. These standards are described more fully in the discussion below.

10. NAESB approved the standards under its consensus procedures.[15] Adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as a means to carry out policy objectives or activities.[16]

11. The Commission is also proposing, consistent with our regulation at 18 CFR 35.28(c)(vi), to require each electric utility to revise its open access transmission tariff (OATT) to include the Version 001 WEQ standards we are proposing to incorporate by reference herein. For standards that do not require implementing tariff provisions, the Commission is proposing to permit the utility to incorporate the WEQ standard by reference in its OATT. We are not, however, requiring a separate tariff filing to accomplish this change. Consistent with our prior practice, we are proposing to give public utilities the option of including these changes as part of an unrelated tariff filing.[17] However, consistent with our prior practice, we propose that, once the Commission incorporates these standards by reference into its regulations, public utilities must abide by these standards even before they have updated their tariffs to incorporate these changes.

A. OASIS Standards

12. In Standards WEQ–001, WEQ–002, and WEQ–003, NAESB revises the OASIS Standards currently incorporated by reference by the Commission. More specifically, in Standard WEQ–001, NAESB adopts new standards addressing Resale and Transfer transactions[18] that are consistent with the Commission's policies articulated in Order No. 890.[19]

13. In Order No. 890, the Commission adopted reforms to its underlying rules governing capacity reassignments. Specifically, the Commission required that all sales or assignments of capacity be conducted through or otherwise posted on the transmission provider's OASIS on or before the date the reassigned service commences.[20] The Commission directed transmission providers (working through NAESB) to develop the appropriate OASIS functionality to allow such postings and stated that transmission providers need not implement this new OASIS functionality and any related business practices until NAESB develops appropriate standards. These business practices and functionality have now been adopted by NAESB in Standard WEQ–001.

14. The WEQ's Standard WEQ–002 creates a new business practice standard requiring a Standards of Conduct link on the OASIS in response to the Commission's NOPR that preceded Order No. 676.[21] In addition, WEQ Standard WEQ–002 divides the OASIS Standards and Communications Protocols Document (S&CP Document) into two documents, thus separating the technical requirements (which remain in WEQ–002) from the business requirements (now found in WEQ–013). The WEQ's Standard WEQ–003 revises the OASIS Data Dictionary to include minor clarifications or corrections to the format, appearance, or descriptions of standards in standards documentation, as well as corrections and minor revisions that did not materially change a standard.

15. The WEQ's Standard WEQ–013 contains a new OASIS Implementation Guide. While this Standard condenses and incorporates the various OASIS S&CP Document business practices and requirements that formerly were found in WEQ–002 into a separate Implementation Guide, it makes no significant substantive changes to the prior standard.

16. In this NOPR, we propose to incorporate by reference all four of these OASIS-related business practice standards, as revised (*i.e.*, Standards WEQ–001, WEQ–002, WEQ–003, and WEQ–013).[22]

B. Public Key Infrastructure

17. In Version 001, NAESB has adopted new standards for secure communications over the public internet, Public Key Infrastructure (PKI)[23] (WEQ–012). These standards describe the requirements that Certification Authorities (CAs)[24] must meet to claim the electronic certificate that a CA issues meets the NAESB WEQ

[14] *See* note 10, *supra*.

[15] The WEQ's procedures ensure that all industry members can have input into the development of a business practice standard, whether or not they are members of NAESB, and each standard it adopts is supported by a consensus of the five industry segments: transmission, generation, marketer/brokers, distribution/load serving entities, and end users. Under the WEQ process, for a standard to be approved, it must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee with support from at least 40 percent of each of the five industry segments. For final approval, 67 percent of the WEQ's general membership must ratify the standards.

[16] Public Law No. 104–113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[17] *See* Order No. 676 at P 100.

[18] NAESB defines a "Resale" as "[t]he request to convey scheduling rights associated with a reservation for Point-to-Point Transmission Service from a Reseller to an Assignee." Standard WEQ–001.0.19. NAESB defines "Transfer" as a "[r]equest to convey *all* rights and obligations associated with a reservation for Point-to-Point Transmission Service from a Reseller to an Assignee." Standard WEQ–001–0.20.

[19] *See* Order No. 890, P 815 and n.496.

[20] *Id.*

[21] The types of information accessible from this link include Emergency Circumstances Deviations, Marketing and Energy Affiliate List, Shared Facilities, Organizational Charts and Job Descriptions, Common Employees, Potential Merger Partners, Transfers, Information Disclosure, Voluntary Consent to Share Non-Affiliated Customer Information, Discretionary Actions Under Tariff, Discounts, Chief Compliance Officer, and Written Procedures for Implementation.

[22] As we stated in Order No. 676, we are not proposing to incorporate by reference WEQ standards 001–0.1, 001–0.9 through 001–0.13, 001–1.0 through 001–1.8, and 001–9.7, because these standards merely restate Commission regulations and because standard 001–9.7 is not consistent with the Commission's policy on redirects.

[23] This PKI mechanism occurs through the use of extremely long prime numbers, called keys. Two keys are involved—a private key, which only the user has access to, and a public key, which can be accessed by anyone. The two keys work together so a message scrambled with the private key can only be unscrambled with the public key and vice versa. The more digits in these keys, the more secure the process. Similar to proving an identity through a handwritten signature offline, a digital signature is used to prove an identity online.

[24] A Certification Authority is a third-party entity that issues digital certificates used to create digital signatures and public-private key pairs. A Certification Authority plays a critical role in data security and electronic commerce since it is entrusted to guarantee that the two parties exchanging information are really who they claim to be.

PKI Standards and to conform to the NAESB Certification Program and, thus, be considered an Authorized Certification Authority (Authorized CA).[25] Providing security for transactions across the public internet is an important part of supporting energy markets and system reliability functions. Therefore, we propose to update our regulations at 18 CFR 38.2 to incorporate by reference Standard WEQ–012.

C. Business Standards to Coordinate With Reliability Standards

18. The WEQ has also adopted revisions to business practice standards addressing the business ramifications of certain reliability-related issues.

1. Coordinate Interchange

19. In Version 001 standards for Coordinate Interchange (WEQ–004), NAESB has made additional modifications to the Coordinate Interchange standards that the Commission incorporated by reference into its regulations in Order No. 676–B.[26] These modifications were made to account for a regional difference in the Western Electricity Coordinating Council regarding acceptable backup methods for creating a Request for Interchange, to provide for Purchasing-Selling Entity optional approval rights, to explain the terms "correctable" and "required," to clarify that tag data elements may be "not correctable" or "not required," and to make the element of "Energy Product Type" required. These modifications were made as a result of a joint effort of NERC and NAESB via the Joint Interchange Scheduling Working Group which is a committee of both NERC and NAESB participants.

20. We propose to update our regulations at 18 CFR 38.2 to incorporate by reference the Coordinate Interchange Standard WEQ–004, Version 001. However, we seek comment on two aspects of these standards. Standard 004–3.1 states that "[f]or Interchange where the sink is in the Western Interconnection for same day transactions, the last Purchasing-Selling Entity before the DC Tie in the Eastern Interconnection shall be responsible for submitting the e-Tag." This standard identifies only the last Purchasing-Selling Entity before the DC Tie in the Eastern Interconnection as being responsible for submitting the e-Tag Interchange when the sink is in the Western Interconnection. However, we request comment on whether, based on the NERC standards, this standard also should address whether a Generator Owner or Load Serving Entity may schedule directly to the DC Tie owner.

21. Additionally, Standard 004–6.1.2 states that "[i]f the PSE, LSE, and GPE do not respond to a request from the Interchange Authority, the Interchange is considered passively approved." While confirmation by silence is a common business practice eliminating unnecessary communications, we request comment on whether this is appropriate for a business practice intended to complement a reliability standard.

2. Area Control Error (ACE) Equation Special Cases

22. In the Version 001 standards for Area Control Error (ACE) Equation Special Cases (WEQ–005), NAESB has made only minor modifications to the standards to number the definitions and make other minor edits. We propose to update our regulations at 18 CFR 38.2 to incorporate by reference this revised standard in lieu of the current version of this standard.

3. Manual Time Error Correction

23. In the Version 001 standards for Manual Time Error Correction (WEQ–006), NAESB has made changes to remove references to the Electric Reliability Council of Texas (ERCOT), to make minor corrections to the standards for the Western Interconnection, and to make other minor modifications including numbering the definitions. We propose to update our regulations at 18 CFR 38.2 to incorporate by reference this revised standard in lieu of the current version of this standard.

4. Inadvertent Interchange Payback

24. In the Version 001 standards for Inadvertent Interchange Payback (WEQ–007), NAESB has made changes to remove references to ERCOT and make other minor modifications including numbering the definitions. We propose to update our regulations at 18 CFR 38.2 to incorporate by reference this revised standard in lieu of the current version of this standard.

5. Transmission Loading Relief

25. In Version 001, NAESB has adopted new standards for Transmission Loading Relief—Eastern Interconnection (WEQ–008). NAESB states that these business practice standards are intended to be complementary to the NERC reliability standards INT–004–1—Reliability Coordination—Operations Planning and INT–006–4—Reliability Coordination—Transmission Loading Relief.[27] NAESB reports that its Transmission Loading Relief (TLR) business practice standards are the result of a multi-year joint effort of the NERC Transmission Loading Relief Drafting Team and the NAESB WEQ Business Practices Subcommittee to split the existing NERC Transmission Loading Relief reliability standards into reliability and business practice components. In addition, NAESB states that the NAESB WEQ TLR standards have been further modified to allow for regional differences for market flows.[28] The NAESB WEQ TLR standards include general requirements regarding the use of Interconnection-wide TLR procedures; [29] Interchange Transaction [30] priorities for use with Interconnection-wide TLR procedures; the Eastern Interconnection procedure for physical curtailment of Interchange Transactions; appendices with various

[25] On achieving NAESB certification, NAESB will provide NERC with the names of Authorized CAs. The Authorized CA may immediately display the NAESB certification mark and will be authorized to claim compliance with NAESB WEQ PKI Standards. All industry applications (e.g., OASIS) secured under these PKI Standards must permit access to any legitimate user that presents a valid electronic certificate issued by an Authorized CA.

[26] The revised Coordinate Interchange standards were designed to facilitate the transfer of electric energy between entities responsible for balancing load and generation. Also, the revised Coordinate Interchange standards were intended to be compatible with the NERC Interchange Scheduling and Coordination Reliability Standards that the Commission approved in Order No. 693, *Mandatory Reliability Standards for the Bulk-Power System*, 72 FR 16416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, at P 961–65 (2007), *order on reh'g*, Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[27] NERC filed a petition seeking approval of its related proposed reliability standards, IRO–006–4—Reliability Coordination—Transmission Loading Relief, with the Commission in Docket No. RM08–7–000. We believe that NAESB's reference to INT–006–4 should be a reference to IRO–006–4. We also believe that the proper subject of INT–004–1 is "Dynamic Interchange Transaction Modifications," rather than "Reliability Coordination—Operations Planning."

[28] Market flows are the calculated energy flows on a specified Flowgate as a result of the dispatch of generating resources within a Market-Based Operating Entity's market. NAESB defines "Flowgate" as a "designated point of the transmission system through which the Interchange Distribution Calculator calculates the power flow from Interchange Transactions." The treatment of the market flows of regional transmission organizations compared with the treatment of generation-to-load impacts of non-market entities as they relate to the use of TLRs has been addressed by the Commission in a number of cases, including Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 987, *Alliance Companies*, 100 FERC ¶ 61,137 (2002) and *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,251 (2004).

[29] NAESB defines "Transmission Loading Relief" (TLR) as "[a] procedure used in the Eastern Interconnection to relieve potential or actual loading on a Constrained Facility or Flowgate." Standard WEQ–008–0.40.

[30] NAESB defines an "Interchange Transaction" as "[a] transaction that crosses one or more Balancing Authorities' boundaries. The planned energy exchange between two adjacent Balancing Authorities." Standard WEQ–008–0.19.

examples; and an appendix specifying regional differences for PJM Interconnection, L.L.C./Midwest Independent System Operator, Inc. and for Southwest Power Pool.

26. The Commission seeks to ensure that the NAESB WEQ TLR business practice standards and the proposed NERC TLR reliability standard complement each other and can be implemented together harmoniously. Therefore, we propose to update our regulations at 18 CFR 38.2 to incorporate by reference Standard WEQ–008. We invite comment on this proposal.

27. While we understand that NAESB and NERC have worked collaboratively to coordinate their standard development efforts, there appear to be several occasions in the TLR standards in which the definitions used by the two depart. The following are some examples:

NAESB definition	NERC definition [31]
Balancing Authority Area: [a]n electrical system bounded by Interconnection (tie-line) metering and telemetry, where the Balancing Authority controls (either directly or by contract) generation to maintain its Interchange Schedule with other Balancing Authority Areas and contributes to frequency regulation of the Interconnection.	Balancing Authority Area: [t]he collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.
Interchange Transaction: [a] transaction that crosses one or more Balancing Authorities' boundaries. The planned energy exchange between two adjacent Balancing Authorities.	Interchange Transaction: [a]n agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.
Reliability Coordinator: [a]n entity that provides the security assessment and emergency operations coordination for a group of Balancing Authorities, Transmission Service Providers, and Transmission Operators.	Reliability Coordinator: [t]he entity that is the highest level of authority who is responsible for the reliable operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator's vision.

28. There also appear to be some instances in various NAESB standards where the same term is defined differently. For example, the definition of Balancing Authority in Standard WEQ–004–0.3 is not identical to the definition of that same term in Standard WEQ–008–0.4. As the Commission stated in Order No. 676, the standards relating to reliability would be clearer if a single definition were used. Although in Order No. 676 the Commission generally found that NERC should take the lead in defining reliability-related terms,[32] we recognize that good reasons may exist in certain cases for some differences in these terms. We therefore request comment on whether the differences in definitions are significant and whether a single definition for reliability-related terms should be adopted in future standards.

III. Notice of Use of Voluntary Consensus Standards

29. The NAESB WEQ standards were adopted pursuant to NAESB's consensus procedures.[33] As the Commission found in Order No. 676, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as a means to carry out policy objectives or activities.[34]

30. Office of Management and Budget Circular A–119 (section 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference a voluntary consensus standard developed by the WEQ.

IV. Information Collection Statement

31. The following collection(s) of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB Control number.

32. The following burden estimate is based on the projected costs for the industry to implement revisions to the WEQ Standards currently incorporated by reference into the Commission's regulations at 18 CFR 38.2 and to implement the new standards adopted by NAESB that we propose here to incorporate by reference.

[31] Glossary of Terms Used in Reliability Standards, *ftp://www.nerc.com/pub/sys/all_updl/standards/rs/Glossary_02Aug06.pdf.*

[32] Order No. 676 at P 40.

[33] This process is described in note 15, *supra.*

[34] Public Law 104–113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

Data collection	Nunber of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–516	176	1	6	1056
FERC–717	176	1	10	1760
Totals				2816

Total Annual Hours for Collection: (Reporting and Recordkeeping, (if appropriate)) = 2816 hours.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:[35]

	FERC–516	FERC–717
Annualized Capital/Startup Costs	$337,920	$563,200
Annualized Costs (Operations & Maintenance)	N/A	
Total Annualized Costs	337,920	563,200

33. OMB regulations[36] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: Standards for Business Practices and Communication Protocols for Public Utilities (*formerly* Open Access Same Time Information System) (FERC–717); Electric Rate Schedule Filings (FERC–516).

Action: Proposed collection.

OMB Control No.: 1902–0096 (FERC–516); 1902–0173 (FERC–717).

Respondents: Business or other for profit, (Public Utilities—Not applicable to small businesses.)

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of the Information: This proposed rule, if implemented would upgrade the Commission's current business practice and communication standards. Specifically, these standards include several modifications to the existing business practice standards as well as creating new standards to provide additional functionality for OASIS transactions, transmission loading relief and public key infrastructure. The standards will assist in providing greater security for business transactions over the Internet, identify the business practices to be used to relieve potential or actual loading on a constrained facility and facilitate the transfer of electric energy between entities responsible for balancing load and generation. These practices will ensure that potential customers of open access transmission service receive access to information that will enable them to obtain transmission service on a non-discriminatory basis and will assist the Commission in maintaining a safe and reliable infrastructure and also will assure the reliability of the interstate transmission grid. The implementation of these standards and regulations is necessary to increase the efficiency of the wholesale electric power grid.

34. The information collection requirements of this proposed rule are based on the transition from transactions being made under the Commission's existing business practice standards to conducting such transactions under the proposed revisions to these standards and to account for the burden associated with the new standard(s) being proposed here (*i.e.*, WEQ–008 and WEQ–012).

35. *Internal Review:* The Commission has reviewed the revised business practice standards and has made a preliminary determination that the proposed revisions are necessary to maintain consistency between the business practice standards and reliability standards on this subject. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

36. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426. Tel: (202) 502–8415 / Fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov.*

37. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285].

V. Environmental Analysis

38. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[37] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[38] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.[39] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

[35] The total annualized costs for the information collection is $901,120. This number is reached by multiplying the total hours to prepare responses (2,816) by an hourly wage estimate of $320 (a composite estimate that includes legal, technical and support staff rates, $200 + $95 + $25=$320), 2,816 hours × $320/hour= $901,120.

[36] 5 CFR 1320.11.

[37] Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶30,783 (1987).

[38] 18 CFR 380.4.

[39] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

VI. Regulatory Flexibility Act Certification

39. The Regulatory Flexibility Act of 1980 (RFA)[40] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on public utilities, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses.

40. The Commission has followed the provisions of both the RFA and the Paperwork Reduction Act on potential impact on small business and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to be considered in a rulemaking to lessen the impact on small entities: Tiering or establishment of different compliance or reporting requirements for small entities, classification, consolidation, clarification or simplification of compliance and reporting requirements, performance rather than design standards, and exemptions. As the Commission originally stated in Order No. 889, the OASIS regulations now known as Standards for Business Practices and Communication Protocols for Public Utilities, apply only to public utilities that own, operate, or control transmission facilities subject to the Commission's jurisdiction and should a small entity be subject to the Commission's jurisdiction, it may file for waiver of the requirements. This is consistent with the exemption provisions of the RFA. Accordingly, pursuant to section 605(b) of the RFA,[41] the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VII. Comment Procedures

41. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due May 28, 2008. Comments must refer to Docket No. RM05–5–005, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

42. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

43. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

44. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

45. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.[42]

46. User assistance is available for eLibrary and the FERC's web site during our normal business hours. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

List of Subjects in 18 CFR Part 38

Conflict of interests, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By direction of the Commission.

Commissioner Wellinghoff concurring with a separate statement attached.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, part 38 of the *Code of Federal Regulations*, as follows:

PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

1. The authority citation for part 38 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 38.2, paragraphs (a)(1) through (8) are revised, and paragraphs (a)(9) through (11) are added to read as follows:

§ 38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) * * *

(1) Business Practices for Open Access Same-Time Information Systems (OASIS), Version 1.4 (WEQ–001, Version 001, October 31, 2007, with minor corrections applied on November 16, 2007) with the exception of Standards 001–0.1, 001–0.9 through 001–0.13, 001–1.0 through 001–1.8, and 001–9.7;

(2) Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols, Version 1.4 (WEQ–002, Version 001, October 31, 2007, with minor corrections applied on November 16, 2007);

(3) Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.4 (WEQ–003, Version 001, October 31, 2007, with minor corrections applied on November 16, 2007);

(4) Coordinate Interchange (WEQ–004, Version 001, October 31, 2007, with minor corrections applied on November 16, 2007);

(5) Area Control Error (ACE) Equation Special Cases (WEQ–005, Version 001, October 31, 2007, with minor corrections applied on November 16, 2007);

(6) Manual Time Error Correction (WEQ–006, Version 001, October 31, 2007, with minor corrections applied on November 16, 2007);

(7) Inadvertent Interchange Payback (WEQ–007, Version 001, October 31, 2007, with minor corrections applied on November 16, 2007);

(8) Transmission Loading Relief—Eastern Interconnection (WEQ–008, Version 001, October 31, 2007, with minor corrections applied on November 16, 2007);

(9) Gas/Electric Coordination (WEQ–011, Version 001, October 31, 2007, with minor corrections applied on November 16, 2007);

(10) Public Key Infrastructure (PKI) (WEQ–012, Version 001, October 31,

[40] 5 U.S.C. 601–612.

[41] 5 U.S.C. 605(b).

[42] NAESB's Dec. 26, 2007, submittal is also available for viewing in eLibrary. The link to this file is as follows: *http://elibrary.ferc.gov:0/idmws/doc_info.asp?document_id=13566661*.

2007, with minor corrections applied on November 16, 2007);

(11) Business Practices for Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.4 (WEQ–013, Version 001, October 31, 2007, with minor corrections applied on November 16, 2007).

* * * * *

Note: The following statement will not appear in the Code of Federal Regulations.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–5–005]

Standards for Business Practices and Communication Protocols for Public Utilities

April 21, 2008.

WELLINGHOFF, Commissioner, *concurring:*

Today, the Commission issues a Notice of Proposed Rulemaking (NOPR) proposing to amend its regulations under the Federal Power Act [43] to incorporate by reference, among other matters, the latest version of certain business practice standards concerning the Open Access Same-Time Information Systems (OASIS) adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB).[44] I appreciate NAESB's leadership and the work of the industry in developing these business practice standards.

One of the business practice standards addressed in this NOPR, WEQ–001 Version 1.4, revises NAESB's Business Practices for OASIS and, among other matters, addresses the information that is to be posted on OASIS. This information includes posting of ancillary service offerings and prices and the process for customers to procure ancillary services.

I write separately to note that in Order No. 890, the Commission determined that many ancillary services may be provided by generating units as well as other non-generation resources such as demand resources where appropriate.[45] Nothing in WEQ–001 precludes such a role for demand resources, but the definition of certain ancillary services in the standard also does not specifically reflect that possible role.

To remove any confusion between the *pro forma* tariff that the Commission adopted in Order No. 890 and the business practice standards for offering and procuring ancillary services on OASIS, I encourage NAESB and its stakeholders to amend WEQ–001, as soon as possible, to reflect that the above-noted ancillary services may be provided by non-generation resources such as demand resources. This will facilitate implementation of this aspect of the *pro forma* OATT.

For this reason, I concur with this NOPR.

Jon Wellinghoff,
Commissioner.

[FR Doc. E8–9046 Filed 4–25–08; 8:45 am]

BILLING CODE 6717–01–P

[43] 16 U.S.C. 791a, *et. seq.*

[44] In addition, the Commission proposes in this NOPR to incorporate by reference NAESB's new business practices standards on transmission loading relief (TLR) for the Eastern Interconnection. I note my concurrence to the separate, concurrently issued NOPR in Docket No. RM08–7–000, in which the Commission proposes to approve, among other matters, modified Reliability Standard IRO–006–4 pertaining to TLR procedures to which the NAESB business practice we address herein relates.

[45] *See* Order No. 890 at P 888 (addressing the following ancillary services: Reactive Supply and Voltage Control, Regulation and Frequency Response, Energy Imbalances, Spinning Reserves, Supplemental Reserves, and Generator Imbalances (Schedules 2, 3, 4, 5, 6, and 9, respectively, of the *pro forma* OATT)).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08–7–000]

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards

Issued April 21, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission proposes to approve six modified Reliability Standards submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). Five modified Reliability Standards pertain to interchange scheduling and coordination and one pertains to transmission loading relief procedures. In addition, the Commission proposes to approve NERC's proposed interpretations of five specific requirements of Commission-approved Reliability Standards.

DATES: Comments are due June 12, 2008.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- *Agency Web Site: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Patrick Harwood (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Christopher Daignault (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Federal Energy Regulatory Commission (Commission) proposes to approve six modified Reliability Standards submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). Five modified Reliability Standards pertain to interchange scheduling and coordination, and one pertains to transmission loading relief procedures.[2] In addition, the Commission proposes to approve NERC's proposed interpretations of five specific requirements of Commission-approved Reliability Standards.

I. Background

A. EPAct 2005 and Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[3]

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO[4] and, subsequently, certified NERC as the ERO.[5] On April 4, 2006, as modified on August 28, 2006, NERC submitted to the Commission a petition seeking approval of 107 proposed Reliability Standards. On March 16, 2007, the Commission issued a final rule, Order No. 693, approving 83 of these 107 Reliability Standards and directing other action related to these Reliability Standards.[6] In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to 56 of the 83 approved Reliability Standards.[7]

[1] 16 U.S.C. 824o (Supp. V 2005).

[2] The Commission is not proposing any new or modified text to its regulations. Rather, as set forth in 18 CFR Part 40, a proposed Reliability Standard will not become effective until approved by the Commission, and the ERO must post on its Web site each effective Reliability Standard. .

[3] See FPA 215(e)(3), 16 U.S.C. 824o(e)(3) (Supp. V 2005).

[4] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[5] *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g & compliance*, 117 FERC ¶ 61,126 (ERO Rehearing Order) (2006), *appeal docketed sub nom. Alcoa, Inc.* v. *FERC*, No. 06–1426 (D.C. Cir. Dec. 29, 2006).

[6] *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[7] 16 U.S.C. 824o(d)(5) (Supp. V 2005). Section 215(d)(5) provides, "The Commission * * * may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard

Continued

4. In April 2007, the Commission approved delegation agreements between NERC and each of the eight Regional Entities, including the Western Electricity Coordinating Council (WECC).[8] Pursuant to such agreements, the ERO delegated responsibility to the Regional Entities to carry out compliance monitoring and enforcement of the mandatory, Commission-approved Reliability Standards. In addition, the Commission approved as part of each delegation agreement a Regional Entity process for developing regional Reliability Standards.

5. NERC's Rules of Procedure provide that a person that is "directly and materially affected" by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[9] The ERO's "standards process manager" will assemble a team with relevant expertise to address the clarification and also form a ballot pool. NERC's Rules provide that, within 45 days, the team will draft an interpretation of the Reliability Standard, with subsequent balloting. If approved by ballot, the interpretation is appended to the Reliability Standard and filed with the applicable regulatory authority for regulatory approval.

B. NERC Filings

6. This rulemaking proceeding consolidates and addresses three NERC filings.

7. On December 19, 2007, NERC submitted for Commission approval interpretations of requirements in four Commission-approved Reliability Standards: BAL–001–0 (Real Power Balancing Control Performance), Requirement R1; BAL–003–0 (Frequency Response and Bias), Requirement R3; BAL–005–0 (Automatic Generation Control), Requirement R17; and VAR–002–1 (Generator Operation for Maintaining Network Voltage Schedules), Requirements R1 and R2.[10]

8. On December 21, 2007, NERC submitted for Commission approval modifications to Reliability Standard IRO–006–4 (Reliability Coordination—Transmission Loading Relief) that applies to balancing authorities, reliability coordinators, and transmission operators. NERC states that the modifications "extract" from the Reliability Standard the business practices and commercial requirements from the current IRO–006–3 Reliability Standard. The business practices and commercial requirements have been transferred to a North American Energy Standards Board (NAESB) business practices document. The NAESB business practices and commercial requirements have been included in Version 001 of the NAESB Wholesale Electric Quadrant (WEQ) Standards which NAESB filed with the Commission on the same day, December 21, 2007.[11] Further, NERC states that the modified Reliability Standard includes changes directed by the Commission in Order No. 693 related to the appropriateness of using the transmission loading relief (TLR) procedure to mitigate violations of interconnection reliability operating limits (IROLs).[12]

9. On December 26, 2007, NERC submitted for Commission approval modifications to five Reliability Standards from the "Interchange Scheduling" group of Reliability Standards: INT–001–3 (Interchange Information); INT–004–2 (Dynamic Interchange Transaction Modifications); INT–005–2 (Interchange Authority Distributes Arranged Interchange); INT–006–2 (Response to Interchange Authority); and INT–008–2 (Interchange Authority Distributes Status). NERC states that the modifications to INT–001–3 and INT–004–2 eliminate waivers requested in 2002 under the voluntary Reliability Standards regime for entities in the WECC region. According to NERC, modifications to INT–005–2, INT–006–2, and INT–008–2 adjust reliability assessment time frames for proposed transactions within WECC.[13]

10. Each Reliability Standard that the ERO proposes to interpret or modify in this proceeding was approved by the Commission in Order No. 693.

II. Discussion

11. The Commission discusses below the ERO's proposed interpretations and proposed modifications, and the Commission's proposed disposition of each.

A. NERC's December 19, 2007 Filing: Interpretations

12. As mentioned above, NERC submitted for Commission approval interpretations of four Commission-approved Reliability Standards.

1. BAL–001–0–Real Power Balancing Control Performance and BAL–003–0–Frequency Response and Bias

a. Background

i. Reliability Standard BAL–001–0

13. The purpose of Reliability Standard BAL–001–0 is to maintain interconnection steady-state frequency within defined limits by balancing real power demand and supply in real-time.[14] Requirement R1 of BAL–001–0 defines the limits on area control error (ACE), which essentially is the mismatch between generation and load (*i.e.*, the mismatch between supply and demand) within the footprint of a balancing authority, measured by the difference between the balancing authority's net actual interchange and scheduled interchange with neighboring balancing authorities, after taking into account effects of deviations in interconnection frequency.[15] The ability to constantly match load and generation within a certain tolerance directly affects the electrical state and control of the Bulk-Power System.[16] Each balancing authority thus monitors the extent of its ACE in real-time and takes appropriate action also in real-time to rebalance supply and demand.[17] Requirement R1 obliges each balancing authority, on a rolling twelve-month

or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section."

[8] *See North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

[9] NERC Rules of Procedure, Appendix 3A (Reliability Standards Development Procedure), at 26–27.

[10] In its filing, NERC identifies the Reliability Standards together with NERC's proposed interpretations as BAL–001–0a, BAL–003–0a, BAL–005–0a, and VAR–002–1a.

[11] NAESB December 21, 2007 Filing, Docket No. RM05–5–005.

[12] An IROL is a system operating limit that, if violated, could lead to instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the Bulk-Power System.

[13] The proposed, modified Reliability Standard addressed in this notice of proposed rulemaking is available on the Commission's eLibrary document retrieval system in Docket No. RM08–7–000 and also on NERC's Web site, *http://www.nerc.com.*

[14] See Reliability Standard BAL–001–0. Each Reliability Standard developed by the ERO includes a "Purpose" statement.

[15] Generally, a balancing authority within an interconnection has an obligation to do its part to maintain the desired 60 Hertz (Hz) frequency. To achieve this, each balancing authority must keep its generation output (including net imports from neighboring balancing authorities) and load in balance within its footprint. A deviation from the 60 Hz baseline system frequency signals an imbalance in supply and demand. To prevent this imbalance from propagating throughout the interconnection, steps are taken to adjust regulating reserves (generation output and demand-side management) in response to deviations from the 60 Hz optimum. *See North American Electric Reliability Corp.*, 121 FERC ¶ 61,179, at P 17 (2007) (November 16, 2007 Order).

[16] If generation and load is not matched within a balancing authority's area, the resulting imbalance could result in an undue burden on adjacent balancing authorities and, if additional contingencies from disturbances are experienced, may compromise the ability of the Bulk-Power System to recover from those disturbances. *See* November 16, 2007 Order, 121 FERC ¶ 61,179 at P 28.

[17] *See* November 16, 2007 Order, 121 FERC ¶ 61,179 at P 20.

basis, to maintain its clock-minute averages of ACE within a specific limit.

14. A supply/demand imbalance between the interconnection's generation output (including net imports) and load on a real-time basis will result in a deviation from the desired 60 Hz optimum operating frequency of the interconnection. All of the balancing authorities within an interconnection must work together to correct a deviation.[18] They do this by including a frequency bias component in their ACE calculation which indicates how many more or fewer megawatts a balancing authority would have interchanged with neighboring balancing authorities if the actual frequency had been exactly maintained so as to equal to the scheduled frequency. Thus, balancing authorities calculate what their total interchange would have been if the actual frequency had been exactly maintained so as to equal to the scheduled frequency. With this information, the balancing authority can increase or decrease generation within the balancing authority's area to maintain the correct scheduled interchange. The total supply and the demand within an interconnection is balanced by the collective effort of all the balancing authorities in that interconnection to maintain the correct scheduled interchange. In this manner, frequency deviations are minimized, thereby protecting reliability without causing undue burden on any balancing authorities.

ii. Reliability Standard BAL–003–0

15. The purpose of Reliability Standard BAL–003–0 is to provide a consistent method for calculating the frequency bias component of ACE. To accomplish this purpose, it is necessary to rely on historic data from a balancing authority's automatic generation control.[19] Automatic generation control is the equipment that calculates ACE on an ongoing basis and serves as a "governor" that adjusts a balancing authority's generation, and demand-side resources where available, from a central location to minimize unscheduled interchange with its neighboring balancing authorities in order to balance ACE. There are several ways that automatic generation control could be set to balance the supply and demand within the balancing authority area. One method is called the "tie-line frequency bias" mode of operation. Collective operation in this mode allows balancing authorities' automatic generation control to calculate ACE and adjust the generation in the balancing authority area in a manner that maintains the interconnection frequency and does not result in an undue burden for any balancing authority. In addition, operation in this mode allows a balancing authority to continuously collect its tie-line and frequency data that must be used when the balancing authority annually reviews the frequency bias component of its ACE calculation as specified by BAL–003–0. Requirement R3 of BAL–003–0 requires the use of the tie-line frequency bias mode of operation of automatic generation control, unless such operation is adverse to system interconnection reliability.

b. NERC's Proposed Interpretations

16. NERC further states that, on June 1, 2007, WECC requested that NERC provide a formal interpretation that addresses Requirement R1 of BAL–001–0 and Requirement R3 of BAL–003–0. In particular, WECC asked whether the use of WECC's existing automatic time error correction procedure, which is currently proposed as a regional Reliability Standard, violates Requirement R1 of BAL–001–0 or Requirement R3 of BAL–003–0.

i. Reliability Standard BAL–001–0

17. Requirement R1 of BAL–001–0 provides:

> Each Balancing Authority shall operate such that, on a rolling 12-month basis, the average of the clock-minute averages of the Balancing Authority's Area Control Error (ACE) divided by 10B (B is the clock-minute average of the Balancing Authority Area's Frequency Bias) times the corresponding clock-minute averages of the Interconnection's Frequency Error is less than a specific limit. This limit ε_1^2 is a constant derived from a targeted frequency bound (separately calculated for each Interconnection) that is reviewed and set as necessary by the NERC Operating Committee.

18. NERC's proposed interpretation of BAL–001–0 Requirement R1 reads:

- The [WECC automatic time error correction or WATEC] procedural documents ask Balancing Authorities to maintain raw ACE for [control performance standard or CPS] reporting and to control via WATEC-adjusted ACE.
- As long as Balancing Authorities use raw (unadjusted for WATEC) ACE for CPS reporting purposes, the use of WATEC for control is not in violation of BAL–001 Requirement 1. (NERC December 19, 2007 Filing, Ex. A–2.)

19. As context to its interpretation, NERC explains that BAL–001–0 uses a formula for the ACE calculation equal to the difference in actual and scheduled interchange, less a component based on the frequency bias to adjust for the difference in actual and scheduled frequency, less the meter error.[20] NERC also explains that the WECC automatic time error correction procedure uses the same formula for ACE as defined in BAL–001–0 except with two additional components.[21]

20. NERC maintains that the use of the WECC automatic time error correction procedure for control does not result in a violation of BAL–001–0 Requirement 1, provided that (1) WECC's balancing authorities use the raw and unadjusted ACE for control performance reporting purposes and (2) the raw, unadjusted ACE complies with Requirement R1.

ii. Reliability Standard BAL–003–0

21. Requirement R3 of BAL–003–0 provides:

> Each Balancing Authority shall operate its Automatic Generation Control (AGC) on Tie Line Frequency Bias, unless such operation is adverse to system or Interconnection Reliability.

NERC's proposed interpretation of BAL–003–0 Requirement R3 reads:

- Tie-Line Frequency Bias is one of the three foundational control modes available in a Balancing Authority's energy management system. (The other two are flat-tie and flat-frequency.) Many Balancing Authorities layer other control objectives on top of their basic control mode, such as automatic inadvertent payback, [control performance standard] optimization, time control (in single [balancing authority] interconnections).[22]
- As long as Tie-Line Frequency Bias is the underlying control mode and CPS1 is measured and reported on the associated ACE equation,[23] there is no violation of BAL–003–0 Requirement 3: $ACE = (NI_A - NI_S) - 10B (F_A - F_S) - I_{ME}$ (NERC December 19, 2007 Filing, Ex. A–3.)

[18] *See* id. P 31.

[19] Automatic generation control refers to an automatic process whereby a balancing authority's mix and output of its generation and demand-side management is varied to offset the extent of supply and demand imbalances reflected in its ACE. November 16, 2007 Order, 121 FERC ¶ 61,179 at P 19 n.14.

[20] *See* NERC December 19, 2007 Filing at 8–9.

[21] *See id.*

[22] The "flat frequency" control mode would increase or decrease generation solely based on the interconnection frequency. The "flat tie" mode would increase or decrease generation within a balancing authority area depending solely on that balancing authority's total interchange. The "tie-line frequency bias" mode combines the flat frequency and flat tie modes and adjusts generation based on the balancing authority's net interchange and the interconnection frequency.

[23] "CPS1" refers to Requirement R1 of BAL–001–0.

22. NERC explains that there is no violation of BAL–003–0 Requirement R3, provided that a balancing authority uses the tie-line frequency bias mode as the underlying control mode and the control performance standard (CPS1), per BAL–001–0 Requirement R1, is measured and reported on the associated ACE equation.

c. Commission Proposal

23. The Commission proposes to approve the ERO's formal interpretation of Requirement R1 of BAL–001–0 and Requirement R3 of BAL–003–0.

24. The ERO's interpretation is reasonable because it clarifies that raw ACE must be used in NERC compliance reporting. Reporting of raw ACE is essential because a balancing authority could exceed ACE limits in BAL–001–0 if allowed to report an adjusted ACE that adds or subtracts amounts from the equation. This interpretation upholds the reliability goal of BAL–001–0, Requirement R1 to minimize the frequency deviation of the interconnection by constantly balancing supply and demand. The interpretation also clarifies that an entity may use automatic generation control modes layered on top of the tie-line frequency bias mode as long as the raw ACE is used in NERC compliance reporting. This would permit WECC to implement more stringent time error correction procedures that rely on additional control modes layered on top of the tie-line frequency bias mode of automatic generation control, provided they do not report adjusted ACE which, if reported, could produce ambiguous data used for frequency bias calculations. The interpretation maintains the goal of BAL–003–0, Requirement R3, by providing accurate historic data for frequency bias calculations and by using ACE calculations in automatic generation control that will adjust the generation, or demand-side resources where available, in the balancing authority area in a manner that maintains the interconnection frequency and does not result in an undue burden for any balancing authority. The Commission proposes to approve the ERO's interpretation based on the understanding that a balancing authority, in operating automatic generation control, must use tie-line frequency bias as its underlying control mode unless to do so is adverse to system or interconnection reliability.

25. In Order No. 693, the Commission stated that, according to the available data, the WECC automatic time error correction procedure is more effective in minimizing time error corrections and inadvertent interchange than the Reliability Standard BAL–004–0.[24] Therefore, the ERO's interpretation provides balancing authorities using the WECC automatic time error correction procedure with necessary clarification and certainty in accordance with the continent-wide Reliability Standards BAL–001–0 and BAL–003–0. Accordingly, this interpretation appears to be just, reasonable, not unduly discriminatory or preferential, and in the public interest.

2. BAL–005–0—Automatic Generation Control

a. NERC's Proposed Interpretation

26. Requirement R17 of Reliability Standard BAL–005–0 (Automatic Generation Control) is intended to annually check and calibrate the time error and frequency devices under the control of the balancing authority that feed data into automatic generation control necessary to calculate ACE. Requirement R17 mandates that the balancing authority must adhere to an annual calibration program for time error and frequency devices. The Requirement states that a balancing authority must adhere to minimum accuracies in terms of ranges specified in Hertz, volts, amps, etc., for various listed devices, such as digital frequency transducers, voltage transducers, remote terminal unit, potential transformers, and current transformers.

27. On December 21, 2006, NERC received a request to provide a formal interpretation of Requirement R17 asking whether the only devices that need to be annually calibrated under this requirement are time error and frequency devices, and whether the list of device accuracy is simply the design accuracy of the devices listed and that those devices do not need to be calibrated on an annual basis (except the digital frequency transducer which is covered as a "frequency device"). NERC provided an interpretation clarifying that the intent of BAL–005–0, Requirement R17 is to annually check and calibrate a balancing authority's time error and frequency devices located in the control room against the common reference, and this requirement does not apply to any such devices located outside of the operations control center.

b. Commission Proposal

28. On July 31, 2007, the ERO received a second request for an interpretation of Requirement R17 of BAL–005–0, which asked the ERO to further clarify the ambiguity of what devices are included in the requirement. On April 15, 2008, the ERO submitted another interpretation of Requirement R17 of BAL–005–0 and sought to withdraw its request for Commission approval of the interpretation of Requirement R17 filed in this proceeding on December 19, 2007. Accordingly, the Commission does not plan to act on the initial interpretation. The Commission will act on the April 15 interpretation in a future proceeding.

3. VAR–002–1—Generator Operation for Maintaining Network Voltage Schedules

a. NERC's Proposed Interpretation

29. The stated purpose of Reliability Standard VAR–002–1 is to ensure that generators provide reactive and voltage control necessary to ensure that voltage levels, reactive flows, and reactive resources are maintained within applicable facility ratings to protect equipment and the reliable operation of the interconnection.[25] Specifically, Requirement R1 of Reliability Standard VAR–002–1 provides:

> The Generator Operator shall operate each generator connected to the interconnected transmission system in the automatic voltage control mode (automatic voltage regulator in service and controlling voltage) unless the Generator Operator has notified the Transmission Operator.

Requirement R2 of this Reliability Standard provides:

> Unless exempted by the Transmission Operator, each Generator Operator shall maintain the generator voltage or Reactive Power output (within applicable Facility Ratings) as directed by the Transmission Operator.

30. NERC states that it received a request to provide a formal interpretation of Requirements R1 and R2 on January 24, 2007. The request for interpretation first asked whether automatic voltage regulator (AVR) operation in the constant power factor or constant Mvar modes complies with Requirement R1.[26] Secondly, the

[24] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 377.

[25] Most bulk electric power is generated, transported, and consumed in alternating current (AC) networks. AC systems supply (or produce) and consume (or absorb or lose) two kinds of power: real power and reactive power. Real power accomplishes useful work (*e.g.*, runs motors and lights lamps). Reactive power supports the voltages that must be controlled for system reliability. FERC, *Principles for Efficient and Reliable Reactive Power Supply and Consumption*, Docket No. AD05–1–000, at 17 (2005), *available at http://www.ferc.gov/legal/staff-reports.asp (Reactive Power Principles).*

[26] "Power factor" is a measure of real power in relation to reactive power. A high power factor means that relatively more useful power is being taken or produced relative to the amount of reactive power. A lower power factor means that there is relatively more reactive power taken than real power. "Mvar" is a measure of reactive power equal to one million reactive volt-amperes. *Reactive*

request asked the ERO whether Requirement R2 gives the transmission operator the option of directing the generation owner to operate the AVR in the constant power factor or constant Mvar modes rather than the constant voltage mode.

31. The AVR is designed to automatically adjust generator voltage and/or power-factor to ensure proper grid operational characteristics. Constant voltage mode is the normal mode of operation for AVR and maintains the output voltage at a constant level. The constant power factor mode is a setting of the AVR that causes the generator to output a set ratio of real power to reactive power, whereas the constant Mvar mode is a setting that causes the generator to maintain an output with a constant amount of reactive power.

32. NERC's formal interpretation provides that AVR operation in the constant power factor or constant Mvar modes does not comply with Requirement R1.[27] The interpretation rests on the assumption that the generator has the physical equipment that will allow such operation and that the transmission operator has not directed the generator to run in a mode other than constant voltage. The interpretation also provides that Requirement R2 does give the transmission operator the option of directing the generation operator to operate the AVR in the constant power factor or constant Mvar modes rather than the constant voltage mode.[28]

33. In its transmittal letter, NERC explains that, with respect to the interpretation of Requirement R1, Reliability Standard VAR–002–1 clearly states that the generator operator shall operate with the automatic voltage regulator in service and controlling voltage. The interpretation specifies that this can only be accomplished by using the constant voltage control mode, and using the constant power factor or constant Mvar control is not a true method to control voltage even though it may have some effect on voltage. In addition, NERC explains that Requirement R2 provides for an exemption to this baseline mode of operation to allow the transmission operator the ability to direct the generator operator to use another mode of operation.

b. Commission Proposal

34. The Commission proposes to approve the ERO's interpretation of Requirement R1 and Requirement R2 of VAR–002–1. These interpretations appear to be reasonable and do not appear to change or conflict with the stated responsibilities set forth in the two requirements as approved in Order No. 693. Therefore, this interpretation appears to be just, reasonable, not unduly discriminatory or preferential, and in the public interest.

B. NERC's December 21, 2007 Filing: Modification of TLR Procedure

1. NERC's Proposed Reliability Standard

35. As mentioned above, on December 21, 2007, NERC submitted for Commission approval proposed Reliability Standard IRO–006–4, to modify the current Commission-approved Reliability Standard, IRO–006–3.

a. Background

36. In Order No. 693, the Commission approved the current version of this Reliability Standard, IRO–006–3. This Reliability Standard ensures that a reliability coordinator has a coordinated transmission service curtailment and reconfiguration method that can be used along with other alternatives, such as redispatch or demand-side management, to avoid transmission limit violations when the transmission system is congested. Reliability Standard IRO–006–3 establishes a detailed TLR process for use in the Eastern Interconnection to alleviate loadings on the system by curtailing or changing transactions based on their priorities and the severity of the transmission congestion.[29]

37. In addition to approving IRO–006–3, the Commission in Order No. 693 directed the ERO to modify the Reliability Standard to: (1) Include a clear warning that the TLR procedure is an inappropriate and ineffective tool to mitigate actual IROL violations; [30] and (2) identify in a requirement the available alternatives to mitigate an IROL violation other than use of the TLR procedure.[31] These directives reflect an observation from the U.S.-Canada Power System Outage Task Force in the August 14, 2003 Blackout Report, which identified that the TLR procedure is often too slow for use in situations where the system has already violated IROLs.[32] In setting forth these directives, the Commission stated that it did not have concerns with the use of the TLR procedure to avoid potential IROL violations.[33]

b. NERC Filing

38. According to NERC, the modifications embodied in proposed Reliability Standard IRO–006–4 represent the first phase of a three-phase project intended to improve the overall quality of IRO–006. In the first phase, NERC extracted the business practices and commercial requirements from the existing IRO–006–3 Reliability Standard and proposes to transfer them into the NAESB business practices.[34] NERC's filing does not seek to modify the remaining reliability requirements of IRO–006, with the exception that the Reliability Standard has been clarified to include the Commission's Order No. 693 directive that using the TLR procedure is not effective to mitigate an actual IROL violation.

39. According to NERC, the second phase of the IRO–006 project will address possible changes to the regional differences associated with the congestion management process used by the PJM Interconnection, L.L.C., the

Pawer Principles, *supra* note 16, at 7, 12, 41, 119, 120.

[27] NERC's proposed interpretation of VAR–002–1 Requirement R1 reads:

1. First, does AVR operation in the constant PF or constant Mvar modes comply with R1? Interpretation: No, only operation in constant voltage mode meets this requirement. This answer is predicated on the assumption that the generator has the physical equipment that will allow such operation and that the Transmission Operator has not directed the generator to run in a mode other than constant voltage.

2. Second, does R2 give the Transmission Operator the option of directing the Generation Owner (sic) to operate the AVR in the constant Pf or constant Mvar modes rather than the constant voltage mode?

Interpretation: Yes, if the Transmission Operator specifically directs a Generator Operator to operate the AVR in a mode other than constant voltage mode, then that directed mode of AVR operation is allowed.

NERC December 19, 2007 Filing, Ex. C–2.

[28] We note, as does NERC, the requesting party's apparent error when it references "Generation Owner" instead of the generator operator.

[29] The equivalent interconnection-wide TLR procedures for use in WECC and Electric Reliability Council of Texas (ERCOT) are known as "WSCC Unscheduled Flow Mitigation Plan" and section 7 of the "ERCOT Protocols," respectively.

[30] An IROL is a system operating limit that, if violated, could lead to instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the Bulk-Power System.

[31] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 964.

[32] U.S.-Canada Power System Outage Task Force, *Final Repart an the August 14, 2003 Blackaut in the United States and Canada: Causes and Recammendatians*, at 163 (April 2004) (*Final Blackaut Repart*), *available at https://reparts.energy.gav/*.

[33] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 962.

[34] The NAESB business practices and commercial requirements have been included in Version 001 of the NAESB Wholesale Electric Quadrant standards and filed with the Commission on December 21, 2007. The NAESB filing is the subject of a separate rulemaking in Docket No. RM05–5–005. A notice of proposed rulemaking addressing the NAESB filing is being issued concurrently with the immediate NOPR.

Midwest Independent System Operator, Inc., and the Southwest Power Pool, Inc. In the third phase, NERC plans to completely redraft the Reliability Standard to incorporate further enhancements and changes beyond the separation of reliability and business practices.

40. In its filing, NERC explains that the filed Reliability Standard IRO–006–4 meets the guidance outlined in Order No. 672, used to determine whether a Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[35] In addition, IRO–006–4 includes violation risk factors and violation severity levels that were not provided with IRO–006–3.

41. NERC's proposed IRO–006–4 Reliability Standard consists of five requirements. Proposed Requirement R1 obligates a reliability coordinator experiencing a potential or actual system operating limit (SOL) or IROL violation within its reliability coordinator area to select one or more procedures to provide transmission loading relief. The requirement also identifies the regional TLR procedures in WECC and Electric Reliability Council of Texas (ERCOT). The requirement includes a warning that the TLR procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation and provides alternatives.

42. Proposed Requirement 2 mandates that the reliability coordinator only use a congestion management procedure to which the transmission operator experiencing the SOL or IROL is a party. NERC explains that Requirement R1 and Requirement R2 are assigned a violation risk factor of "lower" because they are administrative in nature and are merely intended to describe how a reliability coordinator may choose a procedure to implement TLR.[36] According to NERC, these Requirements are not intended to duplicate the requirements of other Reliability Standards that ensure the system is operated within SOL and IROL limits such as Requirements R3 and R5 of IRO–005–1, which have "high" violation risk factors.[37] NERC adds that, provided the reliability coordinator is adhering to the requirements in IRO–005–1, there is no significant risk to the reliability of the Bulk-Power System as a result of a violation of Requirement R1 of IRO–006–4.

43. Proposed Requirement R3 establishes that a reliability coordinator with a TLR obligation from an interconnection-wide procedure follow the curtailments as directed by the interconnection-wide procedure. The requirement includes that a reliability coordinator desiring to use a local procedure as a substitute for curtailments as directed by the interconnection-wide procedure shall obtain prior approval of the local procedure from the ERO. NERC states that a violation risk factor of "lower" for Requirement R3 is appropriate because it is intended that an entity could choose alternate actions for relief other than curtailments specified by this requirement to ensure reliability.

44. Proposed Requirement R4 mandates that each reliability coordinator comply with interconnection-wide procedures, once they are implemented, to curtail transactions that cross interconnection boundaries.

45. Proposed Requirement R5 directs balancing authorities and reliability coordinators to comply with applicable interchange-related Reliability Standards during the implementation of TLR procedures. NERC proposes "medium" violation risk factors for Requirement R4 and Requirement R5 explaining that, while failure to comply with these requirements could lead the system to an unbalanced scenario, such failure would not pose a "high" risk to the system.

46. Finally, NERC explains that four violation severity levels have been assigned to Requirement R1 of IRO–006–4 based on the number of violations of interconnection-wide procedure requirements, and these levels are intended to base violation severity on the degree of deviation from the requirements by the violator. NERC states that there is a single violation severity level for each of the remaining requirements (*i.e.*, R2, R3, R4, and R5), because an entity simply either "passes" or "fails" each of these requirements.

c. Commission Proposal

47. The Commission proposes to approve Reliability Standard IRO–006–4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. In addition, the Commission proposes to direct the ERO to modify certain violation risk factors that correspond to the Requirements of the Reliability Standard.

i. Requirements

48. NERC's proposal implements the Commission's directives (1) to include a clear warning that the TLR procedure is an inappropriate and ineffective tool to mitigate actual IROL violations; and (2) to identify in a requirement the available alternatives to mitigate an IROL violation. Specifically, Requirement R1.1 of IRO–006–4 states, "The TLR procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure. Other acceptable and more effective procedures to mitigate actual IROL violations include: reconfiguration, redispatch, or load shedding." The Commission proposes to approve this standard based on the interpretation that using a TLR procedure alone to mitigate an IROL violation is a violation of the Reliability Standard.

49. Further, the proposed division between NERC and NAESB business practices seems to be reasonable and appears to pose no harm to reliability. The Commission has long supported the coordination of business practices and Reliability Standards. As early as May 2002, the Commission urged the industry expeditiously to establish the procedures for ensuring coordination between NAESB and NERC.[38] The Commission asks for comments on whether any compromise in the reliability of the Bulk-Power System may result from the removal and transfer to NAESB of the business-related issues formerly contained in Reliability Standard IRO–006.

ii. Violation Risk Factors

50. Violation risk factors delineate the relative risk to the Bulk-Power System associated with the violation of each Requirement and are used by NERC and the Regional Entities to determine financial penalties for violating a Reliability Standard. NERC assigns a lower, medium, or high violation risk factor for each mandatory Reliability Standard Requirement.[39] The Commission also established guidelines for evaluating the validity of each Violation Risk Factor assignment.[40]

[35] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 326.

[36] Exhibit A (Reliability Standard Proposed for Approval) of NERC's December 21, 2007 filing, however, contains the violation risk factor of "medium" for these requirements, but NERC indicates elsewhere that it is "lower." NERC December 21, 2007 Filing at 12–13.

[37] *Id.* at 13.

[38] *Electricity Market Design and Structure*, 99 FERC ¶ 61,171, at P 22 (2002); *see also Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs. ¶ 31,216, at P 6 (2006).

[39] The definitions of "high," "medium," and "lower" are provided in *North American Electric Reliability Corp.*, 119 FERC ¶ 61,145, at P 9 (Violation Risk Factor Order), *order on reh'g*, 120 FERC ¶ 61,145 (2007) (Violation Risk Factor Rehearing).

[40] The guidelines are: (1) Consistency with the conclusions of the Blackout Report; (2) consistency

51. The Commission is concerned regarding the violation risk factors submitted with IRO–006–4. While the approved violation risk factors for IRO–006–0 Requirement R2 through Requirement R6 are all "high,"[41] NERC proposes to revise violation risk factors for similarly-worded Requirements R1 through R5 of IRO–006–4 to "lower" or "medium." Sub-requirements R1.1 through R1.3 are explanatory text; therefore, we propose that a violation risk factor need not be assigned to them. For consistency with the Commission's five guidelines discussed above, the Commission proposes to direct the ERO to modify the violation risk factors assigned to Requirements R1 through R4 to "high." We discuss our concerns below.

52. The Commission disagrees with the ERO that Requirement R1 is administrative in nature in describing how a reliability coordinator may choose a procedure to provide transmission loading relief. Requirement R1, as well as Requirement R2 through R4, goes beyond merely providing procedural choices for transmission loading relief, as the ERO asserts. Requirements R1 through R4 require that a reliability coordinator choose and follow the appropriate procedure to provide relief. If the reliability coordinator chooses an unapproved and ineffective procedure for relief or fails to choose a procedure entirely, potential or actual IROLs will not be mitigated as intended by the reliability coordinator. Failure to implement the proper TLR procedure likely would lead to IROL violations, which could lead to cascading outages. The implementation of the TLR procedure shares a similar reliability goal as other Reliability Standard requirements that keep the transmission system within IROLs, thus presenting a similar reliability risk and violation risk factor, if violated.

53. With respect to IRO–006–4, Requirement R1, the ERO states that, provided the reliability coordinator is adhering to the requirements in IRO–005–1, there is no significant risk to the reliability of the Bulk-Power System as a result of a violation of Requirement R1 of IRO–006–4. We disagree. The violation risk factor of a requirement represents the risk a violation of that requirement presents to the reliability of the Bulk-Power System. Violation risk factors should not be assigned differently for requirements in separate Reliability Standards based on compliance with another standard. Two requirements either achieve separate reliability goals and, therefore, violation of them represents independent risks, or two requirements share the same reliability goal. As stated in Guideline 3 of the Violation Risk Factor Order,[42] the Commission expects that the assignment of violation risk factors corresponding to requirements that address similar reliability goals in different Reliability Standards would be treated comparably.

54. Furthermore, a "high" violation risk factor assignment for Requirements R1 through R4 is consistent with findings of the Final Blackout Report. The report highlights that, generally, "TLRs are intended as a tool to prevent the system from being operated in an unreliable state and are not applicable in real-time emergency situations."[43] As a result, Recommendation No. 31 in the Final Blackout Report was developed to clarify that the TLR procedure should not be used in situations involving an actual violation of an operating security limit.

55. A medium or lower violation risk factor has been approved for the Reliability Standards in the Interchange Scheduling and Coordination (INT) family of Reliability Standards. Requirement R5 of IRO–006–4 complements the INT group of Reliability Standards and, thus, appears to be appropriately assigned a medium violation risk factor.

56. The added "Measures" and other revisions embedded in proposed Reliability Standard IRO–006–4 do not appear to substantively change the earlier, Commission-approved version (*i.e.*, IRO–006–3).

57. In summary, proposed Reliability Standard IRO–006–4 appears to be just, reasonable, not unduly discriminatory or preferential, and in the public interest. Accordingly, the Commission proposes to approve Reliability Standard IRO–006–4 as mandatory and enforceable. In addition, the Commission proposes to direct the ERO to modify the violation risk factors, as described above.[44]

C. NERC's December 26, 2007 Filing: Modification to Five "Interchange and Scheduling" Reliability Standards

58. NERC submitted for Commission approval proposed modifications to five Reliability Standards from the INT group of Reliability Standards.

1. INT–001–3—Interchange Information and INT–004–2—Dynamic Interchange Transaction Modifications

a. Background

59. The Interchange Scheduling and Coordination or "INT" group of Reliability Standards address interchange transactions, which occur when electricity is transmitted from a seller to a buyer across the power grid. Reliability Standard INT–001 applies to purchasing-selling entities and balancing authorities. The stated purpose of this Reliability Standard is to "ensure that Interchange Information is submitted to the NERC-identified reliability analysis service." Reliability Standard INT–004 is intended to "ensure Dynamic Transfers are adequately tagged to be able to determine their reliability impacts."

60. In Order No. 693, the Commission approved the currently applicable version of these Reliability Standards, INT–001–2 and INT–004–1.[45] Further, when NERC initially submitted these two Reliability Standards for Commission approval, NERC also asked the Commission to approve a "regional difference" that would exempt WECC from requirements related to tagging dynamic schedules and inadvertent payback provisions of INT–001–2 and INT–004–1. The Commission, in Order No. 693, stated that it did not have sufficient information to address the ERO's proposed regional difference and directed the ERO to submit a filing either withdrawing the regional difference or providing additional information needed for the Commission to make a determination on the matter.[46] The effect of NERC's December 26, 2007 filing is to withdraw the regional difference with respect to WECC.

within a Reliability Standard; (3) consistency among Reliability Standards; (4) consistency with NERC's definition of the violation risk factor level; and (5) treatment of requirements that co-mingle more than one obligation. The Commission also explained that this list was not necessarily all-inclusive and that it retains the flexibility to consider additional guidelines in the future. A detailed explanation is provided in Violation Risk Factor Rehearing, 120 FERC ¶ 61,145 at P 8–13.

[41] The violation risk factors for these requirements were submitted by NERC on February 23, 2007, and they were approved in the Violation Risk Factor Order.

[42] 119 FERC ¶ 61,145 at P 25.

[43] *Final Blackout Report* at 62.

[44] Although "time horizons," which relate to the immediacy of the risk posed by a violation of a requirement, are included in this Reliability Standard, we do not propose to rule on the time horizons in this rulemaking. On March 3, 2008, in Docket No. RR08–4–000, NERC submitted proposed violation severity levels corresponding to the Requirements of 83 Commission-approved Reliability Standards. The Commission will address the violation severity levels regarding IRO–006–4 in that proceeding.

[45] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 821, 843. In addition, the Commission directed that the ERO develop modifications to INT–001–2 and INT–004–1 that address the Commission's concerns.

[46] *Id.* P 825.

b. NERC's Proposed Modifications

61. In May 2007, WECC requested that NERC rescind the regional difference, referred to as e-tagging waivers,[47] for Reliability Standards INT–001–2 and INT–004–1. According to NERC, WECC has developed business practices for dynamic schedules and has taken the steps needed to comply with the e-tagging of inadvertent payback interchange schedules. Thus, WECC determined that it no longer needs the e-tagging waivers.

62. NERC processed WECC's request through NERC's Reliability Standard Development Procedure, using its urgent action process.[48] NERC states that, by rescinding the e-tagging waivers, NERC maintains uniformity and makes no structural changes to the requirements in the current Commission-approved version of the Reliability Standards.

c. Commission Proposal

63. NERC states that simply rescinding these waivers will not result in structural changes to the requirements in the current Commission-approved version of the Reliability Standards and will maintain uniformity. Further, we note that WECC agrees that it no longer needs to retain the waivers.[49] Accordingly, the Commission proposes to approve INT–001–3 and INT–004–2.

2. INT–005–2—Interchange Authority Distributes Arranged Interchange

a. INT–006–2—Response to Interchange Authority, and INT–008–2—Interchange Authority Distributes Status

i. Background

64. In Order No. 693, the Commission approved the entire group of INT Reliability Standards.[50]

65. Reliability Standard INT–005–1 applies to the interchange authority. The stated purpose of proposed Reliability Standard INT–005–1 is to "ensure that the implementation of Interchange between Source and Sink Balancing Authorities is distributed by an Interchange Authority such that Interchange information is available for reliability assessments."

66. Reliability Standard INT–006–1 applies to balancing authorities and transmission service providers. The stated purpose of the Reliability Standard is to "ensure that each Arranged Interchange is checked for reliability before it is implemented."

67. Reliability Standard INT–008–1 applies to the interchange authority. The stated purpose of the Reliability Standard is to "ensure that the implementation of Interchange between Source and Sink Balancing Authorities is coordinated by an Interchange Authority." This means that it is the interchange authorities' responsibility to oversee and coordinate the interchange from one balancing authority to another.

ii. NERC's Proposed Modifications

68. In its December 26, 2007 filing, NERC addresses a specific reliability need identified by WECC in its urgent action request.

69. Requirement R1.4 of INT–007–1 requires that each balancing authority and transmission service provider provide confirmation to the interchange authority that it has approved the transactions for implementation. NERC states that for WECC the timeframe allotted for this assessment is five minutes in the original version of the Commission-approved Reliability Standards.

70. NERC explains that the proposed Reliability Standards for INT–005–2, INT–006–2, and INT–008–2 would increase the timeframe for applicable WECC entities to perform the reliability assessment from five to ten minutes for next hour interchange tags submitted in the first thirty minutes of the hour before. According to NERC, this modification is needed because the majority of next-hour tags in WECC are submitted between xx:00 and xx:30. NERC explains that the existing five minute assessment window makes it nearly impossible for balancing authorities and transmission service providers to review each tag before the five minute assessment time expires. NERC maintains that, when the time expires, the tags are denied and must be resubmitted.

71. NERC states that WECC has experienced numerous instances of transactions being denied because one or more applicable reliability entities did not actively approve the tag. In NERC's view, the current structure causes frustration and inefficiencies for entities involved in this process, as requestors are required to re-create tags that are denied. Further, NERC states that there is no reliability basis for a five minute assessment period for tags submitted at least thirty minutes ahead of the ramp-in period.

72. NERC notes that, prior to January 1, 2007, when the new INT group of Reliability Standards was implemented, WECC had a ten-minute reliability assessment period for next-hour tags. NERC states that the urgent action request restores assessment times back to ten minutes.

73. Apart from the extension of the reliability assessment period from five to ten minutes for WECC entities, NERC avers that it makes no substantive changes to the requirements in the current Commission-approved version of the Reliability Standards.

b. Commission Proposal

74. The Commission proposes to approve INT–005–2, INT–006–2, and INT–008–2. The only change proposed to these Reliability Standards is the reliability assessment period for WECC.[51]

III. Information Collection Statement

75. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[52] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[53] As stated above, the Commission previously approved, in Order No. 693, each of the Reliability Standards that are the subject of the current rulemaking. The proposed modifications to the Reliability Standards are minor and the proffered interpretations relate to existing Reliability Standards; therefore, they do not add to or increase entities' current reporting burden. Thus, the current proposal would not materially affect the burden estimates relating to the currently effective version of the Reliability Standards presented in Order No. 693.[54]

76. For example, the proposed interpretation of BAL–001–0 and BAL–003–0 does not modify or otherwise affect the collection of information already in place. With respect to BAL–001–0, the interpretation merely clarifies the rule that is already in place, that the time error correction

[47] An E-tag represents a transaction on the North American bulk electricity market scheduled to flow within, between, or across electric utility company territories electronically. This is done so that transmission system operators can ascertain all of the transactions impacting their local system and take any corrective actions to alleviate situations that could put the power grid at risk of damage or collapse.

[48] NERC December 26, 2007 Filing at 5–6.

[49] *Id.*

[50] In addition, the Commission directed the ERO to develop modifications to INT–006–1. The Commission-directed modifications are not included in the immediate filing; rather, the ERO will develop such modifications pursuant to its *Reliability Standards Development Plan 2008–2010.*

[51] The Commission notes that NERC's compliance with Order No. 693, with respect to Reliability Standard INT–006–1, is ongoing. *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 866.

[52] 5 CFR 1320.11.

[53] 44 U.S.C. 3507(d).

[54] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1905–07.

component of the WECC automatic time error correction calculation of ACE is not to be used in NERC performance reporting. With respect to BAL–003–0, the interpretation clarifies that layering additional control modes on top of the tie-line frequency bias mode of automatic generation control is acceptable. Layering additional control modes on top of the tie-line frequency bias mode of automatic generation control does not change the information that a balancing authority reports because the same logs, data, or measurements would be maintained.

77. The proposed removal of business practice-related requirements from Reliability Standard IRO–006–4 will likely decrease, not increase, the reporting burden associated with the current, Commission-approved version of the Reliability Standard. Nor would the proposed revision to certain Reliability Standards to allow WECC an additional five minutes to perform a reliability assessment regarding interchange transactions impact the reporting burden. Further, the proposal to rescind the requested waivers from the e-tagging obligation under Reliability Standards INT–001–3 and INT–004–2 for entities in the WECC region does not change the reporting burden because NERC was never granted its requested waiver to exempt WECC from requirements related to tagging dynamic schedules and inadvertent payback.[55] In addition, WECC already has business practice standards in place that fulfill the dynamic transfer e-tagging reporting and record keeping obligations set forth in these Reliability Standards.[56]

78. Thus, the proposed modifications to the current Reliability Standards and interpretations effected by this proposed rule will not increase the reporting burden nor impose any additional information collection requirements.

79. The Commission does not foresee any additional impact on the reporting burden for small businesses, because the proposed modifications are minor and the interpretations do not increase the existing burden. However, we will submit this proposed rule to OMB for informational purposes.

Title: Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards.

Action: Proposed Collection.

OMB Control No.: 1902–0244.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This proposed rule would approve six modified Reliability Standards, five of which pertain to interchange scheduling and coordination and one that pertains to transmission loading relief procedures. In addition, this proposed rule would approve interpretations of five specific requirements of Commission-approved Reliability Standards. The proposed rule would find the Reliability Standards and interpretations just, reasonable, not unduly discriminatory or preferential, and in the public interest.

Internal Review: The Commission has reviewed the proposed Reliability Standards and interpretations and made a determination that these requirements are necessary to implement section 215 of the FPA. These requirements conform to the Commission's plan for interchange scheduling and coordination as well as transmission loading relief procedures within the energy industry.

80. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*].

81. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–4650, fax: (202) 395–7285, e-mail: *oira_submission@omb.eop.gov*].

IV. Environmental Analysis

82. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[57] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[58] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Analysis

83. The Regulatory Flexibility Act of 1980 (RFA)[59] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business. (*See* 13 CFR 121.201.) For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The RFA is not implicated by this proposed rule because the minor modifications and interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

84. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 45 days from publication in the **Federal Register**. Comments must refer to Docket No. RM08–7–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

85. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

[55] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 822, 825 (directing ERO either to withdraw regional difference or provide additional information).

[56] *See* Business Practice Standard INT–BPS–008–1 (Dynamic Transfer E-Tagging Requirements), available at *http://www.wecc.biz*.

[57] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[58] 18 CFR 380.4(a)(2)(ii).

[59] 5 U.S.C. 601–12.

Commenters filing electronically do not need to make a paper filing.

86. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC, 20426.

87. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

88. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

89. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

90. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Commissioners Wellinghoff and Kelly concurring jointly with a separate statement.

Kimberly D. Bose,

Secretary.

Department of Energy

Federal Energy Regulatory Commission

[Docket No. RM08–7–000]

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards

Issued April 21, 2008.

WELLINGHOFF and KELLY, Commissioners, *concurring*:

Today, the Commission issues a Notice of Proposed Rulemaking (NOPR) proposing to approve, among other matters, modified Reliability Standard IRO–006–4 pertaining to transmission loading relief (TLR) procedures that can be used to prevent or manage potential or actual transmission line limit violations when the transmission system is congested. An earlier version of this Reliability Standard, IRO–006–3, was approved in Order No. 693 subject to modification.[60] This Reliability Standard establishes a detailed TLR process for use in the Eastern Interconnection to alleviate loadings on the system by curtailing or changing transmission transactions based on their priorities and the severity of the transmission congestion. However, the Commission directed the ERO[61] to modify the Reliability Standard to: (1) Include a clear warning that the TLR procedure is an inappropriate and ineffective tool to mitigate actual IROL violations, and (2) identify in a requirement the available alternatives to mitigate an IROL violation other than use of the TLR procedure.[62]

Reliability Standard IRO–006–4 contains the required warning that the TLR procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure. It furthers states that other acceptable and more effective procedures to mitigate actual IROL violations include reconfiguration, redispatch, or load shedding. Load shedding reduces customers' demand involuntarily.

We write separately to note that demand-side management (DSM), or voluntary demand reduction, is not explicitly included in IRO–006–4 among the acceptable alternatives to TLR procedures. Nothing in the proposed standard precludes the use of DSM that can respond quickly to emergencies as an alternative to TLR procedures. Nor is there any indication that NERC intended this to be an exhaustive list of alternatives. We understand that DSM technologies used currently to provide operating reserve (for instance, in the operating reserve markets of ISO and RTOs) would, in fact, be deployed as quick response to IROL violations and in most cases would be deployed prior to involuntary load shedding. Indeed, voluntary demand response could be a better alternative than involuntary load shedding, which, as we indicated above, IRO–006–4 identifies as an acceptable alternative to TLR procedures.

In Order No. 693, the Commission directed modifications to Reliability Standards BAL–002–0 (Disturbance Control Performance), EOP–002–2 (Capacity and Energy Emergencies), VAR–001–1 (Voltage and Reactive Control), and the sensitivity studies of the TPL (Transmission Planning) standards to explicitly provide that DSM may be used as a resource to meet the requirements of those Standards. The Commission clarified that DSM should be treated on a comparable basis and must meet similar technical requirements as other resources providing this service.[63] The Commission also addressed why explicit identification in the Reliability Standard is necessary, stating:

> The Commission disagrees with APPA that we should not explicitly identify any type of capacity as a resource for meeting reserve contingencies. The Commission believes that listing the types of resources that can be used to meet contingency reserves makes the Reliability Standard clearer, provides users, owners and operators of the Bulk-Power System a set of options to meet contingency reserves, and treats DSM on a comparable basis with other resources.
>
> Many commenters argue that the Commission's proposed directive that would explicitly allow DSM as a resource for contingency reserves is too prescriptive. Concerns in this area generally fall into three categories: (1) That DSM should be treated on a comparable basis as other resources; (2) that the Reliability Standard should be based on meeting an objective as opposed to stating how that objective is met and (3) that DSM

[60] *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693–A, 120 FERC ¶ 61,053 at P 964 (2007).

[61] The Commission designated the North American Electric Reliability Corp. (NERC) as the nation's electric reliability organization (ERO) in 2006.

[62] An IROL is a system operating limit that, if violated, could lead to instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the Bulk-Power System.

[63] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 335.

may not be technically capable of providing this service.

With regard to the first concern, the Commission clarifies that the purpose of the proposed directive is to ensure comparable treatment of DSM with conventional generation or any other technology and to allow DSM to be considered as a resource for contingency reserves on this basis without requiring the use of any particular contingency reserve option. The proposed directive as written achieves that goal. With regard to the second concern, we believe that this Reliability Standard is objective-based and we reiterate that we are simply attempting to make it inclusive of other technologies that may be able to provide contingency reserves, and are not directing the use of any particular type of resource. By specifying DSM as a potential resource for contingency reserves, the Commission is clarifying the substance of the Reliability Standard.[64]

Thus, in the interest of clarity and comparability, we would prefer to see DSM included among the list of alternatives to TLR procedures. Therefore, we would be interested in comments regarding the inclusion of DSM that is capable of responding quickly to emergencies among the alternatives to TLR procedures for mitigating transmission line limit violations to maintain system reliability.

For these reasons, we concur with this NOPR.

Jon Wellinghoff,

Commissioner.

Suedeen G. Kelly,

Commissioner.

[FR Doc. E8–9013 Filed 4–25–08; 8:45 am]

BILLING CODE 6717–01–P

[64] *Id* at P 331–33.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 382

[Docket No. AD08–7–000]

Annual Charges Assessments for Public Utilities

April 21, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Inquiry.

SUMMARY: In this Notice of Inquiry, the Commission is seeking comments on its current methodology for the assessment of electric annual charges to public utilities, in particular, whether that methodology remains fair and equitable, and on alternative methodologies. As provided in its current regulations, the Commission recovers the costs of its electric regulatory program through filing fees and, as particularly relevant here, annual charges assessed to public utilities that provide transmission service, based on the volume of electricity transmitted. This methodology reflects that regulation of transmission providers, transmission facilities and transmission service is central to Commission regulation, and that the transmission grid is the interstate highway system for wholesale power sales. This Notice will enable the Commission to determine whether its current methodology remains fair and equitable, and to review alternative methodologies.

DATES: Comments are due May 28, 2008.

ADDRESSES: Interested persons may submit comments, identified by Docket No. AD08–7–000, by any of the following methods:

- *eFiling:* Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Documents created electronically using word processing software should be filed in the native application or print-to-PDF format and not in a scanned format. This will enhance document retrieval for both the Commission and the public. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Attachments that exist only in paper form may be scanned. Commenters filing electronically should not make a paper filing. Service of rulemaking (or Notice of Inquiry) comments is not required.
- *Mail/Hand Delivery:* Commenters that are not able to file electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: For further information contact:

Lawrence R. Greenfield (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6415.

Richard M. Wartchow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8744.

Troy D. Cole (Technical Information), Director, Division of Financial Services, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6161.

SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry, the Commission is seeking comments on its current methodology for the assessment of electric annual charges to public utilities, in particular, whether that methodology remains fair and equitable, and on alternative methodologies.[1] As provided in its current regulations, the Commission recovers the costs of its electric regulatory program through filing fees and, as particularly relevant here, annual charges assessed to public utilities that provide transmission service, based on the volume of electricity transmitted. This methodology reflects that regulation of transmission providers, transmission facilities and transmission service is central to Commission regulation, and that the transmission grid is the interstate highway system for wholesale power sales. This Notice will enable the Commission to determine whether its current methodology remains fair and equitable, and to review alternative methodologies.

2. Although the Commission has held in the past that industry concerns did not justify a change to the annual charges methodology, in response to continued expressions of concern the Commission is issuing this Notice of Inquiry to seek comment on whether the existing methodology remains an appropriate means to recover the costs of the Commission's electric regulatory program or whether there is another more appropriate alternative. The Commission seeks to ascertain whether those industry concerns, although not determinative previously, may now be more valid and, if so, to review alternative proposals for the recovery of the Commission's electric regulatory program costs. The Commission also invites interested parties to submit in this proceeding their views on other possible changes to the Commission's annual charges regulations.

[1] This Notice of Inquiry is limited to the assessment of charges to public utilities regulated under Parts II and III of the Federal Power Act (FPA). It does not, therefore, address the assessment of charges for the Commission's hydroelectric, natural gas or oil pipeline regulatory programs. It also does not address recovery of Federal power marketing agency (PMA)-related costs or electric filing fees (the latter are separately charged for, among other things, petitions for declaratory orders, Commission staff interpretations and certain qualifying facility-related filings).

I. Background

A. Commission Authority

3. The Commission is required by section 3401 of the Omnibus Budget Reconciliation Act of 1986 (Budget Act)[2] to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred * * * in that fiscal year."[3] The annual charges must be computed based on methods which the Commission determines to be "fair and equitable."[4] The Conference Report accompanying the Budget Act provides the Commission with the following guidance as to this phrase's meaning:

> [A]nnual charges assessed during a fiscal year on any person may be reasonably based on the following factors: (1) The type of Commission regulation which applies to such person such as a gas pipeline or electric utility regulation; (2) the total direct and indirect costs of that type of Commission regulation incurred during such year;[5] (3) the amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and (4) the total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.[6]

4. The Commission's annual charges do not enable the Commission to collect amounts in excess of its expenses, but merely serve as a vehicle to reimburse the United States Treasury for the Commission's expenses.[7]

B. Current Annual Charges Billing Procedure

5. As required by the Budget Act, the Commission's regulations provide for the payment of annual charges by public utilities to fund the Commission's electric regulatory program.[8] The Commission intends that these annual charges in any fiscal year will recover the Commission's estimated electric regulatory program costs (other than the costs of regulating PMAs and the electric regulatory program costs recovered through electric filing fees) for that fiscal year. In the next fiscal year, the Commission adjusts its annual charges up or down, as appropriate, both to eliminate any over-or under-recovery of the Commission's actual costs and to eliminate any over-or under-charging of any particular person.[9]

6. When the Commission first developed an annual charge methodology for public utilities in response to the Budget Act, it assessed charges based on two types of wholesale electricity service: transmission and wholesale sales in interstate commerce.[10] However, in Order No. 641, the Commission determined that the sweeping changes in the industry occurring in the late 1980's and the 1990's had changed the industry landscape, which consequently changed the nature of the Commission's work.

7. In Order No. 641, the Commission noted that open access transmission, functional unbundling, and the rapid movement to market-based power sales rates brought about by Order No. 888, state retail unbundling, and Order No. 2000 encouraging the formation of regional transmission organizations (RTOs) caused the Commission's time and effort to be increasingly devoted to assuring open and equal access to public utilities' transmission systems. Order No. 641 anticipated that wholesale power rates would be increasingly disciplined by competitive market forces and less by direct regulation, and the Commission's workload had, in fact, moved away from its traditional focus on review of bilateral power sales agreements and instead focused increasingly on transmission. In order to reflect those changes, Order No. 641 changed the Commission's annual charges methodology to recover its electric regulatory program costs by assessing charges solely on the MWh of electric energy transmitted in interstate commerce by public utilities providing transmission service, rather than on both jurisdictional power sales and transmission volumes, as in the past.[11]

8. As such, sections 382.201(a) and (b) of the Commission's regulations provide that the costs of the Commission's administration of its electric regulatory program (excluding the costs of regulating the PMAs such as the Bonneville Power Administration,[12] and electric regulatory program costs recovered through electric filing fees[13]) are assessed to public utilities that provide transmission service based on the comparative amount of transmission that they provide;[14] those that have provided more transmission service (i.e., more MWhs) are charged more, and those that have provided less transmission service (i.e., less MWhs) are charged less.[15]

9. In calculating annual charges, the Commission first determines the total costs of its electric regulatory program and subtracts all PMA-related costs and electric filing fee collections to determine total collectible electric regulatory program costs. It then uses the data submitted under FERC Reporting Requirement No. 582 (FERC 582) to determine the total volume of transmission and exchanges for all public utilities to be assessed.[16] The Commission divides that transaction volume into its collectible electric regulatory program costs to determine

---

[2] 42 U.S.C. 7178 (2000).

[3] This authority is in addition to that granted to the Commission in sections 10(e) and 30(e) of the FPA. See 16 U.S.C. 803(e), 823a(e).

[4] 42 U.S.C. 7178(b).

[5] The Commission is required to collect not only all its direct costs but also all its indirect expenses such as hearing costs and indirect personnel costs. See H.R. Conf. Rep. No. 99–1012 at 238 (1986), *reprinted in* 1986 U.S.C.C.A.N. 3868, 3883 (Conference Report); *see also* S. Rep. No. 99–348 at 56, 66 and 68 (1986).

[6] *See* Conference Report at 238. The Commission may assess these charges by making estimates based upon data available to it at the time of the assessment. 42 U.S.C. 7178(c).

[7] 42 U.S.C. 7178(f). Congress approves the Commission's budget through annual and supplemental appropriations.

[8] 18 CFR Part 382 (2007); see *Revision of Annuol Charges Assessed to Public Utilities*, Order No. 641, FERC Stats. & Regs. ¶ 31,109 (2000), *order on reh'g*, Order No. 641–A, 94 FERC ¶ 61,290 (2001). The Commission's regulations define its electric regulatory program as "the Commission's regulation of the electric industry under Parts II and III of the Federal Power Act; Public Utility Regulatory Policies Act; Powerplant and Industrial Fuel Use Act; Department of Energy Organization Act; Energy Security Act; Regulatory Flexibility Act; Pacific Northwest Electric Power Planning and Conservation Act; Flood Control and River and Harbor Acts; Bonneville Project Act; Federal Columbia River Transmission Act; Reclamation Project Act; Nuclear Waste Policy Act; National Environmental Policy Act; and the Public Utility Holding Company Act." 18 CFR 382.102.

[9] 18 CFR 382.201; *accord Annual Chorges Under the Omnibus Budget Reconciliation Act of 1986*, Order No. 507, FERC Stats. & Regs. ¶ 30,839, at 31,263–64 (1988); *Texas Utilities Electric Company*, 45 FERC ¶ 61,007, at 61,027 (1988).

[10] See *Annual Chorges Under the Omnibus Budget Reconciliotion Act of 1986*, Order No. 472, FERC Stats. & Regs. ¶ 30,746 (1987), *clarified*, Order No. 472–A, FERC Stats. & Regs. ¶ 30,750, *order on reh'g*, Order No. 472–B, FERC Stats. & Regs. ¶ 30,767 (1987), *order on reh'g*, Order No. 472–C, 42 FERC ¶ 61,013 (1988).

[11] Order No. 641, FERC Stats. & Regs. ¶ 31,109 at 31,848–49; *accord Annuol Charges Under the Omnibus Budget Reconcilioition Act of 1986 (Phibro Inc.)*, 81 FERC ¶ 61,308, at 31,843–56 (1997) (*Phibro Inc.*).

[12] The PMAs such as the Bonneville Power Administration are the subject of a separate assessment. 18 CFR 382.201(d).

[13] The Commission's case-specific filing fees are spelled out in Part 381 of the Commission's regulations. 18 CFR Part 381.

[14] 18 CFR 382.201(a), (b).

[15] *See* Order No. 641–A, 94 FERC ¶ 61,290 at 62,038.

[16] The Commission's regulations define public utility, for the purpose of assessing annual charges, as "any person who owns or operates facilities subject to the jurisdiction of the Commission under Parts II and III of the Federal Power Act, and who has rate schedule(s) on file with the Commission and who is not a 'qualifying small power producer' or a 'qualifying cogenerator,' as those terms are defined in section 3 of the Federal Power Act, or the United States or a state, or any political subdivision of the United States or a state, or any agency, authority, or instrumentality of the United States, a state, political subdivision of the United States, or political subdivision of a state." 18 CFR 382.102.

In addition, the current electric annual charges are assessed based on transmission service, and thus exclude power marketers, which typically do not provide transmission service. 17 18 CFR 382.201; see Phibro Inc., 81 FERC ¶ 61,308 at 62,424–25.

the unit charge per megawatt-hour. Finally, the Commission multiplies the transaction volume for each public utility to be assessed by the unit charge per megawatt-hour to determine the annual charges for each public utility.[17]

10. In response to Order No. 641, certain public utilities and members of RTOs and independent system operators (ISO), including municipal utility and cooperative members, expressed concern that this annual charges methodology may be unfair and they alleged that the resulting annual charges fall more heavily on RTO and ISO members than on public utilities that are not RTO or ISO members. These concerns were initially raised in proceedings where RTO and ISO members objected to bills reflecting the charges determined under Order No. 641 and the underlying methodology. Although they did not seek timely rehearing of Order No. 641 itself, they sought rehearing of annual charges bills determined using the Order No. 641 methodology.[18] In a second proceeding, three RTOs and ISOs filed a petition requesting that the Commission initiate a rulemaking proceeding to revise the Order No. 641 methodology, seeking lower annual charges and questioning the assumptions that the Commission made in issuing Order No. 641.[19]

11. Those proceedings raised arguments that charges should be assessed to power sales as well as transmission,[20] challenges to the Commission's finding that its work was primarily focused on transmission regulation,[21] assertions that annual charge allocations should reflect the transmission component of bundled retail sales,[22] and claims that the Commission's annual charge assessments do not reflect the level of transmission service in various regions and unduly disadvantage RTOs. The proceedings also addressed the assertion that the Commission had erred in assessing charges to RTOs and ISOs based on services provided for non-jurisdictional members.[23]

12. After noting that those arguments represented an untimely attempt to seek rehearing of Order No. 641, the Commission responded to the specifics of each issue. The Commission rejected the arguments that annual charges should be allocated to power sales and arguments questioning whether transmission was the Commission's primary regulatory focus by noting that, in contrast to the timeframe in which the Commission established its previous methodology, the Commission was then focused increasingly on transmission through efforts related to open access transmission service, interconnection policy, and RTO and ISO regulation.[24] The Commission also noted that then-current market regulation efforts such as reforming western markets and promoting standard market design (SMD), while nominally related to power sales, were primarily focused on transmission issues.[25] The Commission reported that its reform of western markets was concerned with transmission scheduling and constraints used to manipulate prices, and its SMD proposal incorporated a new open access transmission tariff and focused on congestion management procedures.[26]

13. The Commission rejected the suggestion that it should impose annual charges based on the transmission component of bundled retail sales, noting that such transactions formed no part of the Commission's work load at that time.[27] The Commission also refuted the suggestion that the transaction volumes that it relied on were inaccurate and understated transmission service provided by certain utilities, by pointing out that the reported transaction volumes were subject to audit and correction and annual charge assessments would be updated to reflect any correction.[28] Finally, the Commission justified assessing annual charges on public utilities based on transmission services that they provided to non-jurisdictional entities, noting that such charges were properly recoverable in rates from the non-jurisdictional utility and should be treated like any other cost of providing service.[29]

14. The Midwest ISO petitioned the United States Court of Appeals for the District of Columbia for review of the Commission's orders denying the petition for rulemaking. The court denied the petition, but noted the Commission's statement in the Midwest ISO Rehearing Order that "the issues may merit further consideration at a later time."[30]

II. Discussion

15. When the Commission issued Order No. 641, it determined that its regulatory focus was turning increasingly towards regulation of transmission service and away from a case-by-case review of wholesale power sales rates. In recognition of this focus on regulating transmission service, Order No. 641 provided for the Commission to recover the costs of its electric regulatory program (not otherwise recovered by, for example, filing fees) through annual charges assessed to public utilities that provide transmission service, based on the volume of electricity transmitted. Regulation of transmission providers, transmission facilities and transmission service remains at the heart of Commission regulation.

16. Although the state of the industry in 2002 and 2003 did not justify a change to the Commission's methodology, the Commission stated

[17] 18 CFR 382.201; *see Phibro Inc.*, 81 FERC ¶ 61,308 at 62,424–25.

[18] *See Revision of Annual Charges to Public Utilities (California Independent System Operator)*, 101 FERC ¶ 61,043 (California ISO Order), *order dismissing reh'g*, 101 FERC ¶ 61,326 (2002) (California ISO Rehearing Order) (denying requests for rehearing filed by California Independent System Operator, Inc., New York Independent System Operator (New York ISO), Arizona Public Service Company, American Transmission Company, LLC, and American Transmission Services, Inc.).

[19] *See Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,048 (Midwest ISO Order), *order denying reh'g*, 104 FERC ¶ 61,060 (2003) (Midwest ISO Rehearing Order) (denying petition for rulemaking filed by Midwest ISO, New York ISO and PJM Interconnection, LLC), *aff'd*, 388 F.3d 903 (D.C. Cir. 2004) (Midwest ISO Court Order).

[20] Midwest ISO Rehearing Order, 104 FERC ¶ 61,060 at P 7.

[21] *Id.* P 9.

[22] *Id.* P 7 n.13.

[23] Midwest ISO Order, 103 FERC ¶ 61,048 at P 15 n.25; Midwest ISO Rehearing Order, 104 FERC ¶ 61,060 at P 7.

[24] Midwest ISO Order, 103 FERC ¶ 61,048 at P 11–12; Midwest ISO Rehearing Order, 104 FERC ¶ 61,060 at P 10.

[25] *Id.*

[26] *Id.*

[27] California ISO Order, 101 FERC ¶ 61,043 at P 15; *see also* Order No. 641–A, 94 FERC ¶ 61,290 at 62,038.

[28] Midwest ISO Order, 103 FERC ¶ 61,048 at P 13.

[29] *Id.* P 15 & n.25. In fact, since that order, the Commission's authority over such traditionally non-jurisdictional utilities has expanded with the passage of the Energy Policy Act of 2005 (EPAct 2005). *Compare* 16 U.S.C. 824(f) *with* 16 U.S.C. 824j–1(a)–(b), 824o(b), 824u, 824v (2000 & Supp. V 2005).

[30] Midwest ISO Court Order, 388 F.3d at 923. *citing* Midwest ISO Rehearing Order, 104 FERC ¶ 61,060 at P 16.

that it would reconsider its methodology when the issue merited further consideration. The Commission is now seeking through this Notice of Inquiry to determine whether subsequent developments make it appropriate to revisit Order No. 641 or otherwise suggest the need for changes to its methodology for assessing annual charges to recover its electric regulatory program costs.

17. The Commission continues to devote substantial resources to oversight of transmission service. In February 2007, for example, the Commission issued Order No. 890, amending its regulations and reforming the pro forma open access transmission tariff to ensure that transmission services are provided on a just, reasonable and not unduly discriminatory or preferential basis.[31] In addition, the Commission also continues to commit substantial resources to regulation of the development and operation of RTOs and ISOs. These transmission service providers, moreover, administer complex and comprehensive energy markets and transmission tariffs that serve broad regions—New England, New York, California, the mid-Atlantic and the Midwest, among others. These RTO/ISO markets are based on regional, security-constrained economic dispatch transmission service and locational-based marginal pricing, including transmission congestion charges. Therefore, although the Commission devotes some resources to power sales regulation through its regulation of these markets, the markets are fundamentally linked to transmission service. As a result, assessing annual charges based on transmission has been a fair and equitable means to allocate the costs of regulating these markets (with such costs, in turn, being incorporated into the RTO/ISO transmission rates). Moreover, the Commission devotes extensive resources to resolving hundreds of tariff filings by these entities and their members each year—and these filings are among the most complex that the Commission faces.

18. The Commission thus continues to focus very significant resources on transmission,[32] including implementation of new authority under EPAct 2005 to, among other things, approve and enforce mandatory reliability standards for the bulk-power system, which has as its center the interstate electric transmission grid.[33] Order No. 890, for example, established comprehensive requirements for coordinated, open and transparent transmission planning to facilitate the expansion of the transmission system and to address transmission congestion, which can result in higher energy prices, and other customer concerns.

19. The RTOs and ISOs and their members in their earlier pleadings pointed out that all transmission service in RTOs and ISOs is regulated by this Commission and therefore annual charges are assessed on both wholesale and retail transmission service. This stands in contrast to annual charges paid by a public utility that is not an RTO or ISO member, which may provide both unbundled wholesale transmission service and bundled retail transmission service; for such public utilities, only the former transmission service is considered in allocating the Commission's electric regulatory program costs. This results in a comparatively high percentage of the Commission's annual charges being assessed to RTOs and ISOs.

20. While the nature of Commission regulation of wholesale power sales has certainly changed since adoption of Order No. 641, the Commission continues to regulate wholesale power sales. Comprehensive wholesale power sales rate review proceedings are now comparatively rare. Instead of individual rate proceedings, the Commission reviews new market-based rate power sales applications, electric quarterly reports, and triennial filings and notices of changes in status for market-based rate power sellers. In 2004, the Commission revised the market-power analysis that is used to grant market-based rate authority, and, in 2007, clarified its market-based rate policies.[34] Further, the Commission establishes market rules and mitigation rules for wholesale power sales. Finally, the Commission dedicates enforcement resources to investigating compliance with rules governing wholesale power sales.

21. These facts, in combination with new programs intended to implement new EPAct 2005 authority over certain mergers and other corporate transactions and to sanction market manipulation, warrant the Commission inquiring whether the current system remains fair and equitable, or whether the concerns previously raised by RTOs and ISOs, and their members, or other changes in the industry justify a change to the current electric annual charges methodology.

22. If such a change is justified, the Commission requests comments, as described below, on whether other annual charges assessment methodologies are more suitable than the current methodology. Such alternate methodologies could include, but are not limited to: (i) Assessing annual charges based on jurisdictional wholesale power sales as well as transmission service,[35] (ii) adopting different annual charge calculation methodologies for different types of public utilities to account for regional differences in market structure or to account for the fact that all RTO and ISO transmission service is considered when developing annual charges but that non-RTO and ISO members' bundled retail transmission service is not accounted for in annual charges, or (iii) determining annual charges using factors other than the volume of MWh transmitted in interstate commerce, such as peak load or transmission investment.

23. The Commission requests that interested parties submit comments, taking into account the factors listed in the Conference Report for guidance, on the following inquiries:

(A) Does the current electric annual charges assessment methodology remain a fair and equitable method for recovering the Commission's electric regulatory program costs, and why?

(B) If the current electric annual charges assessment methodology is no longer a fair

[31] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, Order No. 890–A, FERC Stats. & Reg. ¶ 31,261 (2007).

[32] The current electric annual charges methodology also has the advantages of being comparatively simple and easy to administer—a not insignificant concern. It is a methodology that, as well, has been challenged and upheld by the D.C. Circuit. *See supra* notes 18, 29.

[33] Pub. L. No 109–58, Title XII, Subtitle A, 119 Stat. 594 (2005) (EPAct 2005) (amending the FPA, 16 U.S.C. 824, *et seq.*).

[34] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 FR 39904 (Jul. 20, 2007), FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on rehearing*, 123 FERC 61,055 (2008).

[35] To the extent that a commenter advocates assessing annual charges based on wholesale power sales, such commenter should identify what utilities should be assessed annual charges and what transactions (and/or power sales volumes) should be used in developing such charges, as well as how the Commission would calculate such charges. For example, should the methodology reflect capacity sales, energy sales or both? Should the methodology reflect shorter-term transactions, longer-term transactions or both and should the methodology treat them similarly or should the methodology treat them differently (and, if so, how)? Given that the Commission does not separately track its resources devoted to transmission regulation versus those devoted to wholesale power sales regulation, how should the Commission allocate its costs between the two? Given that any alternative annual charges methodology adopted must be practical, i.e. must be a methodology that the Commission can administer without undue burden, such questions and others are important and necessitate answers.

and equitable method, please identify what alternative methodology is fair and equitable, and explain why, providing, where possible, empirical evidence to support any proposed methodology.

(C) For any such alternative methodology, please identify, with specificity, what entities should be assessed electric annual charges and how such an alternative methodology would work,[36] including what data the Commission would need to allocate the charges and how the Commission would obtain the data.

III. Comment Procedures

24. The Commission invites interested persons to submit comments on the matters and inquiries discussed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due May 28, 2008. Comments must refer to Docket No. AD08–7–000, and must include the commenter's name, the organization it represents, if applicable, and its address in their comments.

25. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

26. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

27. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters are not required to serve copies of their comments on other commenters.

IV. Document Availability

28. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

29. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

30. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at (866) 208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–9199 Filed 4–25–08; 8:45 am]

BILLING CODE 6717–01–P

[36] The Commission emphasizes the importance of this third question. Parties seeking a change in methodology are cautioned to give this question careful thought and thorough analysis. Broadly phrased requests that some other entities be charged will be less persuasive than specific recommendations as to which particular entities should be charged, and how.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2007–0066]

RIN 0960–AG57

Revised Medical Criteria for Evaluating Malignant Neoplastic Diseases

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise the criteria in parts A and B of the Listing of Impairments (the listings) that we use to evaluate claims involving malignant neoplastic diseases. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act (the Act). The proposed revisions reflect our adjudicative experience, as well as advances in medical knowledge, treatment, and methods of evaluating malignant neoplastic diseases.

DATES: To be sure that your comments are considered, we must receive them by *June 27, 2008*.

ADDRESSES: You may submit comments by any of the following methods. Regardless of which method you choose, to ensure that we can associate your comments with the correct regulation for consideration, state that your comments refer to Docket No. SSA–2007–0066:

- Federal eRulemaking Portal at *http://www.regulations.gov*. (This is the preferred method for submitting your comments.) In the Comment or Submission section, type "SSA–2007–0066", select "Go", and then click "Send a Comment or Submission" under the highlighted SSA–2007–00766 text.
- Telefax to (410) 966–2830.
- Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703.
- Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

Comments are posted on the Federal eRulemaking Portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Rosemarie Greenwald, Social Insurance Specialist, Social Security Administration, Office of Regulations, 960 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call 410–966–7813 for further information about these proposed rules. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

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

Why are we proposing to revise the adult listings for malignant neoplastic diseases?

We last published final rules revising the listings for malignant neoplastic diseases in the **Federal Register** on November 15, 2004 (69 FR 67017, corrected at 70 FR 15227). In those rules, we indicated that we intended to monitor these listings and to update the criteria for any malignant neoplastic disease contained in these listings as the need arose. We are proposing changes to the listing criteria for malignant neoplastic diseases to reflect our adjudicative experience since we last issued final rules on this body system and to reflect advances in medical knowledge, treatment, and methods of evaluating malignant neoplastic diseases. We are also proposing changes to the introductory text to these listings

to provide additional information about how we evaluate malignant neoplastic diseases and to update medical terminology. Many of these proposed changes are based on the answers we provided to our adjudicators who had questions about the current rules.

How do we propose to revise the introductory text to the malignant neoplastic diseases listings for adults?

We propose to make the following changes to 13.00I, "What do these terms in the listings mean?"

- Expand the definition of "inoperable" in current 13.00I1 by adding a reference to the term "neoadjuvant therapy" and defining it. "Neoadjuvant therapy" is antineoplastic therapy, such as chemotherapy or radiation, that you receive before surgery in order to reduce the size of your tumor. In current 13.00I1, we explain that the determination of whether a tumor is inoperable "usually occurs before attempts to shrink the tumor with chemotherapy or radiation"; that is, before the administration of neoadjuvant therapy. However, it is becoming more common in medical practice to wait until neoadjuvant therapy is completed before determining whether a tumor is inoperable. Therefore, we propose to revise current 13.00I1 to define the term "neoadjuvant therapy" and to explain that the determination of whether a tumor is inoperable "may be made before or after neoadjuvant therapy," to be consistent with current medical practice. Lastly, we propose to make minor editorial changes to clarify our list of examples of when a tumor may be considered inoperable.
- Expand the definition of "unresectable" in current 13.00I2 (proposed 13.00I6) by defining the term "adjuvant therapy" and explaining how the use of this type of therapy relates to a determination of whether a tumor is unresectable. "Adjuvant therapy" is antineoplastic therapy, such as chemotherapy or radiation, that you receive after you have surgery in order to eliminate any remaining cancer cells and lessen the chance of recurrence.
- Add a definition for "metastases" (proposed 13.00I2). In the proposed definition, we explain that "metastases" means spread of tumor cells by blood, lymph, or other body fluid. We also explain that "metastases" does not include the spread of tumor cells by direct extension of the tumor to other tissue or organs.
- Reorganize the section to present the terms in alphabetical order for easier reference.

We propose to make the following changes to 13.00K, "How do we evaluate specific malignant neoplastic diseases?"

- Revise current 13.00K1a and 13.00K1b to refer to "indolent lymphoma" instead of "low grade or indolent lymphoma" to reflect current medical terminology.
- Expand current 13.00K2a to recognize that testicular biopsy is an acceptable method of documenting recurrent leukemia.
- Revise current 13.00K6 to clarify that we consider a brain tumor to be malignant if it is classified as grade II or higher under the World Health Organization's (WHO's) classification of tumors of the central nervous system published in 2007. (See References at the end of this preamble.) For purposes of determining disability, we do not consider grade I tumors to be malignant because they are usually associated with long-term survival, even in the rare situation in which they progress or recur following initial antineoplastic therapy. Although we would not evaluate grade I brain tumors under the listings for malignant neoplastic diseases, we would evaluate them under listing 11.05.

How do we propose to revise the criteria in the malignant neoplastic listings for adults?

We propose to revise current listing 13.02C, which applied to recurrent soft tissue tumors of the head and neck, except for salivary or thyroid gland tumors. The current listing excludes local vocal cord recurrence. We propose to revise the listing to specify that it does not include "recurrence in the true vocal cord." The proposed change more accurately reflects our intent. Accordingly, under our proposal as under our current rules, recurrence of the disease in the "false" vocal cord would meet listing 13.02C.

We propose to expand the criteria in current listing 13.03B2 for melanoma with palpable nodal metastases or metastases to adjacent skin (satellite lesions) or elsewhere. A palpable lymph node is a type of "clinically apparent" lymph node. As defined by the American Joint Committee on Cancer (AJCC) in the sixth edition of the Cancer Staging Handbook (see References at the end of this preamble), "clinically apparent" means "detected by imaging studies (excluding lymphoscintigraphy) or by clinical examination." Current medical literature establishes that a finding of melanoma with metastases to one or more "clinically apparent" lymph nodes is equivalent in severity to palpable nodal metastases. The literature also establishes that a finding of melanoma with metastases to four or more lymph nodes that are not clinically apparent is equivalent in severity to palpable nodal metastases. Therefore, we propose to expand the current listing to include these criteria. We also propose to make a minor editorial change to clarify that "elsewhere" means "distant sites."

We propose to make the following changes to current listing 13.05A for non-Hodgkin's lymphoma:

- Replace the terms "intermediate or high-grade" and "low-grade or indolent" with the terms "aggressive" and "indolent," respectively, to reflect current medical terminology;
- Clarify that mycosis fungoides is an indolent lymphoma by removing it from the heading of the listing and including it as an example in proposed listing 13.05A2; and
- Add an example of an aggressive lymphoma and another example of an indolent lymphoma for clarity.

Current listing 13.09B, for carcinoma of the thyroid gland with metastases beyond the regional lymph nodes, provides that we consider this disease to be of listing-level severity when it progresses despite radioactive iodine treatment. We propose to add a criterion, proposed listing 13.09C, for medullary carcinoma of the thyroid gland with metastases beyond the regional lymph nodes. Because medullary carcinoma is not treated with radioactive iodine, it cannot meet current listing 13.09B.

Although we are adding this criterion for adults, we are not adding a comparable criterion for children since medullary carcinoma is extremely rare in children. Instead, we are proposing to include guidance in proposed 113.00K4, the introductory text to the childhood listings, indicating that we will use listing 13.09C in the rare case in which a child has medullary carcinoma of the thyroid gland.

When we published current listing 13.10B, for breast carcinoma, the spread of breast carcinoma to the supraclavicular nodes was considered to be distant metastases. However, the medical community no longer considers this to represent distant metastases for breast carcinoma. Therefore, we propose to add a criterion to current listing 13.10B for metastases to the supraclavicular nodes to make it clear that we will continue to consider metastases to the supraclavicular nodes to be of listing-level severity.

We also propose to add criteria for breast cancer with metastases to the infraclavicular nodes or to 10 or more axillary nodes. In light of the current

medical literature, we believe that these findings are indicative of listing-level severity as well.

We propose to remove the words "carcinoma or" from the heading of current listing 13.11, for malignant neoplastic diseases of the skeletal system, to correct an editorial error. A carcinoma is a malignant tumor that begins in the skin or in tissues that line or cover internal organs. Therefore, by definition, a carcinoma cannot originate in the skeletal system.

We propose to make a minor editorial change to current listing 13.13A1 for highly malignant central nervous system neoplasms to clarify that the requirement for documented metastases applies only to medulloblastoma or other primitive neuroectodermal tumors (PNETs), and not to grades III and IV astrocytomas, glioblastoma multiforme, and ependymoblastoma. This is what we intend in the current rule, but we wanted to make the current sentence structure clearer. Therefore, we propose to reorganize the sentence for clarity. We also propose to add the word "malignant" to current listing 13.13A, for central nervous system neoplasms. This would clarify that we do not evaluate benign tumors under this listing.

We propose to expand the criteria in current listing 13.14, for carcinoma of the lungs, by adding proposed listing 13.14C. The proposed listing would provide that an individual with carcinoma of the superior sulcus (including Pancoast tumors) who receives multimodal antineoplastic therapy would be disabled for at least 18 months from the date of diagnosis. This criterion recognizes the debilitating effects of, and the length of time needed to recover from, treatment for this disease. At the end of the 18-month period, we would evaluate any residual impairment(s) under the criteria for the affected body system.

We propose to remove current listing 13.23E1c, for ovarian cancer with ruptured ovarian capsule, tumor on the serosal surface of the ovary, ascites with malignant cells, or positive peritoneal washings. Current medical literature indicates improved prognoses for these clinical findings. Consequently, we believe that these clinical findings do not usually represent an impairment of listing-level severity. We will continue to consider ovarian cancer to be of listing-level severity if it meets the other criteria in current listing 13.23E1; that is, there is tumor extension beyond the pelvis (current listing 13.23E1a), there are metastases to or beyond the regional lymph nodes (current listing 13.23E1b), or the disease is recurrent following initial antineoplastic therapy (current listing 13.23E1d). Because of this proposed deletion, we would redesignate current listing 13.23E1d as listing 13.23E1c.

We propose to revise listing 13.24B for carcinoma of the prostate gland to clarify that "visceral metastases" means metastases to internal organs.

We propose to make a minor editorial change to current listing 13.27 for malignant tumors for which the primary site of origin is unknown. The current listing provides that these tumors are of listing-level severity "except for solitary squamous cell carcinoma in the neck." We propose to revise this language to read "except for squamous cell carcinoma confined to the neck nodes" for clarity.

How do we propose to revise the introductory text to the malignant neoplastic diseases listings for children?

We propose to make the following changes in 113.00 to correspond to changes we propose to make in 13.00:

- Add a definition of "metastases" (proposed 113.00I1);
- Reorganize section 113.00I to present the terms in alphabetical order for easier reference;
- Revise the guidance on lymphoma in current 113.00K1a to refer to "aggressive" lymphoma and "indolent" lymphoma and to make minor editorial changes;
- Revise current 113.00K2a to add testicular biopsy as an acceptable method of documenting recurrent leukemia; and
- Revise current 113.00K4 (proposed 113.00K5) to clarify when we consider a brain tumor to be malignant.

We also propose to add a new 113.00K4 to provide guidance on evaluating thyroid tumors. As we indicated above, we are not proposing to add a listing for medullary carcinoma of the thyroid gland to the childhood listings because this disease is extremely rare in children. Instead, we propose to add guidance indicating that we will evaluate this disease in children under listing 13.09C. Because of this addition, we would redesignate current 113.00K4 and current 113.00K5 as 113.00K5 and 113.00K6.

How do we propose to revise the criteria in the malignant neoplastic listings for children?

We propose to revise current listing 113.13, for brain tumors, to be consistent with the change we are proposing in current listing 13.13A1.

What programs would these proposed regulations affect?

These proposed rules would affect disability determinations and decisions that we make under titles II and XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II or title XVI, these proposed rules would also affect the Medicare and Medicaid programs.

Who can get disability benefits?

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

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

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

How do we define disability?

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

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

How do we decide whether you are disabled?

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

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

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

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

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

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

We use a different sequential evaluation process for children who apply for payments based on disability under SSI. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.924, 416.994, and 416.994a of our regulations. However, all of these processes include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

What are the listings?

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

How do we use the listings?

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

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

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

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

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

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended because we have changed a listing. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled a listing. In these cases, we determine whether you have experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that your impairment(s) no longer meets or medically equals the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled, depending on the full circumstances of your case. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). If you are a child who is eligible for SSI payments, we follow a similar rule when we decide that you have experienced medical improvement in your condition(s). See § 416.994a(b)(2).

When will we start to use these rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

How long would these proposed rules be effective?

If we publish these proposed rules as final rules, they will remain in effect for 8 years after the date they become effective, unless we extend them, or revise and issue them again.

Clarity of these Proposed Rules

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended. Thus, they were subject to OMB review.

The Office of the Chief Actuary estimates that these proposed rules, if finalized, would reduce the program costs of the Old Age, Survivors, and Disability Insurance (OASDI) and the SSI programs, as shown in the table below:

ESTIMATED NET REDUCTIONS IN OASDI BENEFIT PAYMENTS AND FEDERAL SSI PAYMENTS DUE TO THE PROPOSED REVISION OF THE MALIGNANT NEOPLASTIC DISEASES LISTINGS, FISCAL YEARS 2009–2018

(in millions)

Fiscal year	OASDI	SSI
2009	$1	(1)
2010	2	(1)
2011	2	(1)
2012	3	$1
2013	4	1
2014	5	1
2015	6	1
2016	7	1
2017	8	1
2018	9	1
Totals:		
2019–2013	12	2
2009–2018	47	8

[1] Reduction in payments of less than $500,000.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

References

During development of these proposed rules, we consulted the following information:

Alifano, M., *et al.*, Surgical treatment of superior sulcus tumors, *Chest*, Sep;124(3), 996–1003 (2003).

Archie, V.C. and Thomas, C.R. Jr., Superior sulcus tumors: A mini-review. *The Oncologist*, Sep;9(5), 550–555 (2004).

Asher, A., *et al.*, *A Primer of Brain Tumors: A Patient's Reference Manuol*, (American Brain Tumor Association, 8th ed. 2004).

Balch, C.M., *et al.*, Final version of the American Joint Committee on Cancer Staging System for Cutaneous Melanoma, *Journal of Clinical Oncology*, Aug;19(16), 3635–3648 (2001).

Bell, J., *et al.*, Randomized phase III trial of three versus six cycles of adjuvant carboplatin and paclitaxel in early stage epithelial ovarian carcinoma: A Gynecologic Oncology Group study, *Gynecologic Oncology* Sep;102(3), 432–439 (2006).

Benamore, R., *et al.*, Does intensive follow-up alter outcomes in patients with advanced lung cancer?, *Journol of Thoracic Oncology*, Apr;2(4), 273–281 (2007).

Cliby, W.A., *et al.*, Is it justified to classify patients to stage IIIC epithelial ovarian cancer based on nodal involvement only?, *Gynecologic Oncology*, Dec;103(3), 797–801 (2006).

Colombo, N., *et al.*, Ovarian cancer, *Critical Reviews in Oncology/Hematology*, Nov;60(2), 159–179 (2006).

Garcia, J.A., *et al.*, Multidisciplinary approach to superior sulcus tumors, *The Concer Journol*, May/Jun;11(3), 189–197 (2005).

Greene, F.L., *et al* , Eds., *AJCC Cancer Stoging Handbook: From the AJCC Cancer Staging Monual*, (Springer, 6th ed. 2002).

Kestle, J., *et al.*, Juvenile pilocytic astrocytoma of the brainstem in children, *Journal of Neurosurgery*, Aug;101(1 Suppl.), 1–6 (2004).

Kleihues, P, *et al.*, The WHO classification of tumors of the nervous system, *Journol of Neuropothology ond Experimental Neurology*, Mar;61(3), 215–225 (2002).

Lockwood-Rayermann, S., Survivorship issues in ovarian cancer: A review, *Oncology Nursing Forum*, May;33(3), 553–562 (2006).

Louis, D.N., *et al.*, Eds., *WHO Classification of Tumours of the Centrol Nervous System*, (International Agency for Research on Cancer, 4th ed. 2007).

Marra, A., *et al.*, Induction chemotherapy, concurrent chemoradiation and surgery for Pancoast tumour, *Europeon Respiratory Journol*, Jan;29(1), 117–126 (2007).

Morton, D.L. and Cochran, A.J., The case for lymphatic mapping and sentinel lymphadenectomy in the management of primary melanoma, *British Journal of Dermatology*, Aug;151(2), 308–319 (2004).

Pectasides, P., *et al.*, Treatment issues in clear cell carcinoma of the ovary: A different entity?, *The Oncologist*, Nov;11(10), 1089–1094 (2006).

Rao, G.G., *et al.*, Surgical staging of ovarian low malignant potential tumors, *The Women's Oncology Review*, Mar;5(1), 29–30 (2005).

Shah, H., *et al.*, Brain: The common site of relapse in patients with Pancoast or superior sulcus tumors, *Journol of Thorocic Oncology*, Nov;1(9), 1020–1022 (2006).

Shimada, M., *et al.*, Outcome of patients with early ovarian cancer undergoing three courses of adjuvant chemotherapy following complete surgical staging, *International Journol of Gynecological Cancer*, Jul/Aug;15(4), 601–605 (2006).

Signorelli, M., *et al.*, Conservative management in primary genital lymphoma: The role of chemotherapy, *Gynecologic Oncology*, Feb;104(2), 416–421 (2007).

Steliarova, E., *et al.*, Thyroid cancer incidence and survival among European children and adolescents (1978–1997): Report from the Automated Childhood Cancer Information System project, *European Journal of Cancer*, Sep;42(13), 2150–2169 (2006).

Tanvetyanon, T., *et al.*, Neoadjuvant therapy: An emerging concept in oncology, *Southern Medical Journal*, Mar;98(3), 338–344 (2005).

White, R.R., *et al.*, Long-term survival in 2,505 patients with melanoma with regional lymph node metastasis, *Annals of Surgery*, Jun;235(6), 879–887 (2002).

Zhang, M., *et al.*, Prognostic factors responsible for survival in sex cord stromal tumors of the ovary—An analysis of 376 women, *Gynecologic Oncology*, Feb;104(2), 396–400 (2007).

These references are included in the rulemaking record for these proposed rules and are available for inspection by interested individuals making arrangements with the contact person shown in this preamble.

(Catalog of Federal Domestic Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

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

Dated: January 29, 2008.

Michael J. Astrue,

Commissioner of Sociol Security.

For the reasons set out in the preamble, we propose to amend Appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Appendix 1 to subpart P of Part 404 is amended as follows:

a. Revise the expiration date in item 14 of the introductory text before part A of appendix 1.

b. Revise paragraph I of section 13.00 of part A of appendix 1.

c. Amend paragraph K of section 13.00 of part A of appendix 1 by revising 13.00K1a, 13.00K1b, the third sentence of 13.00K2a, and 13.00K6.

d. Revise listing 13.02C of part A of appendix 1.

e. Revise listing 13.03B2 of part A of appendix 1.

f. Amend listing 13.05 of part A of appendix 1 by revising the heading and listing 13.05A.

g. Amend listing 13.09 of part A of appendix 1 by adding the word "OR" and listing 13.09C.

h. Revise listing 13.10B of part A of appendix 1.

j. Amend listing 13.11 of part A of appendix 1 by removing the words "carcinoma or."

k. Revise listings 13.13A1 and 13.13A2 of part A of appendix 1.

l. Amend listing 13.14 of part A of appendix 1 by adding the word "OR" and listing 13.14C.

m. Amend listing 13.23 of part A of appendix 1 by removing current listing 13.23E1c and redesignating current listing 13.23E1d as listing13.23E1c.

n. Revise listing 13.24B of part A of appendix 1.

o. Revise listing 13.27 of part A of appendix 1.

p. Revise paragraph I of section 113.00 of part B of appendix 1.

q. Amend paragraph K of section 113.00 of part B of appendix 1 by revising 113.00K1a and the third sentence of 113.00K2a, redesignating current 113.00K4 and 113.00K5 as 113.00K5 and 113.00K6, respectively, adding new 113.00K4, and revising newly designated 113.00K5.

r. Revise listing 113.13 of part B of appendix 1.

The revised text is set forth as follows:

APPENDIX 1 TO SUBPART P OF PART 404—LISTING OF IMPAIRMENTS

* * * * *

14. Malignant Neoplastic Diseases (13.00 and 113.00): (Insert date 8 years from the effective date of the final rules.)

* * * * *

Part A

* * * * *

13.00 MALIGNANT NEOPLASTIC DISEASES

* * * * *

I. *What do these terms in the listings mean?*

1. *Inoperable:* Surgery is thought to be of no therapeutic value or the surgery cannot be performed. Examples of when surgery cannot be performed include a tumor that is too large or that invades crucial structures, or you cannot tolerate the anesthesia or surgery due to another impairment(s). This term does not include situations in which the tumor could have been surgically removed but another method of treatment was chosen; for example, an attempt at organ preservation. The determination whether a tumor is inoperable may be made before or after the administration of neoadjuvant therapy. Neoadjuvant therapy is antineoplastic therapy, such as chemotherapy or radiation, given before surgery in order to reduce the size of the tumor.

2. *Metastases:* The spread of tumor cells by blood, lymph, or other body fluid. This term does not include the spread of tumor cells by direct extension of the tumor to other tissue or organs.

3. *Persistent:* Failure to achieve a complete remission.

4. *Progressive:* The malignancy became more extensive after treatment.

5. *Recurrent, relapse:* A malignancy that had been in complete remission or entirely removed by surgery has returned.

6. *Unresectable:* The operation was performed, but the malignant tumor was not removed. This term includes situations in which a tumor is incompletely resected or the surgical margins are positive. This term does not include situations in which a tumor is completely resected but adjuvant therapy is being administered. Adjuvant therapy is antineoplastic therapy, such as chemotherapy or radiation, given after surgery in order to eliminate any remaining cancer cells and lessen the chance of recurrence.

* * * * *

K. *How do we evaluate specific malignant neoplastic diseases?*

1. *Lymphoma.*

a. Many indolent (non-aggressive) lymphomas are controlled by well-tolerated treatment modalities, although they may produce intermittent symptoms and signs. Therefore, we may defer adjudication of these cases for an appropriate period after initiation of therapy to determine whether the therapy will achieve its intended effect. (See 13.00E3.) For indolent lymphoma, the intended effect of therapy is usually stability of the disease process. When stability has been achieved, we will assess severity on the basis of the extent of involvement of other organ systems and residuals from therapy.

b. A change in therapy for indolent lymphomas is usually an indicator that the therapy is not achieving its intended effect. However, it does not indicate this if the change is based on your (or your physician's) choice rather than a failure to achieve stability. If the therapy is changed solely due to choice, the requirements of listing 13.05A2 are not met.

* * * * *

2. *Leukemia.*

a. *Acute leukemia.* * * * Recurrent disease must be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination, or by testicular biopsy. * * *

* * * * *

6. *Brain tumors.* We use the criteria in 13.13 to evaluate malignant brain tumors. We consider a brain tumor to be malignant if it is classified as grade II or higher under the World Health Organization's (WHO's) classification of tumors of the central nervous system (*WHO Classification of Tumours of the Central Nervous System*, 2007). We evaluate any complications of malignant brain tumors, such as resultant neurological or psychological impairments, under the criteria for the affected body system. We evaluate benign brain tumors under 11.05.

* * * * *

13.01 Category of Impairments, Malignant Neoplastic Diseases

13.02 *Soft tissue tumors of the head and neck* (except salivary glands—13.08—and thyroid gland—13.09).

* * * * *

C. Recurrent disease following initial antineoplastic therapy, except recurrence in the true vocal cord.

* * * * *

13.03 *Skin.*

* * * * *

OR

B. Melanoma, as described in 1 or 2.

* * * * *

2. With metastases as described in a, b, or c:

a. Metastases to one or more clinically apparent nodes; that is, nodes that are detected by imaging studies (excluding lymphoscintigraphy) or by clinical examination.

b. If the nodes are not clinically apparent, with metastases to four or more nodes.

c. With metastases to adjacent skin (satellite lesions) or distant sites.

* * * * *

13.05 *Lymphoma* (excluding T-cell lymphoblastic lymphoma—13.06). (See 13.00K1 and 13.00K2c.)

A. Non-Hodgkin's lymphoma, as described in 1 or 2:

1. Aggressive lymphoma (including diffuse large B-cell lymphoma) persistent or recurrent following initial antineoplastic therapy.

2. Indolent lymphoma (including mycosis fungoides and follicular small cleaved cell) requiring initiation of more than one antineoplastic treatment regimen within a consecutive 12-month period. Consider under a disability from at least the date of initiation of the treatment regimen that failed within 12 months.

* * * * *

13.09 *Thyroid gland.*

* * * * *

OR

C. Medullary carcinoma with metastases beyond the regional lymph nodes.

13.10 *Breast.* (except sarcoma—13.04). (See 13.00K4.)

* * * * *

B. Carcinoma with metastases to the supraclavicular or infraclavicular nodes, to 10 or more axillary nodes, or with distant metastases.

* * * * *

13.11 *Skeletal system*—sarcoma.

* * * * *

13.13 *Nervous system.* (See 13.00K6.)

A. Central nervous system malignant neoplasms (brain and spinal cord), as described in 1 or 2:

1. Highly malignant tumors, such as medulloblastoma or other primitive neuroectodermal tumors (PNETs) with documented metastases, grades III and IV astrocytomas, glioblastoma multiforme, ependymoblastoma, diffuse intrinsic brain stem gliomas, or primary sarcomas.

2. Progressive or recurrent following initial antineoplastic therapy.

* * * * *

13.14 *Lungs.*

* * * * *

OR

C. Carcinoma of the superior sulcus (including Pancoast tumors) with multimodal antineoplastic therapy. Consider under a disability until at least 18 months from the date of diagnosis. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

* * * * *

13.23 *Cancers of the female genital tract*—carcinoma or sarcoma.

* * * * *

E. Ovaries, as described in 1 or 2:

1. All tumors except germ cell tumors, with at least one of the following:

a. Tumor extension beyond the pelvis; for example, tumor implants on peritoneal, omental, or bowel surfaces.

b. Metastases to or beyond the regional lymph nodes.

c. Recurrent following initial antineoplastic therapy.

* * * * *

13.24 *Prostate gland*—carcinoma.

* * * * *

B. With visceral metastases (metastases to internal organs).

* * * * *

13.27 *Primary site unknown after appropriate search for primary*—metastatic carcinoma or sarcoma, except for squamous cell carcinoma confined to the neck nodes.

* * * * *

Part B

* * * * *

113.00 MALIGNANT NEOPLASTIC DISEASES

* * * * *

I. *What do these terms in the listings mean?*

1. *Metastases:* The spread of tumor cells by blood, lymph, or other body fluid. This term does not include the spread of tumor cells by direct extension of the tumor to other tissue or organs.

2. *Persistent:* Failure to achieve a complete remission.

3. *Progressive:* The malignancy became more extensive after treatment.

4. *Recurrent, relapse:* A malignancy that had been in complete remission or entirely removed by surgery has returned.

* * * * *

K. *How do we evaluate specific malignant neoplastic diseases?*

1. *Lymphoma.*

a. We provide criteria for evaluating aggressive lymphomas that have not responded to antineoplastic therapy in 113.05. Indolent lymphomas are rare in children. We will evaluate indolent lymphomas in children under 13.05 in part A.

* * * * *

2. *Leukemia.*

a. *Acute leukemia.* * * * Recurrent disease must be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination, or by testicular biopsy. * * *

* * * * *

4. *Thyroid tumors.* We use the criteria in 113.09 to evaluate anaplastic carcinoma and carcinoma treated with radioactive iodine. Medullary carcinoma of the thyroid gland, which is not treated with radioactive iodine, is rare in children. We evaluate medullary carcinoma in children under 13.09C in part A.

5. *Brain tumors.* We use the criteria in 113.13 to evaluate malignant brain tumors. We consider a brain tumor to be malignant if it is classified as grade II or higher under the World Health Organization's classification of tumors of the central nervous system (*WHO Classification of Tumours of the Central Nervous System*, 2007). We evaluate any complications of malignant brain tumors, such as resultant neurological or psychological impairments, under the criteria for the affected body system. We evaluate benign brain tumors under 111.05.

* * * * *

113.01 Category of Impairments, Malignant Neoplastic Diseases

* * * * *

113.13 *Brain tumors.* (See 113.00K5.) Highly malignant tumors, such as medulloblastoma or other primitive neuroectodermal tumors (PNETs) with documented metastases, grades III and IV astrocytomas, glioblastoma multiforme, ependymoblastoma, diffuse intrinsic brain stem gliomas, or primary sarcomas.

* * * * *

[FR Doc. E8–9170 Filed 4–25–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. FDA–2008–N–0163] (formerly Docket No. 2001N–0067)

Dental Devices: Classification of Encapsulated Amalgam Alloy and Dental Mercury and Reclassification of Dental Mercury; Issuance of Special Controls for Amalgam Alloy; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 90 days, the comment period for the proposed rule, published in the **Federal Register** of February 20, 2002 (67 FR 7620), on the classification of encapsulated amalgam alloy and dental mercury, the reclassification of dental mercury, and the issuance of special controls for amalgam alloy. In the **Federal Register** of July 17, 2002 (67 FR 46941), the initial comment period was reopened for 60 days. The agency is taking this action to provide the public with an additional opportunity to comment and to request data and information that may have become available since publication of the proposed rule.

DATES: Submit written or electronic comments by July 28, 2008.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2008–N–0163 (formerly Docket No. 2001N–0067), by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "How to Submit Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts

and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael E. Adjodha, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3688.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 20, 2002 (67 FR 7620), FDA published a proposed rule entitled "Dental Devices: Classification of Encapsulated Amalgam Alloy and Dental Mercury and Reclassification of Dental Mercury; Issuance of Special Controls for Amalgam Alloy." In that document, FDA proposed the following actions: (1) Issue a separate classification regulation for encapsulated amalgam alloy and dental mercury; (2) amend the classification for amalgam alloy by adding special controls; and (3) reclassify dental mercury from class I (general controls) to class II. FDA proposed that all three products would have the same labeling guidance as a special control. In addition, FDA proposed that dental mercury would have a voluntary American National Standards Institute (ANSI) standard as a special control; encapsulated amalgam alloy and dental mercury would have voluntary ANSI and International Standards Organization (ISO) standards as special controls; and the amalgam alloy products would have a voluntary ISO standard as a special control. Since that time, a 2006 joint meeting of the Dental Products Panel and the Peripheral and Central Nervous System Drugs Advisory Committee raised the need for FDA to further consider scientific issues that are potentially relevant to this classification and we seek additional comments on the proposed classification.

In an effort to provide an update on the latest scientific information concerning dental amalgam, a working group of the U.S. Department of Health and Human Services, known as the Trans-agency Working Group on the Health Effects of Dental Amalgam, commissioned a new review of the scientific literature in 2004 (the 2004 review). The 2004 review, funded by the National Institutes of Health in cooperation with FDA, the Centers for Disease Control and Prevention, and the Office of the Chief Dental Officer of the Public Health Service, was completed in 2004 by Life Sciences Research Office, Inc. (LSRO). LSRO engaged an independent panel of experts from academia with preeminent qualifications and experience in the appropriate scientific disciplines needed for the 2004 review. The 2004 review was a systematic and comprehensive evaluation of approximately 300 peer-reviewed studies of dental amalgam and mercury vapor published from 1996 through 2003, intended to determine whether these studies provided new evidence related to the health effects of dental amalgam in humans. The panel concluded that the studies contained insufficient evidence to support a correlation or causal relationship between exposure to dental amalgam and kidney or cognitive dysfunction; neurodegenerative disease (specifically Alzheimer's disease and Parkinson's disease); autoimmune disease (including multiple sclerosis); or adverse pregnancy outcomes (Refs. 1 and 2).

Dental amalgam was the subject of an advisory committee meeting in 2006. As announced in the **Federal Register** of April 3, 2006 (71 FR 16582), on September 6 and 7, 2006, FDA held a joint meeting of the Dental Products Panel and the Peripheral and Central Nervous System Drugs Advisory Committee (the 2006 joint committee). The 2006 joint meeting was held to discuss and make recommendations to FDA on a draft FDA White Paper (2006 draft White Paper) (Ref. 3) regarding the potential adverse health risks associated with exposure to mercury in dental amalgam. The goal of the 2006 draft White Paper was to provide an assessment and conclusions regarding significant new information and health risks from mercury in dental amalgam and to build on previous Public Health Service literature reviews and risk assessments (1993 and 1997) and reviews by other Federal agencies since 1997. The 2006 joint committee, comprised of 24 panelists, heard presentations from the following groups: (1) Scientists; (2) regulatory officials from Canada and Sweden, on the scientific basis for the regulation of dental amalgam in their respective countries; and (3) FDA, on how the United States has regulated and evaluated dental amalgam. Numerous public speakers also presented their views.

The 2006 joint committee then deliberated on a series of questions FDA had posed on its draft review of the dental amalgam literature and provided recommendations to the agency related to those questions (Ref. 4). By majority vote, the committee concluded that FDA's draft White Paper had significant limitations. Among its criticisms, the 2006 joint committee identified insufficient explanation about the following: (1) How the scientific references were chosen; (2) failure to identify the significant gaps in the scientific knowledge, particularly with respect to exposure limits; and (3) lack of attention to sensitive subpopulations. The majority of the 2006 joint committee voted that it could not find the conclusions of the draft White Paper to be "reasonable."

Despite the limitation on the draft White Paper, the 2006 joint committee generally agreed that there is no evidence that dental amalgams cause health problems. The 2006 joint committee also agreed that the most recent well-controlled clinical studies, including two prospective clinical studies in children (Refs. 5 and 6), showed no evidence of neurological harm from dental amalgams. In addition, a more recent article corroborated this evidence (Ref. 7). Panelists provided individual recommendations, including recommendations that FDA consider requirements related to the use of dental amalgam in pregnant women and small children, as well as patient information to ensure that consumers understand that these devices contain mercury.

II. Reopening of the Comment Period

FDA believes it is important for members of the public to have the opportunity to further comment on FDA's proposal. Accordingly, FDA is asking for comments concerning whether these devices should be classified into class II (special controls). We specifically request comments supported by empirical data and scientific evidence concerning this classification and these special controls. In addition, if class II (special controls) is the appropriate classification for these devices, FDA requests comment on whether the two types of special controls proposed by FDA in 2002 (materials and labeling) provide reasonable assurance of the safety and effectiveness of these devices and on whether the proposed special control guidance document should be revised in light of the recommendations and with respect to the discussions by the 2006 joint committee.

- Controls on the Materials. For example, should the material controls proposed by FDA address conformance to recognized consensus standards that make recommendations for testing, compressive strength, and identifying the mercury vapor released by the device?
- Labeling Controls. For example, how should labeling controls, if any,

address the disclosure of composition, including mercury content, and precautions regarding use of the device in sensitive subpopulations composed of individuals who respond biologically at lower levels of exposure to mercury than the general population? If so, which subpopulations should be included (e.g., children under age 6, pregnant and lactating women, hypersensitive or immunocompromised individuals)? Should the labeling controls require more specific patient labeling (e.g., informing patients of identified sensitive subpopulations of the mercury content, the alternatives to the device and their relative costs, and health risks associated with the failure to obtain dental care)?

For the agency's future analysis of benefits and costs of the regulatory options for dental amalgams, FDA also requests comments, including available data, on the following questions:

(1) How many annual procedures use mercury amalgams? What are the trends?

(2) What are the differences in cost between amalgams and alternative materials (e.g., composite, other metals, ceramics, etc.)? Are there differences in replacement lives?

(3) What are reimbursement rates for dental amalgam and the alternative materials?

(4) How would labeling describing the risks of amalgam for certain subpopulations (e.g., children under age 6, pregnant and lactating women, hypersensitive or immunocompromised individuals) affect the demand for, and use of, mercury amalgam? How would the risks included in the labeling be communicated to those subpopulations?

(5) What is the current exposure to mercury for patients? For professionals? What would be the reduction in exposure associated with the alternatives described previously in this section of this document?

III. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.regulations.gov* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Governmental-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Review and Analysis of the Literature on the Potential Adverse Health Effects of Dental Amalgam, LSRO, July 2004.

2. Brownawell, A.M., et al., "The Potential Adverse Health Effects of Dental Amalgam." *Toxicological Reviews*, 24(1):1–10, 2006.

3. Draft FDA Update/Review of Potential Adverse Health Risks Associated With Exposure to Mercury in Dental Amalgam. National Center for Toxicological Research, FDA, August 2006.

4. Transcripts from the Joint Meeting of Dental Products Panel and Central Nervous System Drugs Advisory Committee, September 6 and 7, 2006.

5. Bellinger, D.C., et al., "Neuropsychological and Renal Effects of Dental Amalgam in Children: A Randomized Trial," *Journal of the American Medical Association*, 295:1775–1783, 2006.

6. DeRouen, T.A., et al., "Neurobehavioral Effects of Dental Amalgam in Children: A Randomized Clinical Trial," *Journal of the American Medical Association*, 295:1784–1792, 2006.

7. Dunn, Julie E., "Scalp hair and urine mercury content of children in the Northeast United States: The New England Children's Amalgam Trial," *Environmental Research*, Vol. 107, Issue 1, pages 79 to 88, May 2008.

Dated: April 22, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. 08–1187 Filed 4–23–08; 10:15 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–208199–91]

RIN 1545–BC55

Suspension of Running of Period of Limitations During a Proceeding to Enforce or Quash a Designated or Related Summons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and withdrawal of notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the use of designated summonses and related summonses and the effect on the period of limitations on assessment when a case is brought with respect to a designated or related summons. This document also withdraws the previous proposed regulations published in the **Federal Register** on July 31, 2003 (68 FR 44905). These proposed regulations reflect changes to section 6503 of the Internal Revenue Code of 1986 made by the Omnibus Budget Reconciliation Act of 1990 and the Small Business Job Protection Act of 1996. These regulations affect corporate taxpayers that are examined under the coordinated issue case (CIC) program and are served with designated or related summonses. These regulations also affect third parties that are served with designated or related summonses for information pertaining to the corporate examination.

DATES: Written or electronic comments and requests for a public hearing must be received by July 28, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–208199–91), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–208199–91), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Comments may also be submitted electronically to the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–208199–91).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Elizabeth Rawlins, (202) 622–3630; concerning submissions of comments, Richard Hurst, (202) 622–7180 or *Richard.A.Hurst@IRSCounsel.Treas.Gov* (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration regulations (26 CFR part 301) under section 6503. Section 11311 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388) amended section 6503(k) to suspend the period of limitations on assessment when a case is brought with respect to a designated or related summons. Section 6503(k) was

redesignated as section 6503(j) by section 1702(h)(17)(A) of the Small Business Job Protection Act of 1996 (Pub. L. 104–188, 110 Stat. 1874).

Proposed regulations under section 6503(j) were previously published in the **Federal Register** on July 31, 2003 (68 FR 44905) (the 2003 proposed regulations). The 2003 proposed regulations contained a procedure for determining the date of compliance with a designated or related summons issued with respect to a taxpayer whose statute of limitations on assessment was suspended under section 6503(j) because a court proceeding was brought. No comments were received with respect to this procedure or any other aspect of the 2003 proposed regulations, and no hearing was requested or held. The IRS and the Treasury Department have determined that, in the interest of effective tax administration, the procedure in the 2003 proposed regulations is not warranted. Instead, the IRS intends to create procedures by which taxpayers can inquire about the suspension of their periods of limitations under section 6503(j), including the date of compliance with the summons, and to publish these procedures in the Internal Revenue Manual. In addition, the IRS has established administrative procedures in the Internal Revenue Manual that ensure substantial IRS executive involvement and oversight of any designated and related summons issued. Additionally, § 301.6503(j)–1(c)(1)(i) of these proposed regulations requires that any designated summons be reviewed by the IRS Division Commissioner and Division Counsel of the Office of Chief Counsel before it is issued. Accordingly, the 2003 proposed regulations are withdrawn.

Explanation of Provisions

These proposed regulations generally provide that the period of limitations on assessment provided for in section 6501 is suspended with respect to any return of tax by a corporation that is the subject of a designated or related summons if a court proceeding to enforce or quash is instituted with respect to that summons.

Designated Summonses and Related Summonses

A designated summons is a summons issued to determine the amount of any internal revenue tax of a corporation for which a return was filed if certain additional requirements are satisfied. A designated summons may only be issued to a corporation (or any other person to whom the corporation has transferred records) if the corporation is being examined under the IRS's coordinated examination program or "any successor program." The existing successor program to the coordinated examination program is the coordinated issue case (CIC) program.

Section 6503(j)(2)(A)(i) requires that the issuance of the summons be preceded by a review by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted. The office of regional counsel was eliminated by the IRS reorganization implemented pursuant to the IRS Reform and Restructuring Act of 1998. Because the office of regional counsel no longer exists, these proposed regulations provide that the review must by completed by the Division Commissioner and the Division Counsel of the Office of Chief Counsel (or their successors) for the organizations that have jurisdiction over the corporation whose liability is the subject of the summons. The summons also must be issued at least 60 days before the day on which the statute of limitations on assessment under section 6501 would otherwise expire. Finally, the summons must clearly state that it is a designated summons for purposes of section 6503(j).

A related summons is any other summons that is issued with respect to the same tax return of the corporation as a designated summons and is issued during the 30-day period that begins on the date the designated summons is issued.

Suspension of Period of Limitations on Assessment

Section 6503(j)(1) suspends the period of limitations on assessment under section 6501 for the applicable tax period when a court proceeding is brought with respect to a designated or related summons. For purposes of these proposed regulations, a court proceeding is a proceeding brought in a United States district court either to quash a designated or related summons under section 7609(b)(2) or to enforce a designated or related summons under section 7604. The court proceeding must be brought within the otherwise applicable period of limitations in order to suspend that period under section 6503(j).

The proposed regulations provide that the suspension begins on the day that a court proceeding is brought and continues until there is a final resolution as to the summoned party's response to the summons (discussed in the next section), plus an additional 120 days if a court requires any compliance with the summons at issue. If a court does not require any compliance, then the period of limitations on assessment resumes running on the day following the date of the final resolution and in no event shall expire before the 60th day following the date of final resolution.

Final Resolution of a Summoned Party's Response to a Summons

Under section 6503(j)(3)(B), the length of the suspension under section 6503(j) depends on when "final resolution" of a summoned party's response to the designated or related summons occurs. The term "final resolution" is not defined in the statute. The legislative history states that the term "final resolution" has the same meaning it has under section 7609(e)(2)(B), relating to third-party summonses. H.R. Conf. Rep. No. 101–964 (1990). Specifically, the conference report states that final resolution means that no court proceeding remains pending and that the summoned party has complied with the summons to the extent required by a court.

Accordingly, the proposed regulations provide that final resolution occurs when no court proceeding remains pending and the summoned party complies with the summons to the extent required by the court. If the summoned party has complied with the summons to the extent required by the court but there still remains time to appeal that order, final resolution occurs when all appeals have been either disposed of or the period in which an appeal may be taken or a request for further review may be made has expired. If all appeal periods have expired but the summoned party has not complied with the summons to the extent required by the court, the proposed regulations provide that final resolution does not occur until the summoned party has complied with the summons to the extent required by the court. Whether a party has complied with the terms of the summons as enforced by a court cannot be determined until the completeness of the materials produced and the testimony given has been evaluated. The IRS intends to create administrative procedures by which the taxpayer can inquire about the suspension of its period of limitations under section 6503(j) and to publish these procedures in the Internal Revenue Manual.

In cases in which a court wholly denies enforcement or orders that the summons in its entirety be quashed, the date of compliance with the court's order is treated as occurring on the date when all appeals are disposed of or when all appeal periods expire. In cases in which a court orders the summons enforced, in whole or in part, the

determination of whether there has been full compliance will be made within a reasonable time after the later of the giving of all testimony or the production of all records required by the order. What constitutes a reasonable time will depend on the volume and complexity of the records produced.

If, following an enforcement order, collateral proceedings are brought challenging whether the production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failing to do so, the suspension of the periods of limitations shall continue until the order enforcing any part of the summons is fully complied with and the decision in the collateral proceeding becomes final. A decision in a collateral proceeding becomes final when all appeals are disposed of or when the period for appeal or further review has expired.

Other Rules

These proposed regulations provide additional rules regarding the number of designated and related summonses that may be issued with respect to a return for any taxable period, the time within which a court proceeding must be brought to enforce or quash a designated or related summons, the computation of the suspension period in cases of multiple court proceedings, and the computation of the 60-day period for assessment when the last day falls on a weekend or holiday.

The proposed regulations also address the relationship of the suspension period provided for in section 6503(j) with other suspension provisions in the Code. The proposed regulations provide that if a designated or related summons also could be subject to the suspension rules governing third-party summonses under section 7609(e), then the suspension rules in section 6503(j) govern. In addition, the proposed regulations provide that the section 6503(j) suspension period is independent of, and may run concurrently with, any other period of suspension, such as the suspension period for third-party summonses under section 7609(e) if a separate third-party summons also was issued in a case. Examples of these rules are contained in the proposed regulations.

Proposed Effective Date

These regulations are proposed to be applicable on the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), 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 electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can 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 written 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 Elizabeth Rawlins of the Office of the Associate Chief Counsel, Procedure and Administration.

Lists of Subjects in 26 CFR Part 301

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

Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–208199–91) that was published in the **Federal Register** on Thursday, July 31, 2003 (68 FR 44905) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6503(j)–1 is added to read as follows:

§ 301.6503(j)–1 Suspension of running of period of limitations; extension in case of designated and related summonses.

(a) *General rule.* The running of the applicable period of limitations on assessment provided for in section 6501 is suspended with respect to any return of tax by a corporation that is the subject of a designated or related summons if a court proceeding is instituted with respect to that summons.

(b) *Period of suspension.* The period of suspension is the time during which the running of the applicable period of limitations on assessment provided for in section 6501 is suspended under section 6503(j). If a court requires any compliance with a designated or related summons by ordering that any record, document, paper, object, or items be produced, or the testimony of any person be given, the period of suspension consists of the judicial enforcement period plus 120 days. If a court does not require any compliance with a designated or related summons, the period of suspension consists of the judicial enforcement period, and the period of limitations on assessment provided in section 6501 shall not expire before the 60th day after the close of the judicial enforcement period.

(c) *Definitions*—(1) A *designated summons* is a summons issued to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable period for which such corporation is being examined under the coordinated industry case program or any other successor to the coordinated examination program if—

(i) The Division Commissioner and the Division Counsel of the Office of Chief Counsel (or their successors) for the organizations that have jurisdiction over the corporation whose tax liability is the subject of the summons have reviewed the summons before it is issued;

(ii) The IRS issues the summons at least 60 days before the day the period prescribed in section 6501 for the assessment of tax expires (determined with regard to extensions); and

(iii) The summons states that it is a designated summons for purposes of section 6503(j).

(2) A *related summons* is any summons issued that—

(i) Relates to the same return of the corporation under examination as the designated summons; and

(ii) Is issued to any person, including the person to whom the designated summons was issued, during the 30-day period that begins on the day the designated summons is issued.

(3) The *judicial enforcement period* is the period that begins on the day on which a court proceeding is instituted with respect to a designated or related summons and ends on the day on which there is a final resolution as to the summoned person's response to that summons.

(4) *Court proceeding*—(i) *In general.* For purposes of this section, a *court proceeding* is a proceeding filed in a United States district court either to quash a designated or related summons under section 7609(b)(2) or to enforce a designated or related summons under section 7604. A court proceeding includes any collateral proceeding, such as a civil contempt proceeding.

(ii) *Date when proceeding is no longer pending.* A proceeding to quash or to enforce a designated or related summons is no longer pending when all appeals (including review by the Supreme Court) are disposed of or after the expiration of the period in which an appeal may be taken or a request for further review (including review by the Supreme Court) may be made. If, however, following an enforcement order, a collateral proceeding is brought challenging whether the testimony given or production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failure to so testify or produce, the proceeding to quash or to enforce the summons shall include the time from which the proceeding to quash or to enforce the summons was brought until the decision in the collateral proceeding becomes final. The decision becomes final on the date when all appeals (including review by the Supreme Court) are disposed of or when all appeal periods or all periods for further review (including review by the Supreme Court) expire. A decision in a collateral proceeding becomes final when all appeals (including review by the Supreme Court) are disposed of or when all appeal periods or all periods for further review (including review by the Supreme Court) expire.

(5) *Compliance*—(i) *In general. Compliance* is the giving of testimony or the performance of an act or acts of production, or both, in response to a court order concerning the designated or related summons and the determination that the terms of the court order have been satisfied.

(ii) *Date compliance occurs.* Compliance with a court order that wholly denies enforcement of a designated or related summons is deemed to occur on the date when all appeals (including review by the Supreme Court) are disposed of or when the period in which an appeal may be taken or a request for further review (including review by the Supreme Court) may be made expires. Compliance with a court order that grants enforcement, in whole or in part, of a designated or related summons, occurs on the date it is determined that the testimony given, or the books, papers, records, or other data produced, or both, by the summoned party fully satisfy the court order concerning the summons. The determination of whether there has been full compliance will be made within a reasonable time, given the volume and complexity of the records produced, after the later of the giving of all testimony or the production of all records requested by the summons or required by any order enforcing any part of the summons. If, following an enforcement order, collateral proceedings are brought challenging whether the production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failing to do so, the suspension of the periods of limitations shall continue until the order enforcing any part of the summons is fully complied with and the decision in the collateral proceeding becomes final. A decision in a collateral proceeding becomes final when all appeals are disposed of, the period in which an appeal may be taken has expired or the period in which a request for further review may be made has expired.

(6) *Final resolution* occurs when the designated or related summons or any order enforcing any part of the designated or related summons is fully complied with and all appeals or requests for further review are disposed of, the period in which an appeal may be taken has expired or the period in which a request for further review may be made has expired.

(d) *Special rules*—(1) *Number of summonses that may be issued*—(i) *Designated summons.* Only one designated summons may be issued in connection with the examination of a specific taxable year or other period of a corporation. A designated summons may cover more than one year or other period of a corporation. The designated summons may require production of information that was previously sought in a summons (other than a designated summons) issued in the course of the examination of that particular corporation if that information was not previously produced.

(ii) *Related summonses.* There is no restriction on the number of related summonses that may be issued in connection with the examination of a corporation. As provided in paragraph (c)(2) of this section, however, a related summons must be issued within the 30-day period that begins on the date on which the designated summons to which it relates is issued and must relate to the same return as the designated summons. A related summons may request the same information as the designated summons.

(2) *Time within which court proceedings must be brought.* In order for the period of limitations on assessment to be suspended under section 6503(j), a court proceeding to enforce or to quash a designated or related summons must be instituted within the period of limitations on assessment provided in section 6501 that is otherwise applicable to the tax return.

(3) *Computation of suspension period if multiple court proceedings are instituted.* If multiple court proceedings are instituted to enforce or to quash a designated or one or more related summonses concerning the same tax return, the period of limitations on assessment is suspended beginning on the date the first court proceeding is brought. The suspension shall end on the date that is the latest date on which the judicial enforcement period, plus the 120-day or 60-day period (depending on whether the court requires any compliance) as provided in paragraph (b) of this section, expires with respect to each summons.

(4) *Effect on other suspension periods*—(i) *In general.* Suspensions of the period of limitations under section 6501 provided for under subsections 7609(e)(1) and (e)(2) do not apply to any summons that is issued pursuant to section 6503(j). The suspension under section 6503(j) of the running of the period of limitations on assessment under section 6501 is independent of, and may run concurrent with, any other suspension of the period of limitations on assessment that applies to the tax return to which the designated or related summons relates.

(ii) *Examples.* The rules of paragraph (d)(4)(i) of this section are illustrated by the following examples:

Example 1. The period of limitations on assessment against Corporation P, a calendar year taxpayer, for its 2007 return is scheduled to end on March 17, 2011. (Ordinarily, Corporation P's returns are filed on March 15th of the following year, but March 15, 2008 was a Saturday, and Corporation P timely filed its return on the subsequent Monday, March 17, 2008, making March 17, 2011 the last day of the period of limitations on assessment for Corporation P's 2007 tax year.) On January 4, 2011, a designated summons is issued to Corporation P concerning its 2007 return. On March 3, 2011 (14 days before the period of limitations on assessment would otherwise expire with respect to Corporation P's 2007 return), a court proceeding is brought to enforce the designated summons issued to Corporation P. On June 6, 2011, the court orders Corporation P to comply with the designated summons. Corporation P does not appeal the court's order. On September 6, 2011, agents for Corporation P deliver material that they state are the records requested by the designated summons. On October 13, 2011, a final resolution to Corporation P's response to the designated summons occurs when it is determined that Corporation P has fully complied with the court's order. The suspension period applicable with respect to the designated summons issued to Corporation P consists of the judicial enforcement period (March 3, 2011 through October 13, 2011) and an additional 120-day period under section 6503(j)(1)(B), because the court required Corporation P to comply with the designated summons. Thus, the suspension period applicable with respect to the designated summons issued to Corporation P begins on March 3, 2011, and ends on February 10, 2012. Under the facts of this *Example 1*, the period of limitations on assessment against Corporation P further extends to February 24, 2012, to account for the additional 14 days that remained on the period of limitations on assessment under section 6501 when the suspension period under section 6503(j) began.

Example 2. Assume the same facts set forth in *Example 1*, except that in addition to the issuance of the designated summons and related enforcement proceedings, on April 5, 2011, a summons concerning Corporation P's 2007 return is issued and served on individual A, a third party. This summons is not a related summons because it was not issued during the 30-day period that began on the date the designated summons was issued. The third-party summons served on individual A is subject to the notice requirements of section 7609(a). Final resolution of individual A's response to this summons does not occur until February 15, 2012. Because there is no final resolution of individual A's response to this summons by October 5, 2011, which is six months from the date of service of the summons, the period of limitations on assessment against Corporation P is suspended under section 7609(e)(2) to the date on which there is a final resolution to that response for the purposes of section 7609(e)(2). Moreover, because final resolution to the summons served on individual A does not occur until after February 10, 2012, the end of the suspension period for the designated summons, the period of limitations on assessment against Corporation P expires 14 days after the date that the final resolution as provided for in section 7609(e)(2) occurs with respect to the summons served on individual A.

(5) *Computation of 60-day period when last day of assessment period falls on a weekend or holiday.* For purposes of paragraph (c)(1)(ii) of this section, in determining whether a designated summons has been issued at least 60 days before the date on which the period of limitations on assessment prescribed in section 6501 expires, the provisions of section 7503 apply when the last day of the assessment period falls on a Saturday, Sunday, or legal holiday.

(e) *Effective/applicability date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–9147 Filed 4–25–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2008–0003; Notice No. 82]

RIN 1513–AB51

Proposed Establishment of the Snipes Mountain Viticultural Area (2007R–300P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 4,145-acre "Snipes Mountain" viticultural area in Yakima County, Washington. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before June 27, 2008.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2008–0003 on Regulations.gov, the Federal e-rulemaking portal); or
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments we receive about this proposal at *http://www.regulations.gov*. A direct link to the appropriate Regulations.gov docket is available under Notice No. 82 on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml*. You also may view copies of this notice, all related petitions, maps or other supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; telephone 415–271–1254.

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 geographic 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 geographic 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.

Snipes Mountain Petition

Mr. Todd Newhouse, of the Upland Winery in Outlook, Washington, submitted a petition proposing the establishment of the Snipes Mountain viticultural area on behalf of the grape growers in the Snipes Mountain area. The proposed viticultural area covers 4,145 acres, and currently has 535 acres of commercial vineyards. According to USGS maps that the petitioner provided, Snipes Mountain lies north of the Yakima River, between the towns of Granger and Sunnyside in Yakima County, Washington. [TTB notes that the proposed viticultural area lies entirely within the Yakima Valley viticultural area (27 CFR 9.69), which includes portions of Yakima and Benton Counties in central Washington, and also entirely within the larger Columbia Valley viticultural area (27 CFR 9.74), which includes portions of central Washington and north-central Oregon.] According to the petitioner, the principal distinguishing features of the proposed viticultural area are Snipes Mountain itself, a singular landform rising from the floor of the Yakima Valley, and its comparatively unique, rocky soils. The proposed viticultural area also includes Harrison Hill, east of Snipes Mountain. Harrison Hill has similar soils, and its topography is contiguous with the elevation lines of Snipes Mountain.

Name Evidence

The petition explains that in the late 1850s, Ben Snipes built a house at the base of a mountain, which later became known as Snipes Mountain, and developed an expansive cattle operation (see also "The Pacific Northwesterner," Fall 1959, reprinted as Essay 7265 on *http://www.HistoryLink.org*). Since the early 1900s, the Snipes Mountain Irrigation District has provided water to the region. According to the USGS Sunnyside quadrangle map, the main water canal, the Snipes Mountain Lateral, lies to the north of Snipes Mountain. The USGS Granger and Sunnyside quadrangle maps identify Snipes Mountain as an elevated landform between the Yakima River to the south and a single railroad line and Interstate 82 to the north.

Boundary Evidence

The petitioner states that growers began establishing vineyards on Snipes Mountain and adjacent Harrison Hill between 1914 and 1917 (see "The Wine Project: Washington State's Winemaking History" by R. Irvine and W. Clore, Sketch Publications, 1997). The second oldest cabernet sauvignon vines in Washington State have been growing for some 40 years in vineyards on Harrison Hill. These vines have been producing award-winning wines for 15 years. On Snipes Mountain, the Upland Winery, which operated from 1934 to 1972, is being reestablished as a historic winery. Within the current 535 acres of vineyards in the proposed viticultural area, a total of 25 varietals are grown.

According to the provided written boundary description and USGS maps, the elevation of the proposed Snipes Mountain viticultural area boundary line designating the lower end of the AVA runs from 750 to 820 feet around the base of the mountain, and the AVA continues up the mountain and encompasses its peak. The USGS maps show that the proposed viticultural area is on elevated terrain, and comprises vineyards, orchards, roads, trails, a reservoir, intermittent streams, gravel pits, buildings, and a winery. The proposed viticultural area is surrounded by the generally flat Yakima Valley terrain that, in areas, dips to approximately 700 feet in elevation. Two sections of the Yakima River with elevations of 670 feet flow adjacent to the southwest portion of the proposed AVA boundary line. The petitioner notes that at elevations below the 750-foot contour line the valley is flatter and has places, such as ponds and other cold air sinks, which are unsuitable for viticulture.

According to the written boundary description and USGS maps, Harrison Hill borders Snipes Mountain in the eastern portion of the proposed Snipes Mountain viticultural area. According to the petitioner, the soils on Harrison Hill are similar to the dominant soils in the rest of the proposed viticultural area.

The petitioner explains that the 132 acres on the south-facing slopes of Harrison Hill are suitable for successful viticulture and claims that the vineyards on Harrison Hill "are the most important acres we grow."

Distinguishing Features

According to the petitioner, the distinguishing features of the proposed Snipes Mountain viticultural area include an elevated topography that is steep in places and a geologic history that contrasts with that of the surrounding Yakima Valley area. According to USGS and digital maps provided with the petition, Snipes Mountain stands alone in the center of the wide Yakima Valley like the crown of a brimmed hat. The petitioner notes that the Snipes Mountain region comprises the Ellensburg Formation. This formation consists of alluvial outwash, the parent material of the unique soils in the Snipes Mountain region.

Topography

The petitioner describes Snipes Mountain and adjacent Harrison Hill as rising visibly from the Yakima Valley floor. The USGS Sunnyside and Granger maps show that the 1,301-foot pinnacle of Snipes Mountain contrasts with the 680- to 780-foot elevations of the surrounding valley floor. The petitioner notes that about a third of the Yakima Valley viticultural area is level, and cites the digital elevation maps of the Yakima Valley and Snipes Mountain from Washington State 10m Digital Elevation Model data.

The petitioner explains that the north side slopes of Snipes Mountain gradually increase in elevation but the

south side slopes are steeper. As shown on USGS maps, the south side slopes increase from 850 to 1,200 feet in elevation over a short distance. According to the petitioner, these steeper slopes are suited to viticulture because they have good air drainage, which helps to prevent spring and fall frost damage to the plants in the vineyards.

Geology and Soils

According to the Washington Division of Geology and Earth Resources, the geology of central Washington consists mainly of a volcanic basalt mantle 10 to 15 million years old ("Late Cenozoic Structure and Stratigraphy of South-Central Washington," by S.P. Reidel, N.P. Campbell, K.R. Fecht, and K.A. Lindsey, Bulletin 80, pp. 159–180, 1994). Further study shows that subsequent alluvial events covered portions of the Yakima Valley, creating the Ellensburg Formation ("Sedimentology of proximal volcaniclastics dispersed across an active foldbelt: Ellensburg formation (late Miocene), central Washington," by G.A. Smith, Sedimentology 35: 953–997, 1988). The Ellensburg Formation consists of a conglomerate of round, river-washed rocks and coarse sediment; tectonic uplift created Snipes Mountain (Reidel *et al.*).

The petitioner describes the soils in the proposed viticultural area based on the Soil Survey of the Yakima County Area, Washington (U.S. Department of Agriculture, Soil Conservation Service, 1985). The petitioner also provides a table that compares soil series in the established Yakima Valley viticultural area with those in the proposed Snipes Mountain viticultural area. The comparison is based on parent material, and shows the soils that resulted from differing geological events in each region. The petitioner explains that almost all soils on Snipes Mountain were deposited by an ancient flood and are now in a dry environment. The soils are older, have more rock fragments, and are drier than the soils elsewhere in the Yakima Valley region.

One third of the soils in the Yakima Valley viticultural area formed in alluvium and 30 percent of the soils formed in loess over lacustrine deposits. In contrast, within the proposed Snipes Mountain viticultural area only 3.32 percent of the soils are alluvial soils. These soils are of small extent because tectonic uplift exposed the southwest face of Snipes Mountain, lifting it above the influence of additional alluvial deposits. Warden soils formed in loess over lacustrine deposits, and these soils cover 53 percent of the proposed Snipes Mountain viticultural area. Typically, these soils are on the north- and northeast-facing slopes, in positions where the parent material was in place prior to tectonic uplift. The Harwood-Burke-Wiehl soils comprise 13.6 percent of the soils in the proposed viticultural area, compared to less than 1 percent of the entire Yakima Valley viticultural area.

On Snipes Mountain 82 percent of the soils are classified as Aridisols. Aridisols are low in organic matter and are in generally dry areas. In the Yakima Valley 47 percent of the soils are classified as Aridisols, but 43 percent are classified as Mollisols. Mollisols have a deep, dark surface horizon with a high content of organic matter. Typically, they are low lying and near ground water that supplies moisture to plants, which ultimately increase the accumulation of organic matter.

According to the petitioner, vineyards on the south-facing slopes of Harrison Hill have produced highly valued grapes. The soils on Harrison Hill and Snipes Mountain are similar. The steeper, south-facing slopes of Snipes Mountain provide excellent air drainage to protect the grapevines, making them less susceptible to spring and fall frost damage.

TTB Determination

TTB concludes that this petition to establish the 4,145-acre Snipes Mountain viticultural area merits consideration and public comment, as invited in this notice.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the proposed 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. If we establish this proposed viticultural area, its name, "Snipes Mountain," will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). Consequently, wine bottlers using "Snipes Mountain" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. On the other hand, we do not believe that any single part of the proposed viticultural area name standing alone, such as "Snipes" would have viticultural significance if the new area is established. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full "Snipes Mountain" name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use a viticultural area name or other term of viticultural significance as an appellation of origin or in a brand name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name or other term of viticultural significance appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name "Snipes Mountain" for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation, upon the effective date of the approval of the Snipes Mountain viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. The easternmost portion of the proposed boundary line includes the south side of the adjacent Harrison Hill, which the petitioner describes as having important vineyards. We are especially interested in receiving any comments on the appropriateness of our including the southern part of Harrison Hill in the proposed Snipes Mountain viticultural area. We are also particularly interested

in any comments on whether the evidence regarding name and distinguishing geographical features is sufficient to warrant the establishment of this new viticultural area within the existing Yakima Valley and Columbia Valley viticultural areas. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Snipes Mountain viticultural area on wine labels that include the words "Snipes Mountain" as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example by adopting a modified or different name for the viticultural area.

Although TTB believes that only the full "Snipes Mountain" name should be considered to have viticultural significance upon establishment of the proposed new viticultural area, we also invite comments from those who believe that "Snipes" standing alone would have viticultural significance upon establishment of the area. Comments in this regard should include documentation or other information supporting the conclusion that use of "Snipes" on a wine label could cause consumers and vintners to attribute to the wine in question the quality, reputation, or other characteristic of wine made from grapes grown in the proposed Snipes Mountain viticultural area.

Submitting Comments

You may submit comments on this notice by using one of the following two methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2008–0003 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov*. A direct link to that docket is available under Notice No. 82 on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml*. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on "User Guide" under "How to Use this Site."
- *Mail:* You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 82 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *http://www.regulations.gov*, please enter the entity's name in the "Organization" blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

We will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments we receive about this proposal within Docket No. TTB–2008–0003 on the Federal e-rulemaking portal, Regulations.gov, at *http://www.regulations.gov*. A direct link to this docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 82. You may also reach the relevant docket through the Regulations.gov search page at *http://www.regulations.gov*. For instructions on how to use Regulations.gov, visit the site and click on "User Guide" under "How to Use this Site."

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be 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 proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, 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. Amend subpart C by adding § 9.__ to read as follows:

§ 9.__ Snipes Mountain.

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

(b) *Approved maps.* The two United Stages Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Snipes Mountain viticultural area are titled:

(1) Sunnyside, Wash., 1965, photorevised 1978; and

(2) Granger, Wash., 1965.

(c) *Boundary.* The Snipes Mountain viticultural area is located in Yakima County, Washington. The boundary of the Snipes Mountain viticultural area is as described below:

(1) The beginning point is on the Sunnyside map at the intersection of the section 34 east boundary line and the Pipeline, between Alexander Road and South Hill Road, to the southwest of Sunnyside, T10N, R22E. From the beginning point, proceed straight south along the section 34 east boundary line, less than 0.1 mile, to its intersection with the 750-foot elevation line, T10N, R22E; then

(2) Proceed along the 750-foot elevation line first southeast, then generally west to its intersection with the section 31 west boundary line and the Union Pacific single railroad track along the west border of the map, T10N, R22E; then

(3) Proceed along the Union Pacific railroad line generally west-northwest (which closely follows the 760-foot elevation line) crossing onto the Granger map and continue to its intersection with the section 27 east boundary line, immediately northeast of BM 768, T10N, R21E; then

(4) Proceed straight south along the section 27 east boundary line less than 0.1 mile to its intersection with the 760-foot elevation line, T10N, R21E; then

(5) Proceed northwest along the meandering 760-foot elevation line to its intersection with the section 27 north boundary line, T10N, R21E; then

(6) Proceed straight north in a line approximately 0.1 mile to its intersection with the 820-foot elevation line, southeast of the claypits, section 22, T10N, R21E; then

(7) Proceed along the meandering 820-foot elevation line first northwest then east-southeast before reaching Granger, and then continuing eastward to its intersection with Nass Road, section 26, T10N, R21E; then

(8) Proceed generally east along the meandering 820-foot elevation line, crossing onto the Sunnyside map and continuing generally eastward to its intersection with section 34 north boundary line, T10N, R22E; then

(9) Proceed straight east along the north boundary line of sections 34 and 35 to its intersection with the 820-foot elevation line, T10N, R22E; then

(10) Proceed southwest along the 820-foot elevation to its intersection with the section 34 east boundary line, T10N, R22E; then

(11) Proceed straight south along the section 34 east boundary line 0.3 mile to the point of beginning.

Signed: March 24, 2008.

John J. Manfreda,

Administrator.

[FR Doc. E8–9172 Filed 4–25–08; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[Docket No. OSM–2008–0001; SATS No. KS–024–FOR]

Kansas Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of revisions to a previously proposed amendment to the Kansas regulatory program (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The revisions concern newly promulgated Kansas Regulations. Kansas submitted these regulations at its own initiative to meet the requirements for its program to operate under Title IV and V of the Surface Mining Control and Reclamation Act and to make technical and editorial corrections to its program. This document gives the times and locations where the Kansas program and proposed amendment are available for your inspection and the comment period during which you may submit written comments on the revisions to the amendment.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t., May 28, 2008. If requested, we will hold a public hearing on the amendment on May 23, 2008. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on May 13, 2008.

ADDRESSES: You may submit comments, identified by Docket No. OSM–2008–0001, by any of the following methods:

- *Federal eRulemaking Portal:* The proposed rule has been assigned Docket ID: OSM–2008–0001. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and do the following. Click on the "Advanced Docket Search" button on the right side of the screen. Type in the Docket ID OSM–2008–0001 and click the "Submit" button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2008–0001, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.
- *Mail/Hand Delivery/Courier:* Submit your comments to Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101 St. East Avenue, Tulsa, Oklahoma 74128.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to obtaining copies of documents at *www.regulations.gov*, information may also be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office: Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101 St. East Avenue, Tulsa, Oklahoma 74128–6547, Telephone: (918) 581–6430, E-mail: *aclayborne@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location: Kansas Department of Health and Environment, Surface Mining Section, 4033 Parkview Drive, Frontenac, Kansas 66763, Telephone: (316) 231–8540.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *aclayborne@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation

operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kansas program on January 21, 1981. You can find background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning the Kansas program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

II. Description of the Proposed Amendment

By letter dated November 19, 2007 (Administrative Record Nos. 626 and 627), Kansas sent us amendments to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas sent the amendments in one package, identifying the Kansas 2006 Revegetation Success Guidelines as KS–024–FOR and the Normal Husbandry Practices as KS–025–FOR. We have combined both amendments under one docket number (Docket No. OSM–2008–0001). We announced receipt of the amendment in the January 23, 2008, **Federal Register** (73 FR 3894) and invited public comment on its adequacy. The public comment period closed February 22, 2008. Kansas submitted these amendments at their own initiative.

During our review of the previous submitted proposed amendments (Kansas's 2006 Revegetation Success Guidelines and Normal Husbandry Practices, Administrative Record Nos. 626 and 627), we identified incorrectly cited regulation references. We notified Kansas of our concerns by telephone on February 7, 2008, (Administrative Record No. 626.08). Kansas, by email on February 7, 2008 (Administrative Record No. 626.06), sent us revisions to its proposed amendments for review under SMCRA (30 U.S.C. 1201 *et seq.*). These revisions concern new promulgated Kansas Regulations (*Kansas Department of Health and Environment Amended Permanent Regulation*), which coincide with regulation citations used in its proposed 2006 Revegetation Success Guidelines and Normal Husbandry Practices for Surface-Mined Lands.

Kansas's new regulations contain a substantial number of grammatical changes to update outdated language and codifications. Changes can be found in the following articles:

Article 2—Meaning of Terms 47–2–75, Article 3—Application for Mining Permit 47–3–42, Article 4—Public Hearing 47–4–14a, Article 5—Civil Penalties 47–5–5a, Article 6—Permit Review 47–6–1, Article 6—Permit Review 47–6–2, Article 7—Coal Exploration 47–7–2, Article 8—Bonding Procedures 47–8–9, Article 9—Performance Standards 47–9–1, Article 9—Performance Standards 47–9–4, Article 10—Underground Mining 47–10–1, Article 11—Small Operator Assistant Program 47–11–8, Article 12—Lands Unsuitable Surface Mining 47–12–4, Article 13—Training, Certification, and Responsibilities of Blasters and Operators 47–13–4, Article 14—Employee Financial Interests 47–14–7, Article 15—Inspection and Enforcement 47–15–1a, Article 16—Reclamation 47–16–9, Article 16—Reclamation 47–16–10, and Article 16—Reclamation 47–16–12.

Kansas proposes more specific substantive revisions to its regulations in the following articles and sections:

K.A.R. 47–3–42, Article 3—Application for Mining permit, (5)(a)(55): Kansas proposes to delete subsection (d) of this article.

K.A.R. 47–4–14a, Article 4—Public Hearing, document filing section (2)(c)(2): Kansas proposes to delete references to the Administrative Appeals Section of the Kansas Department of Health and Environment, Suite 400D, 109. SW 9th, Topeka, Kansas 66612–1215 and add the Office of Administrative Hearings, a division of the Kansas Department of Administration.

K.A.R 47–4–14a, Article 4—Public Hearing section (d)(3)(A): Kansas proposes to delete the phrase, "a presiding officer shall be assigned by the department for the prehearing conference, exercising the same discretion as is provided by subsection (d)(2) concerning the selection of a presiding officer for a hearing;"

K.A.R. 47–5–5a, Article 5—Civil Penalties (a): Kansas proposes to insert a new penalty table, change the dollar amount assessed for separate violations for each day, and add new language in section 47–5–5 (d)(1): Delinquent payment.

K.A.R. 47–5–5, Article 5—Civil Penalties (b)(13): Kansas proposes to delete reference to the Administrative Appeals Coordinator, Administrative Appeals Section, Office of the Secretary, Kansas Department of Health and Environment, Mills Building, Suite 400D, 109 SW. 9th Street, Topeka, Kansas 66612–1215 and add the Office of Administrative Hearings, a division of the Kansas Department of Administration.

III. Public Comment Procedures

We are reopening the comment period on the proposed Kansas program amendment to provide you an opportunity to reconsider the adequacy of the amendment in light of the additional materials sent to us. Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Kansas program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on May 13, 2008. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than

a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Kansas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Kansas program has no effect on federally-recognized Indian tribes.

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 2, 2008.

Bill Joseph,

Acting Regional Director, Mid-Continent Region.

[FR Doc. E8–9194 Filed 4–25–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AD69

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The NPS is proposing to implement recent management decisions affecting Denali National Park and Preserve regarding backcountry management, climbing Mount McKinley, and off-road vehicle use for subsistence purposes.

DATES: Comments must be received by June 27, 2008.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number 1024–AD69 (RIN), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: National Park Service, Victor Knox, Deputy Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Telephone: (907) 644–3501. E-mail: *akro_regulations@nps.gov.* Fax: (907) 644–3816.

SUPPLEMENTARY INFORMATION:

Background

In 1917 Congress established Mount McKinley National Park as a game refuge. By 1932, the park had been enlarged to approximately 2 million acres. In 1980 the Alaska National Interest Lands Conservation Act tripled the size of the park and renamed it Denali National Park and Preserve. At 6 million acres, Denali exemplifies interior Alaska's character as one of the world's last great frontiers for wilderness adventure. One third of the park is designated wilderness-the area that roughly conforms to the boundaries of the former Mount McKinley National Park. The former Mount McKinley is closed to hunting and trapping and is managed to maintain the undeveloped wilderness parkland character. The 1980 park additions allow customary and traditional subsistence uses by local rural residents. The preserve is open to subsistence uses and also to hunting and trapping under Alaska state law.

The proposed regulations would revise Denali National Park and Preserve regulations in Subpart L of 36 CFR Part 13. The proposed rule implements the 2006 Final Environmental Impact Statement (EIS) and Record of Decision (ROD) regarding the Denali Backcountry Management Plan (BMP) as well as the 2007 Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for subsistence use of off-road vehicles in the Cantwell Traditional Use Area. Specific proposed changes include (1) establishing group size limits in the backcountry, an annual limit of 1500 climbers on Mount McKinley, and camping permits where they are currently required through the compendium in accordance with the 2006 BMP/EIS; and (2) restricting off-road vehicle use for subsistence purposes to designated routes and trails in Windy Creek, Cantwell Creek, and Bull River drainages in the Cantwell Traditional Use Area in accordance with the 2007 EA/FONSI. Each proposal is identified in the Section-by-Section Analysis that follows. As used within this document, the terms "we," "our," and "us" refer to the National Park Service.

Section-by-Section Analysis

Section 13.902 Subsistence Resident Zone

ANILCA and NPS implementing regulations authorize subsistence hunting and fishing by local rural residents in parks and monuments established in 1980 and the portions of Denali National Park expanded in 1980. In Denali National Park, local rural residents are those who reside in a resident zone community identified in section 13.902, those who possess a permit issued by the superintendent under section 13.440 of this Part, and those who reside within the park boundary. A resident zone community consists of a significant concentration of local rural residents who customarily and traditionally engaged in subsistence uses in the park or monument. Section 808 of ANILCA establishes a Subsistence Resource Commission (SRC) to make recommendations to the Secretary of the Interior regarding subsistence hunting matters for each national park or monument in Alaska where subsistence is authorized. In 1984, the NPS, in consultation with the Denali SRC, determined the area within a three mile radius of the Cantwell Post Office includes a significant concentration of local rural residents who customarily and traditionally engage in subsistence uses in the park additions. The three mile radius provision has been part of the Denali Subsistence Management Plan since August 2000 and the park compendium since 2001.

Section 13.903 Subsistence Off-Road Vehicle Use

The 1980 Alaska National Interest Lands Conservation Act (ANILCA) authorizes subsistence uses by local rural residents where traditional in the ANILCA additions of Denali National Park (Denali park additions). Section 811(b) of ANILCA authorizes the "appropriate use [of] * * * surface transportation traditionally employed" for subsistence uses by federally qualified local rural residents, subject to reasonable regulation.

Relying on information available at the time, the 1986 Denali General Management Plan (GMP) did not consider ORVs to have been regularly used for subsistence purposes and therefore did not consider them a traditional means of subsistence access. In the 1990s, several Cantwell residents provided information new to the NPS regarding historic off-road vehicle use for subsistence purposes in the Cantwell area of the Denali park additions and requested a revision to the GMP to allow traditional subsistence ORV use. The information included affidavits from Cantwell residents describing their use of ORVs for subsistence purposes, including types of ORVs, periods of use, location of use, purpose of use, and identified individuals who used ORVs. Upon reviewing the information, in 2005 the NPS determined that ORVs were used by successive generations of Cantwell residents for subsistence in the Cantwell area (Cantwell Traditional Use Area or TUA) of the Denali National Park additions (see 2005 Determination for Traditional ORV Use for Subsistence in the Cantwell Area) and therefore are authorized for subsistence purposes in this area under ANILCA section 811 and 36 CFR 13.460.

In 2005 the park initiated a planning process and accompanying EA to assure that subsistence ORV use in the Cantwell Traditional Use Area is managed to minimize adverse impacts to the resources and values for which

the park was established while continuing to provide reasonable access for subsistence purposes. Each year since the 2005 Determination, the NPS has implemented seasonal closures to subsistence ORV use in the Traditional Use Area—excluding the trails identified in this proposal—during the fall subsistence hunting season to protect park resources while the EA was being prepared and until permanent regulations are put into place.

The Cantwell Subsistence Off-Road Vehicle Management EA was completed in 2007 and a FONSI was signed shortly thereafter. The NPS decided that only designated trails and areas in the Traditional Use Area would remain open to use of ORVs by federally qualified subsistence users from Cantwell and those residents of Game Management Unit 13E holding a permit issued pursuant to 36 CFR 13.440 for subsistence purposes. The designated trails and areas are: Windy Creek Access Trail, Windy Creek Bowl Trail, Cantwell Airstrip Trail, Pyramid Peak Trail, and the Cantwell Creek Floodplain Corridor. Future designation of a trail and area along the Bull River Floodplain Corridor is contingent upon access being secured across adjacent state lands, construction of an NPS approved trail, and a determination by the superintendent that ORV use continues to be necessary for reasonable access to the Bull River for subsistence resources. ORV use within the Bull River Floodplain Corridor and Cantwell Creek Floodplain Corridor would be limited to designated trails and unvegetated gravel bars. Motor vehicle use off of designated trails or areas would be prohibited.

This provision would also establish the types of ORVs that may be operated on designated trails or areas, who is authorized to use ORVs, and methods to notify the public of closures or restrictions should changing environmental conditions warrant. Nothing in this provision would supersede the provisions of 36 CFR 13.460(d), which requires that ORVs be operated in compliance with applicable state and federal laws, and prohibits damaging park resources or harassing wildlife.

Should credible information become available in the future regarding subsistence ORV use in other areas of the park additions or preserve, the park will at that time consider whether such ORV use is traditional under ANILCA section 811.

The 2005 Cantwell Subsistence Traditionally Employed ORV Determination as well as the 200 EA and FONSI are available at park headquarters, *http://www.regs.gov*, and *http://www.nps.gov/dena/parkmgmt/managementdocs.htm*.

Section 13.904 Camping

This provision would replace the existing camping regulation that allows camping in accordance with the BMP, moving a camping permit requirement in the high visitation areas of the park from the compendium to regulation. This proposal would clarify that camping permits are required in the former Mount McKinley National Park and the Kantishna area. Based on visitation patterns, the NPS does not believe camping permits are necessary in other areas of the park or preserve at this time and therefore are not required.

Section 13.905 Group Size

This provision would implement the 2006 BMP/EIS decisions on group size. The BMP/EIS calls for a maximum backcountry group size of 12 for the eastern half of the park and a maximum of 6 in the western half of the park and preserve. The western half of the park has a lower group size limit. The western portion of the park and preserve are managed to provide opportunities for extended expeditions that are remote with little evidence of humans and few encounters with other visitors. The eastern half of the park receives more visitation, has more evidence of humans, and visitors should expect a greater likelihood of contacting others. This proposal would also provide the superintendent with discretion to authorize larger groups on a case by case basis.

Section 13.910 Mountain Climbing

This provision would implement sections of the 2006 BMP/EIS by requiring a permit to climb Mount McKinley or Mount Foraker and also establish a limit on the number of climbers on Mount McKinley. An existing 60 day advance registration requirement under current regulations was crafted with the intention of reducing climbing-related accidents and altitude illnesses on Mount McKinley and Mount Foraker. Prior to its promulgation, mountaineering teams could register the same day they departed for the mountain, often with little or no advance preparation or contact with experienced mountaineering rangers. With the advance contact, rangers have an early opportunity to evaluate an expedition's climbing history and make safety recommendations accordingly. These recommendations include urging additional glacier travel, altitude, or winter camping experiences prior to any ascent of Mount McKinley or Foraker; suggesting climbing with an authorized guiding service; or encouraging a more appropriate route based on the reported level of expertise. The advance notice also provides a climbing team adequate time to choose a leader, organize its members, and pre-plan the expedition for improved safety.

This proposal would change the current registration requirement to a permit requirement and would establish an annual limit of 1500 climbers on Mount McKinley as called for in the BMP/EIS. Due to limited capacity by the NPS to provide required safety briefings, conduct ranger patrols, contact climbers on Mount McKinley, and respond to search and rescue incidents, the NPS determined more than 1500 climbers may compromise visitor and employee safety, potentially resulting in more fatalities. Over the past ten years, there has been an annual average of 1226 climbers attempting Mount McKinley, with a maximum of 1340 in 2005.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. However, it is anticipated that governmental processes and economic efficiency in Denali National Park and Preserve would be improved by this proposed regulatory action.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This is an agency-specific rule that will not interfere with other agencies or local government plans, policies, or controls. The proposals included with this rulemaking apply to areas managed by the National Park Service and do not conflict with other federal regulations. The review process used to develop the rulemaking proposals included consultation with the State of Alaska.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other

forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule implements existing legislative enactments, judicial interpretations, regulatory provisions, and planning decisions. It is not a completely new proposal, but rather a continuation of the rulemaking process begun in 1980 to implement various provisions of the Alaska National Interest Lands Conservation Act (ANILCA). In implementing ANILCA, NPS has sought to promulgate only those regulations necessary to interpret the law and to provide for the health and safety of the public and the environment.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rule are local in nature and negligible in scope. The proposals in this rulemaking will either implement rules unrelated to business activity or, in the case of the proposed annual climbing limits for Mount McKinley, does not extend beyond the usual contractual limits for small entities authorized to do business in the park. Consequently, the proposed rule will have no effect on small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more. Expenses related to compliance with various provisions of this proposed rule are slight. No new user fees or charges are proposed. Any incidental costs associated with the proposed climbing permits would be covered by or instead of those for the existing registration, check-in, or orientation programs and would not be additional.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Most of the proposed provisions of this rulemaking will generally continue existing rules and use patterns for Denali National Park and Preserve.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The various provisions of this proposed rule do not apply differently to U.S.-based enterprises and foreign-based enterprises.

Unfunded Mandates Reform Act

This rulemaking addresses only actions that will be taken by the NPS. It will not require any State, local or tribal government to take any action that is not funded. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. This rule is an agency specific rule and imposes no other requirements on small governments.

b. This rule will not produce a federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because no taking of property will occur as a result of this proposed rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule is limited in effect to federal lands and waters managed by the NPS and will not have a substantial direct effect on state and local government in Alaska. This proposed rule was initiated in part at the request of the state and has been drafted in close consultation with the State of Alaska and, as such, promotes the principles of federalism.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the order. This rule does not impose a new burden on the judicial system.

Paperwork Reduction Act

This regulation requires information collection from 10 or more parties, which must be submitted for OMB approval under the Paperwork Reduction Act. However, these are not new collection requirements and, therefore, no additional request to OMB has been prepared. The information collection activities are necessary for the public to obtain benefits in the form of camping and climbing permits.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A Record of Decision (ROD) for the Denali National Park and Preserve Final Backcountry Management Plan Environmental Impact Statement was approved on February 21, 2006. On September 18, 2007, a Finding of No Significant Impact (FONSI) was approved for the Cantwell Subsistence ORV Management Environmental Assessment. These documents together represent the environmental analysis for this proposed rule, and are available for review at: *http://www.nps.gov/dena/parkmgmt/managementdocs.htm*, or *http://www.regulations.gov*

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); the Department of the Interior—Alaska Policy on Government-to-Government Relations with Alaska Native Tribes dated January 18, 2001; part 512 of the Departmental Manual, Chapter 2 "Departmental Responsibilities for Indian Trust Resources"; and park consultation agreements with tribal governments, the potential effects on Federally-recognized Indian tribes have been evaluated, and it has been determined at this time that there are no potential effects that have not been addressed in prior decision documents.

While the consultation agreements noted above have not resulted in findings of new potential effects, various proposals are of interest to local residents using Denali National Park and Preserve and have been facilitated by the relationships established through government-to-government consultation. Finally, the initial determination of effect noted here is dynamic and subject to change throughout this rulemaking process due to the ongoing nature of government-to-government consultation for the NPS areas in Alaska.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information: The principal contributors to this proposed rule are: Peter Armington, Steve Carwile, Philip Hooge, and Joe Van Horn, Denali National Park and Preserve; Andee Sears and Paul Hunter, NPS Alaska Regional Office; and Jerry Case, Regulations Program Manager, NPS, Washington, DC.

Public Participation

You may submit comments online at: *http://www.regulations.gov*. Follow the instructions for submitting comments. You may also mail or hand deliver comments to: National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 13 as set forth below:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Subpart N also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197; Pub. L. 105–277, 112 Stat. 2681–259, October 21, 1998; Pub. L. 106–31, 113 Stat. 72, May 21, 1999; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240.

Subpart L—[Amended]

2. Revise § 13.902 to read as follows:

§ 13.902 Subsistence resident zone.

The following communities and areas are included within the resident zone for Denali National Park addition: Cantwell (limited to the area within a 3 mile radius of the Cantwell post office as shown on a map available at the park visitor center), Minchumina, Nikolai, and Telida.

3. Add § 13.903 to subpart L to read as follows:

§ 13.903 Subsistence use of off-road vehicles.

Operating a motor vehicle off road is prohibited except by authorized residents as defined in this section when engaged in subsistence uses. For purposes of this section, "authorized residents" means residents of the Cantwell resident zone community as defined by this subpart or those residents of Alaska Game Management Unit 13E holding a permit issued under § 13.440 of this part. Operating a motor vehicle off road for subsistence purposes outside any area designated by this section is prohibited. A map and GPS coordinates of designated trails and areas are available on the park Web site and at the park visitor center.

(a) Authorized residents may operate vehicles off road only in the following designated areas and trails:

(1) The Windy Creek Trail;

(2) The Cantwell Airstrip Trail;

(3) The Pyramid Trail;

(4) The Cantwell Creek Floodplain Trail/Corridor; and

(5) A trail or area along the Bull River Floodplain designated by the superintendent under paragraph (b) of this section.

(b) The superintendent may designate a trail or area along the Bull River Floodplain Corridor for motor vehicle use by authorized residents if the superintendent determines that the following conditions are met:

(1) Access across adjacent non-NPS lands has been secured;

(2) An NPS-approved trail has been constructed on NPS lands; and

(3) Off-road vehicle use continues to be necessary for reasonable access to the Bull River for subsistence resources by authorized residents.

(c) All of the following are prohibited:

(1) Motor vehicles greater than 5.5 feet wide;

(2) Motor vehicles exceeding 1,000 pounds curb (unloaded) weight;

(3) Motor vehicles that steer by locking or skidding a wheel or track; and

(4) Operating a motor vehicle in violation of § 13.460(d) of this part.

(d) The superintendent may restrict or prohibit motor vehicle use authorized by this section in accordance with § 13.460(b) of this part. The Superintendent will notify the public of the proposed restriction or closure by:

(1) Publishing a notice in at least one newspaper of general circulation in the State and in at least one local newspaper if appropriate;

(2) Making information about the proposed or emergency actions available for broadcast on local radio stations; and

(3) Posting information about the proposed or emergency actions at local post offices, on the park Web site, and, if appropriate, on signs at the designated trails or areas.

4. Revise § 13.904 to read as follows:

§ 13.904 Camping.

Camping without a permit in designated areas in the former Mount McKinley National Park or the Kantishna area is prohibited. A map showing areas where a permit is required for camping is available at the park visitor center and on the park Web site. Violating terms and conditions of the permit is prohibited.

5. Add § 13.905 to subpart L to read as follows:

§ 13.905 Group size.

(a) The following are prohibited:

(1) Group sizes exceeding 12 individuals on the east side of the park outside the Frontcountry Developed Area as defined by this subpart.

(2) Group sizes exceeding 6 individuals on the west side of the park outside the Frontcountry Developed Area as defined by this subpart.

(b) A map showing the east and west boundaries is available at the park visitor center.

(c) The superintendent may authorize larger groups on a case-by-case basis.

6. Revise § 13.910 to read as follows:

§ 13.910 Mountain climbing.

(a) Climbing Mount McKinley and Mount Foraker without a permit is prohibited. Climbers must apply for a permit at least 60 days in advance of

any climb. The superintendent may authorize a maximum of 1500 climbers on Mount McKinley each year.

(b) Violating terms and conditions of the permit is prohibited.

Dated: April 8, 2008.

Lyle Laverty,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. E8–9184 Filed 4–25–08; 8:45 am]

BILLING CODE 4310–EF–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2006–0011]

RIN 0651–AC05

Institution of a Fee To File on Paper a Request for Reconsideration of a Final Office Action in a Trademark Case

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Supplemental notice of proposed rule and withdrawal of proposed rule.

SUMMARY: In response to objections raised, the United States Patent and Trademark Office ("USPTO") withdraws its prior proposal to amend the Rules of Practice in Trademark Cases to require a request for reconsideration of an examining attorney's final refusal or requirement to be filed through the Trademark Electronic Application System ("TEAS") within three months of the mailing date of the final action. The USPTO instead proposes to require a fee of $50 for filing a request for reconsideration on paper, whereas no fee would be required for a request for reconsideration filed through TEAS. The proposed fee would cover the USPTO's added costs of processing a request for reconsideration filed on paper, rather than through TEAS. Currently, no fee is required in connection with a request for reconsideration, filed either on paper or through TEAS.

DATES: Comments must be received by June 27, 2008 to ensure consideration.

ADDRESSES: The Office prefers that comments be submitted via electronic mail message to *TMRECONCOMMENTS@USPTO.GOV*. Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cynthia C. Lynch; or by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection on the Office's Web site at *http://www.uspto.gov*, and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272–8742.

SUPPLEMENTARY INFORMATION: The USPTO withdraws its prior proposal to amend the Rules of Practice in Trademark Cases to shorten the deadline for filing a request for reconsideration of a final Office action and to mandate that such a request be filed through TEAS. The USPTO received comments about practical difficulties presented by the potentially shorter deadline, and has determined that, at this time, the benefits that would be achieved by the shortened deadline do not outweigh the objections expressed by some commenters.

Regarding the proposal to mandate filing through TEAS, the Office remains convinced that, as set forth in the previous notice, the filing of requests for reconsideration electronically, rather than on paper, promotes efficiency in processing the requests and, thereby, in the prosecution of the application. Paper-filed requests necessitate: (1) Manual scanning and uploading of the documents into the USPTO database, and (2) the creation of paper application file wrappers in which to store the original of the paper-filed request for those applications where all previous filings were through TEAS. In contrast, TEAS-filed requests are automatically uploaded into the USPTO database and require no manual scanning or creation of a file wrapper.

Paper-filed requests also introduce processing delays in addition to those described above. Many applicants simultaneously seek reconsideration of a final refusal and file an appeal to the Trademark Trial and Appeal Board ("TTAB"). Because the examining attorney loses jurisdiction over the application upon the filing of an appeal to the TTAB, this simultaneous pursuit of reconsideration and appeal necessitates a remand by the TTAB to the examining attorney for a decision on the request for reconsideration. Where the applicant has filed the request on paper, the application is often remanded to the examining attorney before the request has been received and/or uploaded into the USPTO database, and so is not immediately available for the examining attorney's review and consideration. Thus, filing through TEAS expedites the examining attorney's notice of and access to the request, shortens pendency, requires less manual processing, and is more cost efficient for the USPTO.

While not disputing the efficiencies achieved by TEAS-filing, some commenters indicated their desire to avoid filing through TEAS when the request for reconsideration would include voluminous attachments that the applicant must scan for submission through TEAS. As an initial matter, the USPTO notes that by the request for reconsideration stage, an applicant has already received at least one non-final action and, in response thereto, has had an opportunity to submit available evidence in support of registration. A request for reconsideration is not intended as an opportunity for an applicant to put forth evidence that could have been provided in response to an initial action. As such, a legitimate need to attach voluminous evidence to a request for reconsideration should only arise where significantly different evidence is included in the final action, which the applicant wishes to rebut.

In addition, the USPTO notes that most filers are able to scan even voluminous evidence, and file it electronically. Nonetheless, in an effort to provide customer service to those who prefer to file requests for reconsideration on paper and therefore shift to the USPTO the burden of scanning and storing the request and all attachments, the USPTO proposes to permit such paper-filing upon payment of a fee in the amount of $50. This fee for paper filing would cover the USPTO's added costs of processing a request for reconsideration filed on paper. No fee would be required for filing a request for reconsideration through TEAS. A TEAS Plus applicant who files a request for reconsideration on paper would also be responsible for the fee for the loss of TEAS Plus status pursuant to §§ 2.23(b) and 2.23(a)(1)(i).

References in this notice to "the Act," "the Trademark Act," or "the statute" refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended.

Discussion of Specific Rules

The Office proposes to revise § 2.64(b) and § 2.6(a).

Rule Making Requirements

Executive Order 13132: This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Regulatory Flexibility Act: This supplemental notice proposes requiring a $50 fee for the filing of a request for reconsideration on paper. The USPTO estimates that approximately 3,685 of the estimated 33,500 requests for reconsideration filed annually will be filed on paper and will incur the $50 fee.

A request for reconsideration is an optional, rather than a mandatory, filing in the course of trademark prosecution. An applicant may therefore choose not to request reconsideration after a final action, and thereby avoid paying the $50 fee. Moreover, no fee will be required for a request for reconsideration filed through TEAS, so even where an applicant chooses to file a request for reconsideration, the applicant will not be required to pay the $50 fee if the applicant files electronically, rather than on paper.

Therefore, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act: This supplemental notice of proposed rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The collection of information involved in this notice was submitted to OMB for review in conjunction with the original notice of proposed rule making. That submission was pre-approved by OMB under OMB Control Number 0651–0050 on June 25, 2007.

This supplemental notice proposes to allow applicants to file their requests for reconsideration on paper, as well as electronically, with the addition of a $50 fee for a paper filing.

The current estimate remains the same for 33,500 requests for reconsideration filings per year. As a result of this supplemental notice, the USPTO estimates that 3,685 of the 33,500 requests for reconsideration will be filed in paper and will incur the $50 fee, for an estimated total burden increase of $184,250 per year. The agency believes that it will take the same amount of time to complete the request for reconsideration whether they are filed in paper or filed electronically, and therefore does not expect an increase in the burden hours as a result of this rule. The USPTO plans to submit to OMB the addition of the paper filings and the associated fee cost adjustment to the 0651–0050 collection at the final rule making stage.

The currently approved estimated annual reporting burden for OMB Control Number 0651–0050 Electronic Response to Office Action and Preliminary Amendment Forms is 117,400 responses, 19,958 burden hours, and $0 in annualized non-hour costs. The estimated time per response is 10 minutes. The time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information is included in the estimate. The collection is approved through April of 2009.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451 (*Attn:* Cynthia C. Lynch), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503 (*Attn:* Desk Officer for the Patent and Trademark Office).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

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

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons stated, 37 CFR part 2 is proposed to be amended as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

2. Amend § 2.6 by adding paragraph (a)(22) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a)

* * *

(22) For filing on paper a request for reconsideration of a final action—$50.00.

* * * * *

3. Amend § 2.64 by revising paragraph (b) to read as follows:

§ 2.64 Final action.

* * * * *

(b) During the period between a final action and expiration of the time for filing an appeal, the applicant may request reconsideration of the final action. If filed on paper, the request for reconsideration must be accompanied by the fee required by § 2.6, or it will not be examined, and no opportunity to correct the deficiency will be permitted. The filing of a request for reconsideration will not extend the time for filing an appeal or petitioning the Director, but normally the examiner will reply to a request for reconsideration before the end of the six-month period if the request is filed within three months after the date of the final action. Amendments accompanying requests for reconsideration after final action will be entered if they comply with the rules of practice in trademark cases and the Act of 1946.

* * * * *

Dated: April 22, 2008.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E8–9216 Filed 4–25–08; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2008–0109; FRL–8559–4]

Determination of Attainment for the Ozone National Ambient Air Quality Standards for Nonattainment Areas in Delaware, District of Columbia, Maryland, Pennsylvania, and Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that two severe 1-hour ozone nonattainment areas, Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD and Metropolitan Washington, DC-MD-VA, attained the 1-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of November 15, 2005. EPA also proposes to find that these areas are not subject to the imposition of the penalty fees under section 185 of the Clean Air Act (CAA). This proposal is based on three years of complete, quality-assured ambient air quality monitoring data for 2003 through 2005 ozone seasons. This proposed determination of attainment is not a redesignation to attainment for these severe areas for which air quality monitoring data indicates attainment of the standard. EPA is proposing this action to fulfill obligations to make such determinations under the CAA.

DATES: Written comments must be received on or before May 28, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0109 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: Fernandez.cristina@epa.gov*

C. *Mail:* EPA–R03–OAR–2008–0109, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No EPA–R03–OAR–2008–0109. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov*.

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

I. What Actions Are EPA Proposing?

EPA is proposing two actions for both the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD 1-hour ozone nonattainment area (hereafter "the Philadelphia area") and the Metropolitan Washington, DC-MD-VA 1-hour ozone nonattainment area (hereafter "the Washington area").

For the Philadelphia area, EPA is proposing to determine that this area attained the 1-hour ozone NAAQS by its attainment date, November 15, 2005. Because EPA is proposing to find that this area has attained the 1-hour ozone NAAQS by its applicable attainment date, we also propose to find that this area is not subject to the imposition of the section 185 penalty fees.

For the Washington area, EPA is proposing to determine that this area attained the 1-hour ozone NAAQS by its attainment date, November 15, 2005. Because EPA is proposing to find that this area has attained the 1-hour ozone NAAQS by its applicable attainment date, we also propose to find that this area is not subject to the imposition of the section 185 penalty fees.

Under Section 181(b)(2) of the CAA, EPA must determine whether ozone nonattainment areas have attained the ozone NAAQS by their attainment date. In the case of the Philadelphia and Washington areas these determinations are based upon air quality monitoring data for the 2003 through 2005 ozone seasons and must be based on the area's design value as of the attainment date.[1]

This proposed determination of attainment is not a redesignation to attainment action for these severe areas. Nor is it a determination as to whether either the Philadelphia area or Washington area has continued to maintain attainment with the NAAQS after November 15, 2005.

II. What Is the Background for These Proposed Actions?

A. What Are the Geographical Boundaries of the Philadelphia and Washington Areas?

1. What Are the Geographical Boundaries of the Philadelphia Area 1-Hour Severe Ozone Nonattainment Area?

The Philadelphia 1-hour severe ozone nonattainment area consists of: Cecil County, Maryland; Kent and New Castle Counties in Delaware; Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem Counties in New

[1] EPA remains obligated under section 181(b)(2) to determine whether an area attained the 1-hour ozone NAAQS by its attainment date. However, after the revocation of the 1-hour ozone NAAQS, EPA is no longer obligated to reclassify an area to a higher classification for the 1-hour NAAQS based upon a determination that the area failed to attain the 1-hour NAAQS by the area's attainment date for the 1-hour NAAQS. (40 CFR 51.905(e)(2)(i)(B). Thus even if we make a finding that an area has failed to attain the 1-hour ozone NAAQS by its attainment date, the area would not be reclassified to a higher classification.

Jersey; and, Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania.

2. What Are the Geographical Boundaries of the Washington Area 1-hour Severe Ozone Nonattainment Area?

The Washington 1-hour severe ozone nonattainment area consists of the District of Columbia (the District), a Northern Virginia portion (Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park), and Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in Maryland.

B. What Is the History of the Ozone Designations and Classifications and 1-Hour Ozone Requirements for the Philadelphia and Washington 1-Hour Ozone Nonattainment Areas?

When the CAA Amendments were enacted in 1990, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including the Philadelphia and Washington areas, were classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. *See*, CAA sections 107(d)(1)(C) and 181(a). The Philadelphia 1-hour zone nonattainment area was classified as "severe-15" with a statutory attainment date of November 15, 2005. *See*, 56 FR 56694, November 6, 1991. The Washington area was designated nonattainment and initially classified "serious" for the 1-hour ozone NAAQS pursuant to section 181(a) of the CAA, but was later reclassified as "severe-15" with a statutory attainment date of November 15, 2005, due to its failure to attain by the November 15, 1999 attainment date for serious areas. *See*, 56 FR 56694, November 6, 1991 and 68 FR 3410, January 24, 2003.

C. What Is the History of the 1-Hour Ozone Requirements Under EPA's Anti-Backsliding Rule?

In an April 30, 2004 final rule (69 FR 23858), EPA designated and classified most areas of the country under the 8-hour ozone NAAQS promulgated in 40 CFR 50.10. On April 30, 2004, EPA also issued a final rule (69 FR 23951) entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1" (Phase 1 Rule). Among other matters, this rule revoked the 1-hour ozone NAAQS in the Philadelphia and Washington areas (as well as most other areas of the country), effective June 15, 2005. *See*, 40 CFR 50.9(b); 69 FR at 23996; and 70 FR 44470, August 3, 2005. This Phase 1 Rule also set forth how anti-backsliding principles will ensure continued progress toward attainment of the 8-hour ozone NAAQS by identifying which 1-hour requirements remain applicable in an area after revocation of the 1-hour ozone NAAQS. Among the requirements not retained were the section 185 requirements for 1-hour severe or extreme nonattainment areas that fail to attain the 1-hour ozone NAAQS by the applicable 1-hour attainment date and the requirement to implement contingency measures for failure to attain the 1-hour ozone NAAQS by the applicable attainment date. *See*, 69 FR 23951, April 30, 2004, and 70 FR 30592, May 26, 2005.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (the Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist.* v. *EPA*, 489 F.3d 1295 (D.C. Cir. 2007), in response to several petitions for rehearing, the Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. With respect to the challenges to the anti-backsliding provisions of the rule, the Court vacated three provisions that would have allowed States to remove from the SIP or to not adopt three 1-hour obligations once the 1-hour ozone NAAQS was revoked: (1) Nonattainment area new source review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 requirement for 1-hour severe or extreme nonattainment areas that fail to attain the 1-hour ozone NAAQS by the 1-hour attainment date; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS or for failure to attain that NAAQS. The Court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

The provisions in 40 CFR 51.905(a)–(c) remain in effect and areas must continue to meet those anti-backsliding requirements. However, the three provisions noted previously, which are specified in 51.905(e), were vacated by the Court. As a result, States must continue to meet the obligations for 1-hour NSR; 1-hour contingency measures; and, for severe and extreme areas, the obligations related to the section 185 requirement. Currently, EPA is developing two proposed rules to address the Court's vacatur and remand with respect to these three requirements. We will address in this proposed rule how the 1-hour obligations that currently continue to apply under EPA's anti-backsliding rule (as interpreted by the Court) apply where EPA has made a determination that the area attained the 1-hour ozone NAAQS by its attainment date.

D. What Are the Section 185 Requirements Pertinent to This Proposed Action?

Section 185(a) of the CAA states that for a severe or extreme ozone nonattainment a State must collect fees on certain stationary sources of air pollution if the area "has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date."

E. What Are the Data Rounding Conventions for the 1-Hour Ozone NAAQS?

Although the 1-hour ozone NAAQS as promulgated in 40 CFR 50.9 includes no discussion of specific data handling conventions, our publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states that: "The level of the national 1-hour primary and secondary ambient air quality standards for ozone * * * is 0.12 parts per million. * * *. The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations Pennsylvania 0.12 parts per million * * * is equal to or less than 1, as determined by appendix H to this part."

We have clearly communicated the data handling conventions for the 1-hour ozone NAAQS in guidance documents. As early as 1979, EPA issued guidance that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. *See*,

"Guideline for the Interpretation of Ozone Air Quality Standards," EPA–450/4–79–003, OAQPS No. 1.2–108, January 1979. EPA has consistently applied the rounding convention in this 1979 guideline. For example, *see*, 68 FR 19106 at 19111, April 17, 2003; 68 FR 62041 at 62043, October 31, 2003; and, 69 FR 21717 at 21719, April 22, 2004.

F. How Do We Make Attainment Determinations?

Section 181(b)(2)(A) requires the Administrator to determine after the attainment date whether ozone nonattainment areas have attained the NAAQS. This provision states: "Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by the date." Although section 181(b)(2)(A) states that the determination of attainment status be based on the area's "design value," EPA interprets this provision generally to refer to EPA's methodology for determining attainment status. That is, EPA determines attainment status under the 1-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over the 3-year period up to, and including, the attainment date. *See*, 60 FR 3349, January 17, 1995. *See, also*, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 at 13506, April 16, 1992 (the "General Preamble").

We will determine whether an area's air quality is meeting the NAAQS for purposes of sections 181(b)(2) based upon data that has been collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS) database, (formerly known as the Aerometric Information Retrieval System (AIRS)).

The 1-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average more than 1 day per year averaged over any 3-year period. *See*, 40 CFR 50.9 and appendix H to 40 CFR part 50. To account for missing data, the procedures found in appendix H to 40 CFR part 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances ("expected exceedance days") at an air quality monitoring site. Under our policies, we determine if an area has attained the 1-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (i.e., "average number of expected exceedance days") during the applicable 3-year period. *See*, generally the General Preamble, 57 FR at 13506, April 16, 1992 and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," February 3, 1994. While the latter is explicitly applicable only to marginal areas, the general procedures for evaluating attainment in terms of the average number of expected exceedance days during the applicable 3-year period in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same CAA requirements in section 181(b)(2).

As noted previously, the applicable attainment date under the 1-hour ozone NAAQS for both the Philadelphia and Washington areas was November 15, 2005. Under these requirements, for severe ozone nonattainment areas with a statutory attainment date of November 15, 2005, we have based our proposed determination of attainment of the 1-hour ozone NAAQS by the applicable attainment date on the average number of expected exceedance days per year for the period 2003 though 2005 to determine whether the area met its applicable attainment date under section 181 of the CAA. We have reviewed this data to determine the area's air quality status in accordance with 40 CFR 50.9, and EPA policy guidance as discussed in the preceding paragraphs and in the previous discussion on rounding conventions elsewhere in the is document.

III. What Is the Basis for EPA's Proposed Determinations of Attainment Under Section 181?

A. How Did We Determine That the Philadelphia and Washington Areas Attained the 1-Hour Ozone NAAQS by the Applicable Attainment Date?

From 2003 through 2005, ambient air quality for ozone was monitored on a continuous basis at 18 monitoring sites within the Philadelphia area and at 17 monitoring sites in the Washington area. As noted previously, the applicable attainment date for both the Philadelphia and Washington severe 1-hour ozone nonattainment areas was November 15, 2005. We are evaluating attainment based on the data from 2003 through 2005.

1. Summary of the Philadelphia Area's Ozone Data for 2003 to 2005

During the entire 2003 to 2005 period, 18 ozone monitoring stations in the Philadelphia area were in operation. One other monitor discontinued operations in 2003.[2] Table 1.A summarizes the ozone data collected at the 18 ozone monitoring stations during the 2003 to 2005 period and included in AQS for the Philadelphia area. This data has been quality assured and is recorded in AQS. The Philadelphia area States use the AQS as the permanent database to maintain its data and quality assure the data transfers and content for accuracy. We have used the established rounding conventions set forth in our guidance documents and regulations.

TABLE 1.A.—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN THE PHILADELPHIA AREA 2003 TO 2005

Monitor information			Number of expected exceedance days			Average number of expected exceedance days per year
State	Monitor	AQS ID No.	2003	2004	2005	2003–05
DE	Killens Pond Rd, Kent County	100010002	1.0	0.0	0.0	0.3
DE	Lums Pond State Park, New Castle County	100031007	1.0	0.0	2.0	1.0
DE	Brandywine Creek State Park, New Castle County	100031010	0.0	0.0	0.0	0.0

[2] This was the monitor located at West Chester University in West Chester, Chester County, Pennsylvania (AQS ID# 420290050). The monitor had averaged 0.3 exceedances per year over this 3-year period from 2001 to 2003. Therefore, EPA concludes that this monitor was attaining the 1-hour ozone NAAQS at the time monitoring ceased at this site.

TABLE 1.A.—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN THE PHILADELPHIA AREA 2003 TO 2005—Continued

Monitor information			Number of expected exceedance days			Average number of expected exceedance days per year
State	Monitor	AQS ID No.	2003	2004	2005	2003–05
DE	Bellevue State Park, New Castle County	100031013	0.0	0.0	0.0	0.0
MD	Fairhill, Cecil County	240150003	0.0	0.0	2.0	0.7
NJ	Copewood E. Davis Sts, Camden	340070003	0.0	0.0	0.0	0.0
NJ	Ancora State Hospital, Camden County	340071001	2.0	0.0	0.0	0.7
NJ	Lincoln Ave. & Highway 55, Vineland, Cumberland County	340110007	1.0	0.0	1.0	0.7
NJ	Shady Lane Rest Home, Clarksboro, Gloucester County	340150002	2.0	0.0	0.0	0.7
NJ	Rider College, Mercer County	340210005	0.0	0.0	0.0	0.0
PA	Rockview Lane, Bristol, Bucks County	420170012	0.0	0.0	1.0	0.3
PA	New Garden Airport—Toughkenamon, Chester County	420290100	0.0	0.0	1.0	0.3
PA	Front St & Norris St, Chester, Delaware County	420450002	0.0	0.0	1.1	0.4
PA	State Armory, Norristown, Montgomery County	420910013	0.0	0.0	0.0	0.0
PA	1501 E Lycoming Ave AMS Lab, Philadelphia	421010004	0.0	0.0	0.0	0.0
PA	Roxy Water Pump Sta, Philadelphia	421010014	0.0	0.0	0.0	0.0
PA	Grant-Ashton Roads, NE Airport, Philadelphia	421010024	0.0	0.0	2.0	0.7
PA	Amtrak, 5917 Elmwood Avenue, Philadelphia	421010136	0.0	0.0	0.0	0.0

Source: EPA AQS Database.

As shown in Table 1.A, the average number of expected exceedance days per year is less than or equal to 1.0 at all of the sites. Therefore, we propose to find that the Philadelphia area attained the 1-hour ozone NAAQS by November 15, 2005, which was the applicable attainment date under the 1-hour ozone NAAQS for this nonattainment area.

2. Summary of the Washington Area's Ozone Data for 2003 to 2005

During the entire 2003 to 2005 period, there were 17 ozone monitoring stations in the Washington area were in operation. One other monitor had discontinued operations in 2003.[3] Table 1.B summarizes the ozone data collected at the ozone monitoring stations during the 2003 to 2005 period and included in AQS for the Washington area. This data has been quality assured and is recorded in AQS. The Washington area States use the AQS as the permanent database to maintain its data and quality assure the data transfers and content for accuracy. We have used the established rounding conventions set forth in our guidance documents and regulations.

TABLE 1.B.—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN THE WASHINGTON AREA 2003 TO 2005

Monitor information			Number of expected exceedance days			Average number of expected exceedance days per year
State	Monitor	AQS ID No.	2003	2004	2005	2003–05
DC	Tacoma School, Washington	110010025	0.0	0.0	0.0	0.0
DC	River Terrace, 34th and Dix Streets, NE, Washington	110010041	0.0	0.0	0.0	0.0
DC	McMillan Reservoir, 2500 1st Street, NW, Washington	110010043	0.0	0.0	0.0	0.0
MD	Calvert County	240090011	Note 1	Note 1	0.0	Note 1
MD	Southern Maryland, Charles County	240170010	1.0	0.0	0.0	0.3
MD	Frederick County	240210037	0.0	0.0	0.0	0.0
MD	Rockville, Montgomery County	240313001	1.1	0.0	0.0	0.4
MD	Howard University's Beltsville Laboratory, Beltsville, Prince George's County.	240330030	Note 1	Note 1	0.0	Note 1
MD	P.G. County Equestrian Cntr, Prince George's County	240338003	2.0	0.0	0.0	0.7
VA	18th And Hayes St, Arlington County	510130020	1.0	0.0	0.0	0.3
VA	Cub Run Lee Rd, Chantilly, Fairfax County	510590005	0.0	0.0	0.0	0.0
VA	Mount Vernon, Fairfax County	510590018	2.0	1.0	0.0	1.0
VA	Lee Park, Franconia, Fairfax County	510590030	1.0	1.0	0.0	0.7
VA	6507 Columbia Pike, Annandale, Fairfax County	510591005	1.0	0.0	0.0	0.3
VA	McLean, Fairfax County	510595001	0.0	1.0	0.0	0.3
VA	Ashburn, Loudoun County	511071005	0.0	1.0	0.0	0.3
VA	Long Park, Prince William County	511530009	0.0	0.0	0.0	0.0
VA	Widewater, Stafford County	511790001	0.0	0.0	0.0	0.0

[3] This was the monitor located at the Goddard Space Flight Center in Greenbelt, Prince George's County, Maryland (AQS Id# 240330002). This monitor had averaged of 0.7 exceedances per year over this 3-year period from 2001 to 2003. Therefore, EPA concludes that this monitor was attaining the 1-hour ozone NAAQS at the time monitoring ceased at this site.

TABLE 1.B.—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN THE WASHINGTON AREA 2003 TO 2005—Continued

Monitor information			Number of expected exceedance days			Average number of expected exceedance days per year
State	Monitor	AQS ID No.	2003	2004	2005	2003–05
VA	Alexandria City	515100009	0.0	1.0	0.0	0.3

Source: EPA AQS Database.

Notes: 1. These two additional monitoring sites commenced operations in 2005. Because neither of these two monitoring sites recorded an exceedance of the 1-hour ozone NAAQS in 2005, EPA concludes that these monitors were attaining the 1-hour ozone NAAQS in 2005.

As shown in Table 1.B, the average number of expected exceedance days per year is less than or equal to 1.0 at all of the sites. Therefore, we propose to find that the Washington area attained the 1-hour ozone NAAQS by November 15, 2005, which was the applicable attainment date under the 1-hour ozone NAAQS for this nonattainment area.

IV. What Would Be the Consequences of This Proposed Action?

Because the area has attained the 1-hour ozone NAAQS by the applicable attainment date, the area is not subject to the requirement to implement contingency measures for failure to attain the 1-hour ozone NAAQS by its attainment date. Since the area has met its attainment deadline, even if the area subsequently lapses into nonattainment, it would not be required to implement the contingency measures for failure to attain the 1-hour ozone NAAQS by its attainment date.

If a severe or extreme 1-hour ozone nonattainment area attains by its 1-hour ozone attainment date, it would not be required to implement the section 185 penalty fees program. Section 185(a) of the CAA states that a severe or extreme ozone nonattainment must implement a program to impose fees on certain stationary sources of air pollution if the area "has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date." Consequently, if such an area has attained the standard as of its applicable attainment date, even if it subsequently lapses into nonattainment, the area would not be required to implement the section 185 penalty fees program. Because EPA is proposing to find that the area has attained the 1-hour ozone NAAQS by its applicable attainment date, we also propose to find that the area is not subject to the imposition of the section 185 penalty fees.

V. Proposed Actions

A. Philadelphia Area

Based upon EPA's review of the air quality data for the 3-year period 2003 to 2005, EPA is proposing to determine that the Philadelphia severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also proposes to find that this area is not subject to the imposition of the section 185 penalty fees.

B. Washington Area

Based upon EPA's review of the air quality data for the 3-year period 2003 to 2005, EPA is proposing to determine that the Washington severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also proposes to find that this area is not subject to the imposition of the section 185 penalty fees.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This proposed action merely proposes to find that an area has attained a previously-established NAAQS based on an objective review of measured air quality data and imposes no additional requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duties, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to determine that each of two areas has attained a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. These proposed rules to determine that the Philadelphia and Washington severe zone nonattainment

areas attained the 1-hour ozone NAAQS and are not required to impose section 185 penalty fees does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: April 15, 2008.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–9261 Filed 4–25–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2008–0260; FRL–8556–6]

RIN 2060–AO57

Standards of Performance for Coal Preparation Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 111(b)(1)(B) of the Clean Air Act (CAA), EPA has reviewed the emissions limits in the standards of performance for coal preparation plants which were promulgated January 15, 1976. This action presents the results of EPA's review and proposes amendments to limits for coal preparation plants consistent with those results. Specifically, we are proposing to tighten and add additional particulate matter (PM) emissions limits for sources constructed after April 28, 2008. In addition, we are proposing to clarify the procedures used to measure emissions from coal preparation plants and add new monitoring requirements for sources constructed after April 28, 2008.

DATES: *Comments.* Comments must be received on or before June 12, 2008. If anyone contacts EPA by May 8, 2008 requesting to speak at a public hearing, EPA will hold a public hearing on May 13, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before May 28, 2008.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0260, 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. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503. 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–2008–0260, 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–2008–0260. 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 *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the 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:

Regulated Entities. Entities potentially affected by this proposed action include, but are not limited to, the following:

Category	NAICS [1]	Examples of regulated entities
Industry	212111	Bituminous Coal and Lignite Surface Mining.
	212112	Bituminous Coal Underground Mining.
	221112	Fossil Fuel Electric Power Generation.
	212113	Anthracite Mining.

Category	NAICS [1]	Examples of regulated entities
	213113	Support Activities for Coal Mining.
	322121	Paper (except Newsprint) Mills.
	324199	All other petroleum and coal products manufacturing.
	325110	Petrochemical Manufacturing.
	327310	Cement Manufacturing.
	331111	Iron and Steel Mills.
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. Fossil fuel-fired electric steam generating units in Indian Country.
	921150	

[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. This table lists categories of entities that may have coal preparation plants regulated by this proposed rule. To determine whether your facility is regulated by the proposed rule, you should examine the applicability criteria in § 60.250 and the definitions in § 60.251. 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.

WorldWide 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

New source performance standards (NSPS) implement CAA section 111(b) and are issued for categories of sources which have been identified as causing, or contributing significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS are to help States attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized. Since 1970, the NSPS have been successful in achieving long-term emissions reductions at numerous industries by assuring cost-effective controls are installed on new, reconstructed, and modified sources.

CAA section 111 requires that NSPS reflect the degree of emission limitation achievable through application of the best system of emissions reductions which (taking into consideration the cost of achieving such emissions reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT). CAA section 111(b)(1)(B) requires the EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions.

The current NSPS for coal preparation plants are contained in 40 CFR part 60, subpart Y, and were promulgated in the **Federal Register** on January 15, 1976 (41 FR 2232). Subpart Y is applicable to facilities which process more than 181 megagrams (Mg) (200 tons) of coal per day that commenced construction, reconstruction, or modification after October 24, 1974. The first review of the Coal Preparation Plants NSPS was completed on April 14, 1981 (46 FR 21769). The second review of the Coal Preparation Plants NSPS was completed on April 03, 1989 (54 FR 13384). EPA did not make changes to the NSPS as a result of these reviews.

II. Summary of Proposed Amendments

We are proposing to amend 40 CFR part 60, subpart Y, to revise emissions limits and monitoring requirements for affected facilities constructed, reconstructed, or modified after April 28, 2008 at coal preparation plants processing more than 181 Mg (200 tons) of coal per day. We are also proposing to add provisions to subpart Y to clarify procedures for monitoring opacity at facilities presently subject to subpart Y. A summary of the proposed substantive amendments is presented below.

A. Applicability

Subpart Y presently applies to the following affected facilities located at coal preparation plants which process more than 181 Mg (200 tons) of coal per day: Thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and transfer and

loading systems. The terms "thermal dryer" and "pneumatic coal-cleaning equipment" are defined to include only facilities that process bituminous coal and "Coal storage system" is defined to exclude open storage piles. We are proposing not to amend the designation of affected facilities or the definitions of thermal dryer, pneumatic coal-cleaning equipment, coal processing and conveying equipment, coal storage system, or transfer and loading system.

B. PM Emission Limit

For thermal dryers constructed, modified, or reconstructed after April 28, 2008, we are proposing to revise the PM emission limit to 0.046 grams per dry standard cubic meter (g/dscm) (0.020 grains per dry standard cubic foot (gr/dscf)). For pneumatic coal-cleaning equipment constructed, modified, or reconstructed after April 28, 2008, we are proposing to revise the PM emissions limit to 0.011 g/dscm (0.0050 gr/dscf) and the opacity limit to 5 percent. For coal processing and conveying equipment, coal storage systems, and transfer and loading systems that commenced construction, reconstruction, or modification after April 28, 2008, we are proposing to revise the opacity limit to 5 percent. Finally, for coal processing and conveying equipment, coal storage systems, and transfer and loading systems processing coals other than bituminous coals that commenced construction or reconstruction after April 28, 2008 or were modified after April 28, 2008 and are enclosed, we are proposing to require that all PM emissions be vented to a stack and that emissions from the stack meet a PM standard of 0.011 g/dscm (0.0050 gr/dscf).

C. Monitoring and Recordkeeping Requirements

We are proposing to clarify the procedures that should be used by sources covered by subpart Y to monitor opacity. We are also proposing to require owners/operators of thermal dryers and pneumatic coal-cleaning equipment constructed, modified, or reconstructed after April 28, 2008 to either install and operate a PM continuous emissions monitoring system (PM CEMS) or to conduct annual PM performance tests. In addition, we are proposing to require owners/operators of pneumatic coal-cleaning equipment or thermal dryers using fabric filters constructed, modified, or reconstructed after April 28, 2008 not using PM CEMS to install a bag leak detection system. Finally, we are proposing to eliminate the opacity limit for owners/operators of affected facilities that properly install and continuously operate a PM CEMS.

To monitor the opacity at coal processing and conveying equipment, coal storage systems, and transfer and loading systems constructed, modified, or reconstructed after April 28, 2008, owner/operators of affected facilities shall conduct EPA Test Method 22, Appendix A–7, 40 CFR part 60, observations each calendar month that the coal preparation plant operates. If the results of the Method 22 observations indicate the presence of visible emissions for more than 5 percent of the observation period, the owner/operator would be required to conduct an EPA Test Method 9, Appendix A–4 of 40 CFR part 60, performance test on that affected facility within 24 hours. The data from the Method 9 test would be compared to the applicable opacity limit.

Finally, we are proposing to add specific recordkeeping requirements to subpart Y that would require the owner/operator of an affected facility that commenced construction, reconstruction, or modification after April 28, 2008 to maintain a logbook that records the visual opacity observations, the amount of chemical stabilizer or water purchased to control PM emissions, and the amount and ranks of coal processed each month.

D. Additional Proposed Amendments

We are proposing to add a definition for a bag leak detection system. In addition, we are proposing to amend the definitions of bituminous coal and coal to include the most recent ASTM test procedures. Finally, for a venturi scrubber, liquid flow rate is a better indicator of performance then liquid pressure monitoring, and we are proposing to add flow rate monitoring as an alternative to pressure monitoring. These changes update the definitions sections and are only intended to clarify the monitoring provisions, but do not substantively change the standards that apply to sources constructed before April 28, 2008.

III. Rationale for the Proposed Amendments

A. Determination of Best Demonstrated Technology (BDT)

We reviewed air permits for coal handling/processing/preparation/cleaning (process type 90.011) in the RACT/BACT/LAER Clearinghouse (RBLC) clearinghouse to determine BDT for existing coal preparation plants. In this review, we did not identify any emerging pollution prevention measures or PM control technologies at coal mines, electric power plants, or other industrial facilities. Therefore, we assumed that the following PM controls can be used on thermal dryers and pneumatic coal-cleaning equipment: A centrifugal (cyclone) collector, followed by a venturi scrubber and fabric filter respectively. Based on this review, we also concluded that the following PM controls can be used at coal processing and conveying equipment, coal storage systems, and transfer and loading systems at coal preparation plants: Enclosures in conjunction with either wet or chemical suppression or venting to a fabric filter.

B. Selection of Thermal Dryer PM Emission Limit

When developing the proposed standards, we concluded that it is appropriate to use a fuel-neutral approach. The fuel-neutral principle dictates that emission standards should be as neutral as possible between clean fuels (fuels that have inherently low emissions) and other fuels. We are proposing to adopt this approach in order to set a nationwide emission standard that can be achieved by all new facilities in this source category, including facilities that do not have long-term access to clean fuels at a reasonable cost. In addition, we have concluded that the most bituminous coal mines are located away from major population centers and are not connected to the natural gas distribution system and that the use of natural gas as the thermal dryer fuel is not an option. Therefore, we concluded that the thermal dryer limit should be based on the combustion of coal.

A review of EPA's RBLC database over the past decade indicated that three new permits have been granted for new and modified coal-fired thermal dryers located at coal mines. The first permit was granted to the Island Creek coal preparation plant to modify an existing thermal dryer. The other two permits were granted to the Buchanan coal preparation plant. One was to modify an existing thermal dryer, and the other was to construct a new thermal dryer. All three coal-fired thermal dryers have PM permit limits of 0.025 gr/dscf; however, the new thermal dryer was never constructed at the Buchanan unit. To gather additional data, EPA reviewed permits for thermal dryers built more than 10 years ago to identify permit conditions that were more stringent than the existing NSPS. One of the identified plants was Mettiki general coal preparation plant, which had a permit limit of 0.020 gr/dscf. EPA reviewed PM performance test from

2000 from the Metikki facility, 1997 data from the Island Creek facility, and PM and opacity performance test data from 2003 and 2006 from the modified Buchanan thermal dryer. The average PM performance test results were 0.013, 0.019, 0.020, and 0.018 gr/dscf, respectively. The maximum opacity readings for the 2003 and 2006 performance tests at the Buchanan plant were 10 and 20 percent, respectively. We selected 0.020 gr/dscf as the proposed PM limit because this level is currently being achieved by the thermal dryer located at the three facilities subject to the most stringent PM limits, and because we did not identify any emerging pollution prevention or emission control technologies. In addition, we have concluded that the existing opacity limit of 20 percent is appropriate since the opacity data from the Buchanan plant demonstrates that compliance with the PM mass emission limit is possible at an opacity of 20 percent and has decided not to revise the limit.

We are not proposing to set separate limits for condensable PM, PM2.5, or PM10 emissions. Based on AP–42 emission factors, condensable PM accounts for only approximately 1 percent of total PM emissions from a fluidized bed dryer. Based on AP–42 emissions factors, a high efficiency venturi scrubber controls 75 percent of condensable PM, and 99 percent of the total filterable PM. PM2.5 accounts for approximately 15 percent of filterable PM emissions from a fluidized bed dryer. Even though the collection efficiency for a venturi scrubber decreases with decreasing PM size, we have concluded that the improvements in design required to comply with the amended PM standard will result in 50 percent collection efficiency of submicron particles. Therefore, we concluded that setting a total filterable PM limit is sufficient. Further, at this time we do not have sufficient performance test data on condensable PM or PM2.5 emissions from thermal dryers to determine what limits would be reasonable. Finally, although we acknowledge that the addition of controls after the high efficiency venturi scrubber could result in lower condensable and PM2.5 emissions, we do not have any way to estimate the performance of such controls to conduct a cost analysis. Therefore we cannot conclude at this time that such controls would constitute the best demonstrated technology for this source category.

C. Selection of Pneumatic Coal-Cleaning Equipment PM Emission Limit

We are proposing to revise the PM and opacity limits that would apply to pneumatic coal-cleaning equipment constructed, modified, or reconstructed after April 28, 2008. A review of the RBLC database indicated that no new pneumatic coal-cleaning equipment has been permitted in the past decade. We concluded, however, that performance from baghouses on coal processing and conveying equipment, coal storage systems, and transfer and loading systems is representative of the performance that would be expected of new pneumatic coal-cleaning equipment. Therefore, we determined that the level of control that reflects the BDT for coal processing and conveying equipment, coal storage systems, and transfer and loading systems standards also reflects the BDT for pneumatic coal-cleaning equipment. The following section describes how the proposed PM and opacity standards for these affected facilities were developed.

D. Selection of Coal Processing and Conveying Equipment, Coal Storage Systems, and Transfer and Loading System PM and Opacity Limits

To determine the best demonstrated technology for coal processing and conveying equipment, coal storage systems, and transfer and loading systems, we reviewed control measures currently in use at coal preparation plants to reduce emissions from coal processing and conveying equipment, coal storage systems, and transfer and loading systems. This review indicated that most new facilities use either partial or total enclosures in conjunction with either wet or chemical suppression or venting to a baghouse. However, no single PM control scheme works for all coal ranks throughout the country. Bituminous coals typically have high surface moisture contents and low uncontrolled PM emissions. Facilities currently utilizing bituminous coal typically use enclosures with either wet suppression or chemical suppression to control PM emissions from the various processing and handling operations at a coal preparation plant. Low rank coals (subbituminous and lignite) tend to have low surface moisture and higher uncontrolled PM emissions, but the use of wet suppression can significantly decrease the coal's heating value. In addition, water resources are often limited in the regions where low rank coals are processed. Consequently, facilities currently utilizing low rank coals typically use enclosures and controls other than wet suppression (e.g., chemical sprays, fogging systems, or venting to a fabric filter) to control PM emissions from the various processing and handling operations at a coal preparation plant.

We developed uncontrolled emission rates for coal processing and conveying equipment, coal storage systems, and transfer and loading systems using emissions information from three references (i.e., EPA's AP–42 emission factors, the CHEER workshop proceedings, and the Emission Estimation Technique Manual for Mining). We are not aware of any additional sources of information for uncontrolled emissions rates for these operations and, for the purposes of this analysis, we selected the uncontrolled emissions factor for each coal preparation operation based on the information contained in these references. We also selected default percent control efficiencies for different control devices based on information contained in these references. Using the default uncontrolled emission rates and the default control efficiencies, we determined the cost effectiveness of the various control options.

We developed six model coal preparation plants to evaluate the cost effectiveness of the control options. The model plants are located at a bituminous coal mine, a subbituminous coal mine, an electric utility steam generating unit, a coke production facility, a cement manufacturing facility, and an industrial site. For each model coal preparation plant, we compared the use of chemical suppressants to venting to a fabric filter because these are the options with the highest level of control. Based on an analysis of these model coal preparation plants, we drew the following conclusions regarding the BDT for affected facilities at these plants. Control technologies and costs, and therefore BDT, differ depending on the type of coal processed.

For coal preparation plants processing bituminous coal at end-user locations (the electric utility steam generating unit, the coke production facility, the cement manufacturing facility, and the industrial site), we concluded that requiring fabric filters instead of using chemical suppressants would result in an annual reduction of 7 tons of PM, but cost an additional $640,000 annually. In addition, the incremental benefit and cost of fabric filters at a bituminous mine compared to application of chemical suppressants is a reduction of an additional 33 tons of PM, but the annual cost is an additional $200,000. Due to these high costs, we concluded that fabric filters are not BDT for any

coal preparation plant processing bituminous coal. Therefore, BDT for affected facilities at coal preparation plants processing bituminous coal is the use of enclosures and chemical suppression.

In contrast, for coal preparation plants processing coals other than bituminous coal (the subbituminous mine), we determined that fabric filters do constitute BDT. The high uncontrolled PM emissions of subbituminous coal results in higher chemical costs and more cost effective fabric filters. The cost of a baghouse is $580,000 less than the use of chemicals at a subbituminous mine; the higher control efficiency of fabric filters results in a 230 ton annual decrease in PM emissions. Therefore, since fabric filters provide the highest level of control and are cost effective, they are considered BDT. Lignite has similar uncontrolled PM emissions as subbituminous coal and fabric filters are also considered BDT for coal preparation plants processing lignite.

We determined that BDT for new and reconstructed coal preparation plants processing coals other than bituminous coal is enclosure of the affected facilities and venting of emissions through a stack equipped with fabric filters. However, for modified facilities, we determined that enclosure is not BDT. Modified facilities could face technical challenges due to the layout of existing equipment. Therefore, BDT for these facilities is enclosure and venting through a stack equipped with fabric filters only if the affected facility was already enclosed before the modification. For modified facilities at coal preparation plants processing coal other than bituminous coal that are not enclosed prior to the modification BDT is the use of chemical suppressants. A detailed explanation of the emission factors and cost analysis is available in the docket.

In addition, we analyzed whether it was appropriate to set a mass PM or an opacity standard for coal processing and conveying equipment, coal storage systems, and transfer and loading systems. As discussed above, we concluded that BDT was enclosure and venting to a stack equipped with fabric filters only for new or reconstructed affected facilities that process coals other than bituminous coals, and modified affected facilities that are enclosed and process coals other than bituminous coals. BDT for processing and conveying equipment, coal storage systems, and transfer and loading systems processing bituminous coal and unenclosed modified processing and conveying equipment, coal storage systems, and transfer and loading systems processing coals other than bituminous coal was determined to be enclosure and the use of chemical suppression. Because it is not technically difficult or economically prohibitive to measure both PM emissions and opacity from sources venting emissions through a stack, we concluded that it was appropriate to set both a PM and opacity standard for new or reconstructed affected facilities that process coals other than bituminous coals, and modified affected facilities that are enclosed and process coals other than bituminous coals. For all other coal processing and conveying equipment, coal storage systems, and transfer and loading systems, we concluded that, at this time, it is appropriate to continue to use only an opacity standard. While measuring emissions of uncontrolled and controlled fugitive PM emissions from coal preparation facilities is technically possible, due to economic limitations it is often not presently practicable to measure the mass of PM emissions for operations that are not vented to a stack. Therefore, we are not proposing to set a separate PM standard for these affected facilities.

To identify the opacity standard that reflects the degree of emission limitation achievable through the application of the best demonstrated technology, we reviewed the RBLC database for opacity conditions applied in permits for coal handling facilities. Thirty-eight permits had opacity conditions, all for baghouses. Five of these permit conditions repeat the existing NSPS limit of 20 percent opacity, 1 was at 10 percent, and the remaining 32 were at 5 percent opacity or less. Based on this, we concluded that 5 percent opacity is BDT for a baghouse at a coal preparation plant. To further evaluate the actual performance of fabric filters, we conducted a review of test reports collected in support of the subpart OOO (non-metallic mineral processing facilities) review. These data were recently collected for review of subpart OOO, 40 CFR part 60, and we concluded the results are representative of results that would be expected from baghouses located at coal preparation plants since the size distribution and total mass of PM emissions are similar. We found that the results from all 102 relevant opacity performance tests on baghouses from the review showed maximum opacity readings of 5 percent or less.

To determine the appropriate opacity for affected facilities that do not vent PM emissions through a stack, we reviewed 383 Method 9 performance tests on facilities processing non-metallic minerals and using wet suppression (water-mixed surfactant sprays) to control fugitive dust. Again, we concluded that this data is comparable to what could be expected from non-enclosed affected facilities at a coal preparation plant since the size distribution and total uncontrolled PM emissions are similar for affected facilities covered by both subparts. None of the performance tests resulted in any 6-minute opacity readings in excess of 10 percent, and 91 percent of the performance tests had opacity readings of 5 percent or less. Since the assumed BDT for coal preparation plants processing bituminous coal is the use of enclosures and chemical suppressants, which is superior to standard wet suppression technology, we have concluded that an opacity limit of 5 percent is appropriate for new, modified, and reconstructed coal processing equipment. Even though many of the opacity readings are zero, opacity is measured in 5 percent increments. If the observer sees anything at all the minimum opacity they can report is 5 percent. We have concluded that a zero opacity limit is not appropriate since then even the smallest amount of visible emissions for any period would be an excess emission.

We concluded that a PM limit of 0.011 g/dcsm (0.0050 gr/dcsf) reflects the degree of emission limitation achievable through the application of the BDT at new or reconstructed affected facilities that process coals other than bituminous coals, and modified affected facilities that are enclosed and process coals other than bituminous coals. To determine what PM limit would be achievable through the application of best demonstrated technology at affected facilities processing coals other than bituminous coal, we reviewed data from the RBLC over the past decade for permit conditions for recent baghouses at coal handling facilities. Twenty-four of the 47 baghouse permits that list the gr/dscf stack limit were at 0.0050 gr/dscf or less, 22 were between 0.0050 and 0.010 gr/dscf, and 1 was above 0.010 gr/dscf. Since the cost difference in designing a baghouse to meet either 0.010 or 0.0050 gr/dscf is insignificant and the majority of new permits require stack limits of 0.0050 gr/dscf, EPA concluded that 0.0050 gr/dscf is BDT for a baghouse at a coal preparation plant. To further evaluate the actual performance of fabric filters, we reviewed performance test data from baghouses installed at affected facilities subject to subpart OOO. These data were recently

collected for review of subpart OOO, and we concluded the results are representative of results that would be expected from baghouses located at coal preparation plants. One important distinction is that the majority of baghouses that submitted performance test data for the subpart OOO review had design emissions rates of 0.010 gr/dscf or higher. Of the 143 performance test results, 71 percent had results of 0.0050 gr/dscf or less and 87 percent had results of 0.010 gr/dscf or less. Based on this review, we selected a PM limit of 0.0050 gr/dscf of filterable PM for new or reconstructed affected facilities that process coals other than bituminous coals, and modified affected facilities that are enclosed and process coals other than bituminous coals because it is achievable on a consistent basis for a baghouse designed to achieve 0.0050 gr/dscf. For the same reasons, we also determined that a PM limit of 0.0050 gr/dcsf represented the emissions limitation achievable through the application of BDT at new, modified, and reconstructed pneumatic coal-cleaning equipment. Even though some individual PM performance test results are less then 0.0050 gr/dscf, we have concluded that the permit limit and manufacturer guarantees have an appropriate compliance margin built in. A detailed analysis of the performance test data is available in the docket.

We concluded that there are insignificant condensable PM emissions from coal processing and conveying equipment, coal storage systems, and transfer and loading systems and, therefore, decided not to establish a separate PM limit for condensable PM emissions.

We also concluded that it was not appropriate to establish separate PM2.5 or PM10 limits. Based on AP–42 emission factors, PM10 accounts for approximately half of the total PM emissions from coal handling operations and PM2.5 accounts for approximately 7 percent. We have concluded that both fabric filters and chemical dust suppressants control PM equally across the size distribution, and setting an overall PM limit is sufficient to control both PM10 and PM2.5. Even if we were to set a PM10 or PM2.5 limit, it would not result in any environmental benefit, but would increase compliance costs due to testing and reporting requirements. In addition, we do not have sufficient performance test data to establish reasonable PM10 and PM2.5 limits that could be achieved on a consistent basis.

E. Monitoring and Recordkeeping Requirements

We have concluded that it is appropriate to eliminate the opacity limit for affected facilities that use a PM CEMS to monitor emissions. For affected facilities at coal preparation plants, a PM CEMS will give a more direct measurement of the pollutant of interest causing opacity at these facilities (i.e., filterable PM) and provide data in units of the standard. We are not proposing, however, to require all affected facilities to install a PM CEMS, and the opacity standard will continue to apply to all facilities without a PM CEMS. For those facilities that elect not to install PM CEMS, and for those emissions at a source that are not suitable for monitoring by PM CEMS, it is appropriate to retain the opacity standard.

For new thermal dryers and pneumatic coal-cleaning equipment for which a PM CEMS is not applied, we are requiring a bag leak detection system. Bag leak detection systems that are based on electromagnetic or other electric charge transfer measurement are sensitive to changes in PM concentration and mass emissions rates. These devices are suitable for detecting changes in PM emissions control that suggests potential compliance problems in need of attention well before significant deterioration in control device operation. Bag leak detection systems in most applications act as early detection alarms but do not provide a measure of actual PM emissions. For this reason, we are proposing to retain the opacity standard for sources applying a bag leak detection system.

For monitoring PM emissions from coal processing and conveying equipment, coal storage systems, and transfer and loading systems, we are proposing monthly Method 22 opacity tests. We recognize that there is currently no readily available practical technology for continuously monitoring opacity from sources that do not vent PM emissions to a stack. Method 22 requires an observer, not necessarily certified as a Method 9 observer, to monitor the subject process or area for any visible emissions (i.e., not zero). For a period of time, this observer records all instances and the duration of visible emissions. If the sum of the duration of periods of visible emissions exceeds five percent of the observation period, the source must conduct a Method 9 test to establish compliance with the opacity limit.

We are also proposing as an explicit alternative to Method 22 observations the use of a digital photographic technique for detecting visible emissions. The proposed rule references an EPA preliminary method entitled "Determination of Visible Emission Opacity from Stationary Sources Using Computer-Based Photographic Analysis Systems" found at *http://www.epa.gov/tnn/emc/prelim/pre-008.pdf*. For this option, the source owner prepares for approval a site-specific monitoring plan based on this technology.

To verify that proper inspections and maintenance procedures are followed, we have concluded that it is necessary for the owner/operator of an affected facility to maintain a logbook. Data in the logbook would include the dates and results of all visual emission observations, the amount of water and/or chemical stabilizer used each month to control PM emissions, and the amount of coal processed each month.

IV. Modification and Reconstruction Provisions

Existing affected facilities at coal preparation plants that are modified or reconstructed would be subject to the applicable proposed amendments. We have concluded that existing affected facilities that are reconstructed and units that are modified should be able to achieve the proposed limits. Therefore, we are not proposing any amendments to how a facility would conduct the modification and reconstruction analysis.

V. Summary of Cost, Environmental, Energy, and Economic Impacts

In setting the standards, the CAA requires EPA to consider alternative emission control approaches, taking into account the estimated costs and benefits, as well as energy, solid waste, and other effects. We request comment on whether we have identified the appropriate alternatives and whether the proposed standards adequately take into consideration the incremental effects in terms of emission reductions, energy, and other effects of these alternatives. We will consider the available information in developing the final rule.

The costs and environmental, energy, and economic impacts are expressed as incremental differences between the impacts of coal preparation facilities complying with the proposed amendments and the current common permitting authority requirements (i.e., baseline). We used permit data and raw material use data to determine that new coal preparation plants will be built at 2 bituminous mines, 2 subbituminous mines, 1 coke production plant, 6 utility plants, 10 cement manufacturing plants, and 1 industrial site over the next 5

years. However, the controls presently required by State permitting authorities are equivalent to what would be required by the proposed amendments, and the impacts of the proposed amendments will result in limited environmental benefit or increase in control costs over the next 5 years. Therefore, the primary impact resulting from the proposed amendments to subpart Y for coal preparation facilities is a slight increase in recordkeeping costs for new units subject to subpart Y.

Compliance with the proposed standards would potentially increase the quantity of coal dust collected by fabric filters over the baseline levels. Depending on the practices used at a given coal preparation plant site, the amended regulation would increase the amount of coal dust the company must dispose of as a solid waste either on-site or off-site. In addition, the use of tree resin emulsions and synthetic polymer emulsions as dust suppressants have minimal environmental impacts, but the use of salts and ligin products can have negative impacts on the environment. Repeated applications of salts may harm nearby vegetation, and ligin products have a high biological oxygen demand in aquatic systems and can lead to fish kills and increases in groundwater concentrations of iron, sulfur compounds, or other pollutants. No significant energy impacts, as measured relative to the regulatory baseline, are expected as a result of the proposed PM limits.

The analysis concludes minimal changes in prices and output for the industries affected by the final rule. The price increase for baseload electricity, cement prices, coke prices, and coal prices are insignificant.

VI. Request for Comment

We request comments on all aspects of the proposed amendments. All significant comments received will be considered in the development and selection of the final amendments and, if appropriate, we will publish a supplemental proposal. We specifically solicit comments on additional amendments that are under consideration. These potential amendments are described below.

BDT for Thermal Dryers. No new thermal dryers have been installed at bituminous coal mines in the past decade, but two new thermal dryers have been installed at metal production facilities in the past decade. Both of those thermal dryers are fueled by natural gas and use fabric filters to control PM emissions. However, we are not aware of a fabric filter that has been used on a thermal dryer located at a bituminous coal mine. We are requesting comment on whether the high dew point of coal-fired thermal dryer exhaust at bituminous mines could cause potential difficulties with the use of a fabric filter. If we determine that the use of fabric filters at thermal dryers located at bituminous coal mines would not pose any significant technical difficulties and would not be cost prohibitive, we will consider basing the revised PM standard for thermal dryers on the performance of a fabric filter instead of a venturi scrubber. In addition, we are requesting comment on whether the proposed standards for thermal dryers are adequate to control condensable PM, PM2.5, and PM10 or whether additional standards are needed to control these types of PM.

Alternate requirements for an owner or operator of coal processing and conveying equipment, coal storage systems, and coal transfer equipment. We are requesting comment on if it is appropriate to establish equipment specifications in addition to, as an alternate to, or in place of the opacity standard for affected facilities not venting emissions to a stack. Affected facilities using chemical suppression or an equivalent dust control application typically do not emit through a conveyance designed to capture the PM emissions. In addition, it may not be practical to measure the mass of actual PM emissions from these facilities and work practice standards might be more appropriate.

Expanded coverage. We are requesting comment on expanding the coverage to include open storage piles by changing the definition of coal storage system. The Coal Handling Emissions Evaluation Roundtable (CHEER) workshop proceedings provide default control efficiencies for different technologies. We are requesting comment on the reliability and validity of these default control efficiencies. We have not developed cost estimates for some of these technologies. Also, we do not presently have information relating different control techniques to specific opacity limits and appropriate monitoring requirements. We request comment on both of these issues. If we were to expand the coverage to include open storage piles, work practice standards might be more appropriate than opacity limits. Our current understanding is that it is difficult to control opacity from open storage piles that are being actively worked at all times, and State permitting authorities often use opacity of open storage piles as an indication that a work practice is required as opposed to a strict limit.

Nonmetallic minerals processing. We are requesting comment on if it is appropriate to allow owners and operators of a facility processing nonmetallic minerals (as defined by subpart OOO) along with coal at the same property the option of being exempt from the requirements of subpart OOO as long as the nonmetallic mineral(s) is treated as coal for the purposes of compliance with subpart Y. Steam generating units with SO_2 scrubbers and cement manufacturers process limestone along with coal and consolidating the recordkeeping and reporting requirements to a single rule could lower the compliance burden for these facilities while still providing equivalent protection for the environment.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1062.10.

These proposed amendments to the existing standards of performance for Coal Preparation Plants would add new monitoring, reporting, and recordkeeping requirements. The information would be used by EPA to ensure that any new affected facilities comply with the emission limits and other requirements. Records and reports would be necessary to enable EPA or States to identify new affected facilities that may not be in compliance with the requirements. Based on reported information, EPA would decide which units and what records or processes should be inspected.

These proposed amendments would not require any notifications or reports

beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to EPA for which a claim of confidentially is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentially of Business Information.

The annual monitoring, reporting, and recordkeeping burden for this collection averaged over the first 3 years of this ICR is estimated to total 32,664 labor hours per year at an average annual cost of $2,957,707. This estimate includes performance testing, excess emission reports, notifications, and recordkeeping. There are no capital/start-up costs or operational and maintenance costs associated with the monitoring requirements over the 3-year period of the ICR. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2008–0260. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of the notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 28, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by May 28, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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. This proposed rule will not impose any requirements on small entities.

We continue 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 UMRA section 202, 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, UMRA section 205 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 UMRA section 203 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 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 one year. The total annual control and monitoring costs of the proposed amendments, compared to a baseline of no control, at year five is $2 million. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. EPA has 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 UMRA section 203.

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 EO 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."

These 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 EO 13132. These proposed amendments will not impose substantial direct compliance costs on State or local governments; they will not preempt State law. Thus, EO 13132 does not apply to these proposed amendments. In the spirit of EO 13132, and consistent with EPA policy to promote

communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." These proposed amendments do not have tribal implications, as specified in EO 13175. We are not aware of any coal preparation facilities owned by an Indian tribe. Thus, EO 13175 does not apply to these proposed amendments. EPA specifically solicits additional comment on these proposed amendments from tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed action is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. EPA has decided to use ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," for its manual methods of measuring the oxygen or carbon dioxide content of the exhaust gas. These parts of ASME PTC 19.10–1981 are acceptable alternatives to EPA Method 3B. This standard is available from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990.

The EPA has also decided to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 9 (40 CFR part 60, appendices A–1 through A–4), or 22 (40 CFR part 60, appendix A–7); and Performance Specification 11 (40 CFR part 60, appendix B). While the Agency has identified 13 VCS as being potentially applicable to these methods cited in this rule, we have decided not to use these standards in this proposed rulemaking. The use of these VCS would have been impractical because they do not meet the objectives of the standards cited in this rule. The search and review results are in the docket for this rule.

Under 40 CFR 60.13(i) of the NSPS General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule and amendments. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this proposed action.

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

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

EPA has determined that this proposed rule will not have disproportionately high adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high adverse human health or environmental effects on any populations, including any minority or low-income population. The proposed amendments would assure that all new coal preparation plants install appropriate controls to limit health impacts to nearby populations.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 16, 2008.

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 as follows:

a. By revising paragraph (a)(13);

b. By removing paragraph (a)(14);

c. By redesignating paragraphs (a)(15) through (a)(92) as paragraphs (a)(14) through (a)(91); and

d. By revising paragraph (h)(4).

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(13) ASTM D388–77, 90, 91, 95, 98a, 99 (Reapproved 2004), Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.24(h)(8), 60.41 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, 60.41b of subpart Db of this part, 60.41c of subpart Dc of this part, 60.251 of subpart Y of this part, and 60.4102.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for § 60.254(c)(3) of subpart Y, Tables 1 and 3 of subpart EEEE, Tables 2 and 4 of subpart FFFF, Table 2 of subpart JJJJ, and § 60.4415(a)(2) and 60.4415(a)(3) of subpart KKKK of this part.

* * * * *

Subpart Y—[Amended]

3. Part 60 is amended by revising subpart Y to read as follows:

Subpart Y—Standards of Performance for Coal Preparation Plants

Sec.

Subpart Y—Standards of Performance for Coal Preparation Plants

§ 60.250 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to any of the following affected facilities in coal preparation plants which process more than 181 Mg (200 tons) per day: Thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and transfer and loading systems.

(b) Any affected facility under paragraph (a) of this section that commences construction, reconstruction, or modification after October 24, 1974, is subject to the requirements of this subpart.

§ 60.251 Definitions.

As used in this subpart, all terms not defined herein have the meaning given them in the Act and in subpart A of this part.

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust loadings) in the exhaust of a fabric filter to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Bituminous coal means solid fossil fuel classified as bituminous coal by ASTM Designation D388 (incorporated by reference—see § 60.17).

Coal means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM Designation D388 (incorporated by reference—see § 60.17).

Coal preparation plant means any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: Breaking, crushing, screening, wet or dry cleaning, and thermal drying.

Coal processing and conveying equipment means any machinery used to reduce the size of coal or to separate coal from refuse, and the equipment used to convey coal to or remove coal and refuse from the machinery. This includes, but is not limited to, breakers, crushers, screens, and conveying systems.

Coal storage system means any facility used to store coal except for open storage piles.

Cyclonic flow means a spiraling movement of exhaust gases within a duct or stack.

Pneumatic coal-cleaning equipment means any facility which classifies bituminous coal by size or separates bituminous coal from refuse by application of air stream(s).

Thermal dryer means any facility in which the moisture content of bituminous coal is reduced by contact with a heated gas stream which is exhausted to the atmosphere.

Transfer and loading system means any facility used to transfer and load coal for shipment.

§ 60.252 Standards for particulate matter.

(a) *Thermal dryers.* On and after the date on which the initial performance test is completed or required to be completed under § 60.8, the owner or operator of thermal dryers subject to the provisions of this subpart must meet the requirements in paragraphs (a)(1) through (3) of this section, as applicable to the affected facility.

(1) For each thermal dryer constructed, reconstructed, or modified on or before April 28, 2008, the owner or operator must ensure that emissions discharged into the atmosphere from the affected facility:

(i) Do not contain particulate matter in excess of 0.070 g/dscm (0.031 gr/dscf); and

(ii) Do not exhibit 20 percent opacity or greater.

(2) For each thermal dryer constructed, reconstructed, or modified after April 28, 2008, the owner or operator must ensure that emissions discharged into the atmosphere from the affected facility do not contain particulate matter in excess of 0.046 g/dscm (0.020 gr/dscf).

(3) For each thermal dryer constructed, reconstructed, or modified after April 28, 2008 that does not use a particulate matter continuous emissions monitoring system (PM CEMS) according to the requirements § 60.253(e), the owner or operator must ensure that emissions discharged into the atmosphere from the affected facility do not exhibit 20 percent opacity or greater.

(b) *Pneumatic coal-cleaning equipment.* On and after the date on which the initial performance test is completed or required to be completed under § 60.8, the owner or operator of pneumatic coal-cleaning equipment subject to the provisions of this subpart must meet the requirements in paragraphs (b)(1) through (3) of this section, as applicable to the affected facility.

(1) For each pneumatic coal-cleaning equipment constructed, reconstructed, or modified on or before April 28, 2008, the owner or operator must ensure that emissions discharged into the atmosphere from the affected facility:

(i) Do not contain particulate matter in excess of 0.040 g/dscm (0.017 gr/dscf); and

(ii) Do not exhibit 10 percent opacity or greater.

(2) For each pneumatic coal-cleaning equipment constructed, reconstructed, or modified after April 28, 2008, the owner or operator must ensure that emissions discharged into the atmosphere from the affected facility do not contain particulate matter in excess of 0.011 g/dscm (0.0050 gr/dscf).

(3) For each pneumatic coal-cleaning equipment constructed, reconstructed, or modified after April 28, 2008 and that does not use a PM CEMS according to the requirements in § 60.253(e), the owner or operator must ensure that emissions discharged into the atmosphere from the affected facility do not exhibit 5 percent opacity or greater.

(c) *Coal processing and conveying equipment, coal storage systems, and coal transfer systems.* On and after the date on which the initial performance test is completed or required to be completed under § 60.8, the owner or operator of coal processing and conveying equipment, coal storage systems, and transfer and loading systems subject to the provisions of this subpart must meet the requirements in paragraph (c)(1) or (2) of this section as applicable to the affected facility.

(1) For each coal processing and conveying equipment, coal storage system, and transfer and loading system constructed, reconstructed, or modified on or before April 28, 2008, the owner or operator must ensure that emissions

discharged into the atmosphere from the affected facility do not exhibit 20 percent opacity or greater.

(2) For each coal processing and conveying equipment, coal storage system, and transfer and loading system constructed, reconstructed, or modified after April 28, 2008, the owner or operator must meet the requirements in paragraphs (c)(2)(i) through (iii) of this section, as applicable to each affected facility.

(i) For each affected facility that does not use a PM CEMS according to the requirements in § 60.253(e), the owner or operator must ensure that emissions discharged into the atmosphere from the affected facility do not exhibit 5 percent opacity or greater.

(ii) For each new and reconstructed affected facility that processes, conveys, stores, transfers, or loads coals, except those that exclusively process, convey, store, transfer, or load bituminous coal, must vent all emissions through a stack and ensure that emissions discharged into the atmosphere from the affected facility do not contain particulate matter in excess of 0.011 g/dscm (0.0050 gr/dscf).

(iii) For each modified affected facility that was in an enclosure prior to the modification and that processes, conveys, stores, transfers, or loads coals, except those that exclusively process, convey, store, transfer, or load bituminous coal must vent all emissions through a stack and ensure that emissions discharged into the atmosphere from the affected facility do not contain particulate matter in excess of 0.011 g/dscm (0.0050 gr/dscf).

(d) Owners and operators of affected facilities constructed, reconstructed, or modified after April 28, 2008 that are subject to a particulate matter emissions limit in this section and do not use a PM CEMS according to the requirements of § 60.253(e) must demonstrate compliance with the applicable particulate matter emissions limit by conducting an initial performance test and, thereafter, an annual performance test according to the requirements in § 60.254(c).

§ 60.253 Monitoring of operations.

(a) The owner or operator of any thermal dryer constructed, reconstructed, or modified on or before April 28, 2008 shall install, calibrate, maintain, and continuously operate monitoring devices as follows:

(1) A monitoring device for the measurement of the temperature of the gas stream at the exit of the thermal dryer on a continuous basis. The monitoring device is to be certified by the manufacturer to be accurate within ±1.7 °C (±3 °F).

(2) For affected facilities that use a venturi scrubber emissions control equipment:

(i) A monitoring device for the continuous measurement of the pressure loss through the venturi constriction of the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ±1 inch water gauge.

(ii) A monitoring device for the continuous measurement of the water supply pressure or water flow rate to the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ±5 percent of design water supply pressure or flow rate. The pressure sensor or tap or flow rate sensor must be located close to the water discharge point. The Administrator may be consulted for approval of alternative locations.

(b) All monitoring devices under paragraph (a) of this section are to be recalibrated annually in accordance with procedures under § 60.13(b).

(c) The owner or operator of each thermal dryer and pneumatic coal-cleaning equipment constructed, reconstructed, or modified after April 28, 2008 must install, calibrate, maintain, and continuously operate the monitoring devices specified in paragraphs (c)(1) through (3) of this section, as applicable, except as provided for in paragraph (d) of this section.

(1) For a thermal dryer, a monitoring device for the measurement of the temperature of the gas stream at the exit of the thermal dryer on a continuous basis. The monitoring device is to be certified by the manufacturer to be accurate within ±1.7 °C (±3 °F).

(2) For a fabric filter (baghouse), a bag leak detection system according to the requirements in paragraph (f) of this section.

(3) For a venturi scrubber, monitoring devices according to the requirements in paragraphs (c)(3)(i) and (ii) of this section.

(i) A monitoring device for the continuous measurement of the pressure loss through the venturi constriction of the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ±1 inch water gauge.

(ii) A monitoring device for the continuous measurement of the water supply pressure or water flow rate to the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ±5 percent of design water supply pressure or flow rate. The pressure sensor or tap or flow rate sensor must be located close to the water discharge point.

(d) The monitoring requirements in paragraph (c) of this section do not apply to an affected facility if the owner or operator installs, calibrates, maintains, and continuously operates at that facility a particulate matter continuous emission monitoring system (PM CEMS) according the requirements in paragraph (e) of this section.

(e) Each PM CEMS used in lieu of the monitoring requirements in paragraph (c) of this section must be installed, calibrated, maintained, and continuously operated according to the requirements in paragraphs (e)(1) through (4) of this section.

(1) You must install, certify, operate, and maintain the PM CEMS according to Performance Specification 11 in appendix B of this part and procedure 2 in appendix F of this part.

(2) You must conduct a performance evaluation of the PM 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.

(3) During each relative accuracy test run of the PM CEMS required by Performance Specification 11 in appendix B of this part, collect the particulate matter and stack gas molecular weight data concurrently (or within a 30- to 60-minute period) with both the PM CEMS and the performance testing using the following test methods.

(i) For particulate matter, Method 5 of Appendix A–3 of this part shall be used.

(ii) For stack gas molecular weight determination, Method 3, 3A, or 3B of Appendix A–2 of this part, as applicable shall be used.

(4) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part.

(f) Each bag leak detection system used to comply with the monitoring requirements of this subpart must be installed, calibrated, maintained, and continuously operated according to the requirements in paragraphs (f)(1) through (3) of this section.

(1) The bag leak detection system must meet the specifications and requirements in paragraphs (f)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output

from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (f)(2) of this section, and the alarm must be located such that it can be heard or otherwise observed by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (f)(2) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (f)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (f)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (f)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (f)(2)(vi) of this section, you must address the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

(g) An owner or operator of a coal processing and conveying equipment, coal storage systems, or transfer and loading system with an applicable opacity limit that commenced construction, reconstruction, or modification after April 28, 2008 must comply with the requirements in paragraphs (g)(1) and (2) of this section.

(1) Monitor visible emissions from each affected facility according to the requirements in either paragraph (g)(1)(i) or (ii) of this section.

(i) Conduct a series of three 1-hour observations (during normal operation) at least once per calendar month that the coal preparation plant operates using Method 22 of Appendix A–7 of this part at the affected facility and demonstrate that the sum of the occurrences of any visible emissions at each affected facility is not in excess of 5 percent of the observation period (i.e., 9 minutes per 3-hour period); or

(ii) Prepare and implement a written site-specific monitoring plan based on the application of a digital opacity compliance system that has been approved by the Administrator. The observations should include at least one digital image every 15 seconds for three separate 1-hour periods (during normal operation) every calendar month that the coal preparation plant operates. An approvable monitoring plan should include a demonstration that the occurrences of visible emissions are not in excess of 5 percent of the observation period (i.e., 36 observations per 3-hour period). For reference purposes in preparing the monitoring plan, see OAQPS "Determination of Visible Emission Opacity from Stationary Sources Using Computer-Based Photographic Analysis Systems." This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality and Planning Standards; Sector Policies and Programs Division; Measurement Group (D243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Preliminary Methods (*http://www.eps.gov/tnn/emc/prelim/pre-008.pdf*).

(2) For each observation period resulting in cumulative visible emissions periods in excess of 5 percent of the observation period, the owner or operator must conduct an opacity performance test with Method 9 of Appendix A–4 of this part to verify compliance within 24 hours from the day on which the observations were made.

§ 60.254 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8 for affected facilities constructed, reconstructed, or modified on or before April 28, 2008, the owner or operator shall use as reference methods and procedures the test methods in appendices A–1 through A–8 of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator of an affected facility constructed, reconstructed, or modified after April 28, 2008 shall use the following procedures to measure particular matter emissions from that facility:

(1) Method 5 of Appendix A–3 of this part shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). Sampling shall begin no less than 30 minutes after startup and shall terminate before shutdown procedures begin.

(2) Method 9 of Appendix A–4 of this part and the procedures in § 60.11 shall

be used to determine opacity from all affected facilities except those that do not vent PM emissions through a stack.

(3) Method 9 of Appendix A–4 of this part, the procedures in § 60.11, and the additional procedures in paragraphs (b)(3)(i) through (iii) of this section shall be used to determine opacity from affected facilities that do not vent PM emissions through a stack.

(i) The minimum distance between the observer and the emission source shall be 5.0 meters (16 feet), and the sun shall be oriented in the 140-degree sector of the back.

(ii) The observer shall select a position that minimizes interference from other emission sources and make observations such that the line of vision is approximately perpendicular to the plume and wind direction.

(iii) Make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. Water vapor is not considered a visible emission.

(c) For each affected facility subject to a particulate matter emission limit in § 60.252 that is constructed, reconstructed, or modified after April 28, 2008 the owner or operator must conduct each performance test according to § 60.8 using the test methods and procedures in paragraphs (c)(1) through (5) of this section.

(1) Method 1 or 1A (40 CFR part 60, appendix A–1) to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(2) Method 2, 2A, 2C, 2D, 2F (40 CFR part 60, appendix A–1), or 2G (40 CFR part 60, appendix A–2) to determine the volumetric flow rate of the stack gas.

(3) Method 3, 3A, or 3B (40 CFR part 60, appendix A–2) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" (incorporated by reference—see § 63.14) as an alternative to Method 3B (40 CFR part 60, appendix A–2).

(4) Method 4 (40 CFR part 60, appendix A–3) to determine the moisture content of the stack gas.

(5) Method 5 (40 CFR part 60, appendix A–3) to determine the PM concentration or Method 5D (40 CFR part 60, appendix A–3) for positive pressure fabric filter. A minimum of three valid test runs comprise a particulate matter performance test.

(d) For each affected facility subject to an opacity limit in § 60.252 that is constructed, reconstructed, or modified after April 28, 2008, the owner or operator must conduct the performance test as follows:

(1) Method 9 of Appendix A–4 of this part and the procedures in § 60.11 shall be used to determine opacity from all affected facilities except those that do not vent PM emissions through a stack.

(2) Method 9 of Appendix A–4 of this part, the procedures in § 60.11, and the additional procedures in paragraphs (d)(2)(i) through (iii) of this section shall be used to determine opacity from affected facilities that do not vent PM emissions through a stack.

(i) The minimum distance between the observer and the emission source shall be 5.0 meters (16 feet), and the sun shall be oriented in the 140-degree sector of the back.

(ii) The observer shall select a position that minimizes interference from other emission sources and make observations such that the line of vision is approximately perpendicular to the plume and wind direction.

(iii) Make opacity observations at the poinf of greatest opacity in that portion of the plume where condensed water vapor is not present. Water vapor is not considered a visible emission.

§ 60.255 Reporting and recordkeeping.

(a) An owner or operator of a coal preparation plant that commenced construction, reconstruction, or modification after April 28, 2008 shall maintain in a logbook (written or electronic) on-site and made available upon request. The logbook shall record the following:

(1) The date and time of periodic coal preparation plant facility opacity observations noting those sources with emissions above the action level along with the results of the corresponding opacity performance test.

(2) The amount and type of coal processed each calendar month.

(3) The amount of chemical stabilizer or water purchased for use in the coal preparation plant.

(4) Monthly certification that the dust suppressant systems were operational when any coal was processed and that manufacturer recommendations were followed for all control systems.

(b) [RESERVED]

[FR Doc. E8–9104 Filed 4–25–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 531, 533, 534, 536 and 537

[Docket No. NHTSA–2008–0060]

Supplemental Notice of Public Scoping for an Environmental Impact Statement for New Corporate Average Fuel Economy Standards

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

ACTION: Supplemental notice of public scoping; further request for scoping comments.

SUMMARY: On March 28, 2008, NHTSA announced plans to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to address the potential environmental impacts of the agency's Corporate Average Fuel Economy program for passenger automobiles (referred to herein as "passenger cars") and non-passenger automobiles (referred to herein as "light trucks"). Specifically, NHTSA announced its intent to prepare an EIS to consider the potential environmental impacts of new fuel economy standards for model year 2011–2015 passenger cars and light trucks that NHTSA is proposing pursuant to the Energy Independence and Security Act of 2007. At the same time, NHTSA initiated the NEPA scoping process by inviting Federal, State, and local agencies, Indian tribes, and the public to help identify the environmental issues and reasonable alternatives to be examined in the EIS by providing public comments related to the scope of NHTSA's NEPA analysis. This supplemental notice provides additional guidance for participating in the scoping process and additional information about the proposed standards and the alternatives NHTSA expects to consider in its NEPA analysis.

DATES: The scoping process will culminate in the preparation and issuance of a Draft EIS, which will be made available for public comment. Interested persons are requested to submit their scoping comments as soon as possible. To ensure that NHTSA has an opportunity to consider scoping comments and to facilitate NHTSA's prompt preparation of the Draft EIS, scoping comments should be received on or before May 28, 2008, although NHTSA will try to consider comments

received after this date to the extent the NEPA and rulemaking schedules allow.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

• *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For technical issues, contact Carol Hammel-Smith, Fuel Economy Division, Office of International Vehicle, Fuel Economy and Consumer Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5206. For legal issues, contact Kerry E. Rodgers, Vehicle Safety Standards & Harmonization Division, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–9511.

SUPPLEMENTARY INFORMATION: In a companion notice of proposed rulemaking (NPRM), NHTSA is proposing Corporate Average Fuel Economy (CAFE) standards for model year (MY) 2011–2015 passenger cars and light trucks pursuant to the amendments made by the Energy Independence and Security Act of 2007 (EISA) to the Energy Policy and Conservation Act (EPCA).[1] In connection with this action, NHTSA has begun preparing an Environmental Impact Statement (EIS) to address the potential environmental impacts of the proposed standards and reasonable alternative standards in the context of NHTSA's CAFE program pursuant to the National Environmental Policy Act (NEPA) and implementing regulations issued by the Council on Environmental Quality (CEQ) and NHTSA.[2] NEPA instructs Federal agencies to consider the potential environmental impacts of their proposed actions and possible alternatives in their decisionmaking. To inform decisionmakers and the public, the EIS will compare the environmental impacts of the agency's proposal and reasonable alternatives, including a "no action" alternative. The EIS will consider direct, indirect, and cumulative impacts and should discuss impacts "in proportion to their significance."

In March 2008, NHTSA issued a notice of intent to prepare an EIS for the MY 2011–2015 CAFE standards and opened the NEPA "scoping" process. In that notice, NHTSA described the statutory requirements for the proposed standards, provided initial information about the NEPA process, and initiated scoping by requesting public input on the scope of NHTSA's NEPA analysis for the proposed standards.[3] NHTSA also stated that it would describe the proposed standards and the possible alternatives NHTSA expects to consider for purposes of its NEPA analysis in its NPRM and in a separate scoping notice that would provide further guidance about the scoping process. This document constitutes that supplemental scoping notice.

Background. EPCA sets forth extensive requirements concerning the rulemaking to establish MY 2011–2015 CAFE standards. It requires the Secretary of Transportation[4] to establish average fuel economy standards at least 18 months before the beginning of each model year and to set them at "the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year." When setting "maximum feasible" fuel economy standards, the Secretary is required to "consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy."[5] NHTSA construes the statutory factors as including environmental and safety considerations.[6] NHTSA also will consider environmental impacts under NEPA when setting CAFE standards.

As recently amended, EPCA further directs the Secretary, after consultation with the Secretary of Energy (DOE) and the Administrator of the Environmental Protection Agency (EPA), to establish separate average fuel economy standards for passenger cars and for light trucks manufactured in each model year beginning with model year 2011 "to achieve a combined fuel economy average for model year 2020 of at least 35 miles per gallon for the total fleet of passenger and non-passenger automobiles manufactured for sale in the United States for that model year."[7] In doing so, the Secretary of Transportation is required to increase average fuel economy standards for MY 2011–2020 vehicles through "annual fuel economy standard increases."[8] The standards for passenger cars and light trucks must be "based on 1 or more vehicle attributes related to fuel economy." In any single rulemaking, standards may be established for not more than five model years.[9] EPCA also mandates a minimum standard for domestically manufactured passenger cars.[10]

Earlier this year, NHTSA initiated the EIS process for MY 2011–2015 CAFE standards, which include light truck standards for one model year previously covered by the 2006 Rule (MY 2011).[11] We did so because a standard for MY 2011 must be issued by the end of March 2009 and achieving an industry-wide combined fleet average of at least 35 miles per gallon for MY 2020 depends, in substantial part, upon setting standards well in advance so as to provide the automobile

[1] EISA is Public Law 110–140, 121 Stat. 1492 (December 19, 2007). EPCA is codified at 49 U.S.C. 32901 *et seq.*

[2] NEPA is codified at 42 U.S.C. 4321–4347. CEQ's NEPA implementing regulations are codified at 40 CFR 1500–1508, and NHTSA's NEPA implementing regulations are codified at 49 CFR Part 520.

[3] *See* Notice of Intent to Prepare an Environmental Impact Statement for New Corporate Average Fuel Economy Standards, 73 FR 16615, March 28, 2008, *available at http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.43ac99aefa80569eea57529cdba046a0/* (last visited March 26, 2008).

[4] NHTSA is delegated responsibility for implementing the EPCA fuel economy requirements assigned to the Secretary of Transportation. 49 CFR 1.50, 501.2(a)(8).

[5] 49 U.S.C. 32902(a), 32902(f).

[6] *See, e.g., Competitive Enterprise Inst.* v. *NHTSA*, 956 F.2d 321, 322 (D.C. Cir. 1992) (citing *Competitive Enterprise Inst.* v. *NHTSA*, 901 F.2d 107, 120 n.11 (D.C. Cir. 1990)).

[7] 49 U.S.C.A. 32902(b)(1), 32902(b)(2)(A).

[8] 49 U.S.C.A. 32902(b)(2)(C).

[9] 49 U.S.C.A. 32902(b)(3)(A), 32902(b)(3)(B).

[10] 49 U.S.C.A. 32902(b)(4).

[11] In preparing an EIS for the MY 2011–2015 CAFE standards, NHTSA intends to consider issues raised in litigation concerning a 2006 final rule, "Average Fuel Economy Standards for Light Trucks, Model Years 2008–2011," 71 FR 17,566, April 6, 2006 (2006 Rule). *See Center for Biological Diversity* v. *NHTSA*, 508 F.3d 508, 514, 545–58 (9th Cir. 2007) (holding, among other things, that NHTSA did not prepare an adequate environmental assessment under NEPA and ordering the agency to prepare an EIS). The Government is presently seeking rehearing in the Ninth Circuit on the appropriateness of the Court's remedy.

manufacturers with as much lead time as possible to make the extensive necessary changes to their automobiles.

The Proposed Action and Possible Alternatives: NHTSA's companion NPRM proposes attribute-based (vehicle size) fuel economy standards for passenger cars and light trucks consistent with the "Reformed CAFE" approach NHTSA used to establish standards for MY 2008–2011 light trucks.[12] The NPRM proposes separate standards for MY 2011–2015 passenger cars and separate standards for MY 2011–2015 light trucks. This notice briefly describes the proposed standards and the possible alternatives discussed in the NPRM. For more detailed discussion of those alternatives, please see the NPRM.

Under the proposed standards, each vehicle manufacturer's required level of CAFE would be based on target levels of average fuel economy set for vehicles of different sizes and on the distribution of that manufacturer's vehicles among those sizes. Size would be defined by vehicle footprint.[13] The level of the performance target for each footprint would reflect the technological and economic capabilities of the industry. The target for each footprint would be the same for all manufacturers, regardless of differences in their overall fleet mix. Compliance would be determined by comparing a manufacturer's harmonically averaged fleet fuel economy levels in a model year with a required fuel economy level calculated using the manufacturer's actual production levels and the targets for each footprint of the vehicles that it produces.

In developing the proposed standards and possible alternatives, NHTSA considered the four EPCA factors underlying maximum feasibility (technological feasibility, economic practicability, the effect of other standards of the Government on fuel economy, and the need of the nation to conserve energy) as well as relevant environmental and safety considerations. NHTSA used a computer model (known as the "Volpe model") that, for any given model year, applies technologies to a manufacturer's fleet until the manufacturer achieves compliance with the standard under consideration. In light of the EPCA factors, the agency placed monetary values on relevant externalities (both energy security and environmental externalities, including the benefits of reductions in carbon dioxide (CO_2) emissions). As discussed in the NPRM, NHTSA also consulted with EPA and DOE regarding a wide variety of matters.

After assessing what fuel saving technologies would be available, how effective they are, and how quickly they could be introduced, NHTSA balanced the EPCA factors relevant to standard-setting. The agency used a marginal benefit-cost analysis to set the proposed standards at levels such that, considering the seven largest manufacturers, the cost of the last technology application equaled the benefits of the improvement in fuel economy resulting from that application. That is the level at which net benefits are maximized. Accordingly, NHTSA refers to the proposed standards as "optimized" standards or the "optimized scenario". In considering further action on the proposed standards and reasonable alternatives, NHTSA will consider the NEPA analysis that results from the scoping process described in this notice.

NHTSA projects what the industry-wide average fuel economy level would be for passenger cars and for light trucks if each manufacturer produced its expected mix of automobiles and exactly met its obligations under the proposed "optimized" standards for each model year. For passenger cars, the average fuel economy (in miles per gallon, or mpg) would range from 31.2 mpg in MY 2011 to 35.7 mpg in MY 2015. For light trucks, the average fuel economy would range from 25.0 mpg in MY 2011 to 28.6 mpg in MY 2015. The combined industry-wide average fuel economy for all passenger cars and light trucks would range from 27.8 mpg in MY 2011 to 31.6 mpg in MY 2015, if each manufacturer exactly met its obligations under the standards proposed in the NPRM.[14]

Under the proposed standards, the annual average increase during the five-year period from MY 2011-MY 2015 would be approximately 4.5 percent. The annual percentage increases would be greater in the early years due to the uneven distribution of new model introductions during this period and to the fact that significant technological changes can be most readily made in conjunction with those introductions.[15] Pursuant to EISA's mandate, domestically manufactured passenger car fleets also must meet an alternative minimum standard for each model year. The alternative minimum standard would range from 28.7 mpg in MY 2011 to 32.9 mpg in MY 2015 under NHTSA's proposal.

In addition to the proposed standards, NHTSA has considered several regulatory alternatives for purposes of Executive Order 12,866.[16] NHTSA anticipates that those alternatives, plus a "no action" alternative as required by NEPA, will form the framework of the agency's alternatives analysis under NEPA. The alternatives, in order of increasing stringency, are:

(1) A "no action" alternative of maintaining CAFE standards at the MY 2010 levels of 27.5 mpg and 23.5 mpg for passenger cars and light trucks, respectively.[17] NEPA requires agencies to consider a "no action" alternative in their NEPA analyses, although the recent amendments to EPCA direct NHTSA to set new CAFE standards and do not permit the agency to take no action on fuel economy. (NHTSA also refers to this "no action" alternative as a "no increase" or "baseline" alternative.)

(2) An alternative reflecting standards that fall below the optimized scenario by the same absolute amount by which the "25 percent above optimized alternative" (described below) exceeds the optimized scenario. NHTSA refers to this as the "25 percent below optimized alternative".

(3) An alternative reflecting the "optimized scenario," the proposed standards based on applying technologies until net benefits are maximized.

(4) An alternative reflecting standards that exceed the optimized scenario by 25 percent of the interval between the optimized scenario and an alternative (described below) based on applying technologies until total costs equal total benefits. NHTSA refers to this alternative as the "25 percent above optimized alternative."

(5) An alternative reflecting standards that exceed the optimized scenario by 50 percent of the interval between the

[12] *See* 71 FR 17,566, 17,587–17,625, April 6, 2006 (describing that approach).

[13] A vehicle's "footprint" is generally defined as "the product of track width [the lateral distance between the centerlines of the base tires at ground, including the camber angle * * * times wheelbase [the longitudinal distance between front and rear wheel centerlines] * * * divided by 144. * * *" 49 CFR 523.2.

[14] NHTSA notes that it cannot set out the precise level of CAFE that each manufacturer would be required to meet for each model year under the proposed standards, because the level for each manufacturer would depend on that manufacturer's final production figures and fleet mix for a particular model year. That information will not be available until the end of each model year.

[15] With the proposed standards, the combined industry-wide average fuel economy would have to increase by an average of 2.1 percent per year from MY 2016 –MY 2020 in order to reach EISA's goal of at least 35 mpg by MY 2020. In addition, the NPRM discusses flexibility mechanisms available to manufacturers to meet their obligations.

[16] Exec. Order 12,866, "Regulatory Planning and Review," 58 FR 51,735, October 4, 1993, as amended.

[17] *See* 40 CFR 1502.2(e), 1502.14(d).

optimized scenario and the alternative based on applying technologies until total costs equal total benefits. This alternative is known as the "50 percent above optimized alternative".

(6) An alternative reflecting standards based on applying technologies until total costs equal total benefits (zero net benefits). This is known as the "TC=TB alternative".

(7) A "technology exhaustion alternative" in which NHTSA applied all feasible technologies without regard to cost by determining the stringency at which a reformed CAFE standard would require every manufacturer to apply every technology estimated to be potentially available for its MY 2011–2015 fleet. Accordingly, the penetration rates for particular technologies would vary on an individual manufacturer basis. NHTSA has presented this alternative in order to explore how the stringency of standards would vary based solely on the potential availability of technologies at the individual manufacturer level.

Under NEPA, the purpose of and need for an agency's action inform the range of reasonable alternatives to be considered in its NEPA analysis.[18] NHTSA believes that these alternatives represent a reasonable range of stringencies to consider for purposes of evaluating the potential environmental impacts of proposed CAFE standards under NEPA, because these alternatives represent a wide spectrum of potential impacts ranging from the current standards to standards based on the maximum technology expected to be available over the period necessary to meet the statutory goals of EPCA, as amended by EISA.[19] However, as discussed in the NPRM, NHTSA's provisional analysis of these alternatives suggests that some of them may not satisfy the four EPCA factors that NHTSA must apply in setting "maximum feasible" CAFE standards (*i.e.*, technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the nation to conserve energy). Please see the companion NPRM for further discussion of these alternatives and for background on why NHTSA has identified these alternatives. As indicated below, NHTSA invites comments to ensure that the agency's NEPA analysis for the proposed standards addresses a full range of reasonable alternatives and identifies all potentially significant impacts related to each. Comments may go beyond the approaches and information that NHTSA used in developing the proposed standards and the above alternatives.

Scoping and Public Participation: As NHTSA indicated in its notice of intent and request for scoping comments, NHTSA plans to use the scoping process to determine "the range of actions, alternatives, and impacts to be considered" in the EIS and to identify the most important issues for analysis.[20] NHTSA's NEPA analysis for the MY 2011–2015 CAFE standards will consider the direct, indirect and cumulative environmental impacts of the proposed standards and those of reasonable alternatives. Among other potential impacts, NHTSA will consider direct and indirect impacts related to fuel and energy use, emissions including CO2 and their effects on temperature and climate change, air quality, natural resources, and the human environment. NHTSA also will consider the cumulative impacts of the proposed standards for MY 2011–2015 automobiles together with estimated impacts of NHTSA's implementation of the CAFE program through MY 2010 and NHTSA's future CAFE rulemaking for MY 2016–2020, as prescribed by EPCA, as amended by EISA. To this end, NHTSA will project the future effects of the fuel use and emissions of the vehicle fleets analyzed over their lifetimes.

NHTSA anticipates considerable uncertainty in estimating and comparing the potential environmental impacts of the proposed standards and the alternatives relating to climate change in particular. For instance, it may be difficult to predict with a reasonable degree of certainty or accuracy the range of potential global temperature changes that may result from changes in fuel and energy consumption and CO_2 emissions due to new CAFE standards. In turn, for example, it may be difficult to predict and compare the ways in which potential temperature changes attributable to new CAFE standards may impact many aspects of the environment. Accordingly, NHTSA expects to apply the provisions in the CEQ regulations addressing "[i]ncomplete or unavailable information," where NHTSA would acknowledge these and other uncertainties in its NEPA analysis for the proposed standards.[21] NHTSA will rely on the 2007 Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) as a recent "summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment."[22] The NHTSA NEPA analysis and documentation will incorporate material by reference "when the effect will be to cut down on bulk without impeding agency and public review of the action."[23]

In preparing this supplemental notice of public scoping, NHTSA has consulted with CEQ, EPA, and the Office of Management and Budget. Through this notice, NHTSA again invites other Federal agencies and State, local, and tribal agencies with jurisdiction by law or special expertise with respect to potential environmental impacts of the proposed CAFE standards and the public to participate in the scoping process.[24]

Specifically, NHTSA invites all stakeholders to submit written comments concerning the appropriate scope of NHTSA's NEPA analysis for the proposed CAFE standards for MY 2011–2015 passenger cars and light trucks to the docket number identified in the heading of this notice using any of the methods described in the **ADDRESSES** section of this notice. NHTSA does not plan to hold a public scoping meeting, because written comments will be effective in identifying and narrowing the issues for

[18] 40 CFR 1502.13.

[19] Given EPCA's mandate that NHTSA consider specific factors in setting CAFE standards and NEPA's instruction that agencies give effect to NEPA's policies "to the fullest extent possible," NHTSA recognizes that a very large number of alternative CAFE levels are potentially conceivable and that the alternatives described above essentially represent several of many points on a continuum of alternatives. Along the continuum, each alternative represents a different way in which NHTSA conceivably could assign weight to each of the four EPCA factors and NEPA's policies. CEQ guidance instructs that "[w]hen there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS." CEQ, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 FR 18026, 18027, March 23, 1981 (emphasis original).

[20] *See* 40 CFR 1500.5(d), 1501.7, 1508.25.

[21] *See* 40 CFR 1502.22.

[22] 40 CFR 1502.22(b)(3); see 40 CFR 1502.21. The report and the IPCC's earlier reports are available at *http://www.ipcc.ch/* (last visited March 11, 2008).

[23] 40 CFR 1502.21.

[24] Consistent with NEPA and implementing regulations, NHTSA is sending this notice directly to: (1) Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts involved or authorized to develop and enforce environmental standards; (2) the Governors of every State, to share with the appropriate agencies and offices within their administrations and with the local jurisdictions within their States; (3) organizations representing state and local governments and Indian tribes; and (4) other stakeholders that NHTSA reasonably expects to be interested in the NEPA analysis for the MY 2011–2015 CAFE standards. NHTSA also mailed the notice of intent to these stakeholders on April 10 and 11, 2008. *See* 42 U.S.C. 4332(2)(C); 49 CFR 520.21(g); 40 CFR 1501.7, 1506.6.

analysis and because the rulemaking schedule necessary to meet the new statutory requirements is tight. However, NHTSA is especially interested in comments that address the potential impacts of NHTSA's proposed CAFE standards and reasonable alternatives relating to climate change. Specifically, NHTSA requests:

- Peer-reviewed scientific studies that have been issued since the IPCC's Fourth Assessment Report (and are not reflected in the IPCC's work through November 17, 2007) and that address: (a) The impacts of CO_2 and other greenhouse gas emissions on temperature, and specifically, the temperature changes likely to result from the proposed standards or the alternatives; (b) the impacts of changes in temperature on the environment, including water resources and biological resources, and human health and welfare; or (c) the time periods over which such impacts may occur.
- Comments on how NHTSA should estimate the potential changes in temperature that may result from the changes in CO^2 emissions projected from the proposed standards and reasonable alternatives, and comments on how NHTSA should estimate the potential impacts of temperature changes on the environment.
- Reports prepared by or on behalf of States, local governments, Indian tribes, regional organizations, or academic researchers analyzing the potential impacts of climate change in particular geographic areas of the United States.
- Comments on other reasonable alternatives that NHTSA might consider in its NEPA analysis that fit within the purpose and need for the proposed rulemaking, as set forth in EPCA, as amended by EISA. When suggesting a possible alternative, please explain how it would satisfy each of the EPCA factors (namely, technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the nation to conserve energy) and requirements (such as achieving a combined fleet average fuel economy of at least 35 miles per gallon for MY 2020) and give effect to NEPA's policies.

In addition, NHTSA requests comments on how the agency should assess cumulative impacts, including those from various emissions source categories and from a range of geographic locations.

Two important purposes of scoping are identifying the significant issues that merit in-depth analysis in the EIS and identifying and eliminating from detailed analysis the issues that are not significant and therefore require only a brief discussion in the EIS.[25] In light of these purposes, written comments should include an Internet citation (with a date last visited) to each study or report you cite in your comments if one is available. If a document you cite is not available to the public on-line, you should attach a copy to your comments. Your comments should indicate how each document you cite in or attach to your comments is relevant to NHTSA's NEPA analysis and indicate the specific pages and passages in the attachment that are most informative.

The more specific your comments are, and the more support you can provide by directing the agency to peer-reviewed scientific studies and reports as requested above, the more useful your comments will be to the agency. For example, if you identify an additional area of impact or environmental concern you believe NHTSA should analyze, you should clearly describe it and support your comments with a reference to a specific peer-reviewed scientific study or report. Specific, well-supported comments will facilitate the purposes of scoping identified above and will serve NEPA's overarching aims of making high quality information available to decisionmakers and the public and generating NEPA documents that "concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."[26] By contrast, mere assertions that the agency should evaluate broad lists or categories of concerns, without support, will not help NHTSA focus its NEPA analysis for the proposed standards through scoping.

Please be sure to reference the docket number identified in the heading of this notice in your comments. In addition, please provide a mailing address and indicate whether you want to receive notice of the publication of the NEPA documents with a copy of the executive summary and one of the following: (a) A url to access the document on the Internet; (b) a CD readable on a personal computer; or (c) a printed copy of the entire document. These steps will help NHTSA to manage a large volume of material during the NEPA process. All comments and materials received, including the names and addresses of the commenters who submit them, will become part of the administrative record and will be posted on the Web at *http://www.nhtsa.dot.gov*.

Based on comments received during scoping, NHTSA expects to prepare a draft EIS for public comment later this spring and a final EIS to support a final rule later this year. Separate **Federal Register** notices will announce the availability of the draft EIS, which will be available for public comment, and the final EIS, which will be available for public inspection. NHTSA also plans to continue to post information about the NEPA process and this CAFE rulemaking on its Web site (*http://www.nhtsa.dot.gov*).

Issued: April 23, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 08–1191 Filed 4–23–08; 1:55 pm]

BILLING CODE 4910–59–P

[25] 40 CFR 1500.4(g), 1501.7(a).

[26] 40 CFR 1500.1(b).

Notices

Federal Register
Vol. 73, No. 82
Monday, April 28, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 18, 2008.

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, Pub. L 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.

Food and Nutrition Service

Title: Report of Disaster Food Stamp Benefit Issuance and Report of Commodity Distribution for Disaster Relief.

OMB Control Number: 0584–0037.

Summary of Collection: The Emergency Food Stamp Assistance Program is authorized by the Disaster Relief Act of 1970; the Food Stamp Act, as amended; and Part 274 of the Food Stamp Program regulations. The Food and Nutrition Service (FNS) initiate this program in a food stamp project area when all or part of the area has been affected by a disaster. Food distribution in disaster situation is authorized under Section 32 of the Act of August 24, 1935. Surplus foods are made available by State distributing agencies for relief purposes to victims of natural disaster such as hurricanes, floods, tornadoes, etc. Distribution to these recipients is made primarily through such organizations as the American Red Cross or the Salvation Army. These organizations use surplus foods for both central feeding operations and for distribution to families in homes cut off from normal sources of food supply. Form FNS–292–A will be used by State distributing agencies to provide a summary report to the agency within 45 days following termination of the disaster assistance. Form FNS–292–B will be used by State welfare departments to report to FNS the number of households and persons who were certified for the Disaster Food Stamp Program, and also to report the value of benefits issued to those households.

Need and Use of the Information: FNS will collect information through the use of form FNS–292–A and B, which is used by the FNS Administrator, the Food Distribution Division, and the three Food Stamp Program divisions to monitor program activity, assess coverage provided to needy recipients, and assure the validity of requested commodity reimbursement and to prepare budget requests. If the information were not collected, FNS would be unable to monitor the issuance of food stamp benefits and the distribution of surplus foods during disaster situations.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 55.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 46.

Food and Nutrition Service

Title: Child Nutrition Database.

OMB Control Number: 0584–0494.

Summary of Collection: The Child Nutrition (CN) Database is a necessary component in implementation of USDA's Food and Nutrition Service (FNS) National School Lunch Program (NSLP) and School Breakfast (SBP): School Meals Initiative for Healthy Children final rule published in the June 13, 1995 **Federal Register**, Volume 60, No. 113. The overriding purpose in NSLP and SBP initiatives is to serve more nutritious and healthful meals to school children. FNS updated the regulations which established the specific nutrition criteria for reimbursable school meals incorporating the Recommended Dietary Allowances (RDA) issued by the Food and Nutrition Board, Commission on Life Sciences, National Research Council for key nutrients, energy allowances for calories, and the most current nutritional standards as outlined in the Dietary Guidelines. FNS will collect information using a database that contains information on the nutritional composition.

Need and Use of the Information: FNS will collect information on (1) USDA commodities; (2) USDA Nutrient Database for Standard Reference food items which are used in the SBP and NSLP; (3) quantity recipes for school food service developed by USDA; and (4) brand name commercially processed foods. The information gathered for the CN Database is required to be used in software program approved by USDA for use in meeting the nutrient standards and nutrition goals of the Child Nutrition Program meal pattern. Both the States and program will use the information.

Description of Respondents: Business or other for-profit.

Number of Respondents: 32.

Frequency of Responses: Report: Other (as needed).

Total Burden Hours: 2,240.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–8791 Filed 4–25–08; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2008–0013]

Better Communications, Better Public Health Outcomes: Strategies for Improved Coordination During Foodborne Outbreaks

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice is announcing that the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS), the Food and Drug Administration's (FDA) Center for Food Safety and Applied Nutrition (CFSAN), and the National Centers for Disease Control and Prevention (CDC), will co-sponsor a two-day summit that will include a public meeting on May 15, 2008, and an invitation-only simulation exercise on May 16, 2008. The purpose of the summit is to have a discussion with stakeholders on improved information sharing and coordination during multi-jurisdictional foodborne outbreak investigations.

DATES: The public meeting will be held on Thursday, May 15, 2008, 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Renaissance St. Louis Grand and Suites Hotel, 800 Washington Avenue, St. Louis, MO 63101.

All documents related to the meeting will be available for public inspection in the FSIS Docket Room, 1400 Independence Avenue, SW., Room 2534 South Building, Washington, DC 20250, between 8:30 a.m. and 4:30 p.m., Monday through Friday, as soon as they become available.

FSIS will finalize an agenda on or before the meeting date and post it and the documents related to the public meeting on the FSIS Web page at: *http://www.fsis.usda.gov/News/Meetings_&_Events/*.

Also, when it becomes available, the official transcript of the meeting will be kept in the FSIS Docket Room at the above address and will be posted on the Agency Web site, *http://www.fsis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Bonnie Kissler, Phone: (404) 562–5940, FAX: (404) 562–5934, e-mail: *Bonnie.Kissler@fsis.usda.gov* or at the mail address: USDA, FSIS, Office of Public Health Science, 100 Alabama Street, SW., 1924 Building, Suite 3R90A, Atlanta, GA 30303.

Pre-registration for this meeting is recommended. To pre-register for the public meeting, go to *http://www.fsis.usda.gov* and complete the registration form. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Kissler by May 8, 2008.

SUPPLEMENTARY INFORMATION:

Background

According to the CDC, foodborne infections result in approximately 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths in the U.S. each year. FSIS collaborates with local, state, and federal public health agencies to investigate foodborne illness outbreaks associated with FSIS-regulated products.

Foodborne illness investigations that span multiple agencies and jurisdictions are more common today because the U.S. food supply chain has become increasingly complex due to a wider distribution of products that are produced domestically and internationally. Further, advances in epidemiologic and laboratory surveillance have enabled the identification of multi-jurisdictional foodborne outbreaks more readily. Successful investigations of these multi-jurisdictional outbreaks require not only technical competence in epidemiologic and laboratory data analysis, but also efficient information sharing and coordination among all stakeholders. Mitigation of the impact of a foodborne illness outbreak and protection of the public health depends on effective and timely communication to consumers regarding symptoms, treatment, prevention, rapid identification of contaminated food products, and removal of those products from commerce whenever possible. The response to an outbreak by public health agencies should be consistent, comprehensive, and timely in order to effectively protect the public health. Improvements in communications and coordination among local, state, and federal public health agencies and the regulated industries during these investigations are essential to achieving this goal.

Because FSIS is committed to partnering with all members of the food safety and public health communities in an effort to make these critical improvements, FSIS will hold a summit to facilitate discussion with and among stakeholders on ways to improve communication and collaboration during multi-jurisdictional foodborne illness investigations.

A public meeting will be held on May 15, 2008, and an outbreak simulation exercise will be conducted on May 16, 2008. Participation in the exercise will be by invitation only.

Topics on the agenda for the public meeting include:

—Stakeholders' perspectives on both successes and challenges to effective collaboration during multi-jurisdictional outbreaks, and

—Ongoing projects and initiatives to improve foodborne outbreak response.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2008_Notices_Index/*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic 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 accounts.

Done at Washington, DC, on April 22, 2008.

Alfred V. Almanza,

Administrator.

[FR Doc. E8–9168 Filed 4–25–08; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

Title: Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries.

OMB Control Number: 0648–0272.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 20,364.

Number of Respondents: 2,470.

Average Hours per Response: Application to become a Community Quota Entity (CQE), 200 hours; application for eligibility to receive quota share (QS)/individual fishing quota (IFQ), QS holder form: identification of ownership interest, application for transfer of QS/IFQ to or from a CQE, application for transfer of QS/IFQ, 2 hours; IFQ/community development quota (CDQ) hired master permit, application for registered buyer permit, QS/IFQ designated beneficiary form, application for replacement of certificates, permits, or licenses, and approval of transfer from governing body of the eligible community, 30 minutes; letter of appeal, 4 hours; IFQ administrative waiver, 6 minutes; prior notice of landing, 12 minutes; landing report, 18 minutes; departure report, 15 minutes; transshipment authorization and dockside sales receipt, 12 minutes; and CQE annual report, 40 hours.

Needs and Uses: The National Marine Fisheries Service seeks to renew a collection-of-information for the continued management of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries off Alaska as well as the Western Alaska Community Development Quota Program (CDQ) halibut fishery. The IFQ program allocates annual total catch limits for the halibut and sablefish fisheries among individual fishermen and Gulf of Alaska Non-profit Organizations holding QS. The CDQ halibut program allocates annual total catch limits for the halibut fishery among individual CDQ fishermen. Fishermen are assigned Quota Shares (QS) for the fisheries, and then annually receive an IFQ and/or CDQ. Applications and reporting are required to manage and track the program.

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer.

Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: April 23, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–9212 Filed 4–25–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–580–818)

Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 28, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW, Washington, D.C. 20230, telephone: (202) 482–2209 or (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On September 25, 2007, the U.S. Department of Commerce ("the Department") published a notice of initiation of the administrative review of the countervailing duty order on corrosion–resistant carbon steel flat products from the Republic of Korea covering the period January 1, 2006, through December 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428 (September 25, 2007). The preliminary results are currently due no later than May 2, 2008.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results to up to 365 days.

Due to the complexity of the issues in this administrative review, such as direction of credit, we have determined that it is not practicable to complete the preliminary results of this review within the 245-day period. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are fully extending the time period for issuing the preliminary results of the review. The preliminary results are now due no later than September 2, 2008, the next business day after 365 days after the last day of the anniversary month of the order. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: April 22, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–9227 Filed 4–25–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–926)

Sodium Nitrite from the People's Republic of China: Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is aligning the final determination in the countervailing duty investigation of sodium nitrite from the People's Republic of China

(PRC) with the final determination in the companion antidumping investigation.

EFFECTIVE DATE: April 28, 2008.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3964 and (202) 482–3586, respectively.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

On November 28, 2007, the Department initiated the countervailing duty and antidumping duty investigations on sodium nitrite from the PRC. *See Sodium Nitrite from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 72 FR 68568 (December 5, 2007) and *Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 72 FR 68563 (December 5, 2007). The countervailing duty and antidumping duty investigations have the same scope with regard to the subject merchandise covered. On April 11, 2008, the Department published the preliminary affirmative countervailing duty determination pertaining to sodium nitrite from the PRC. *See Sodium Nitrite from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 73 FR 19816 (April 11, 2008). On April 14, 2008, counsel for petitioner (General Chemical LLC) submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC.

Therefore, in accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), we are aligning the final countervailing duty determination on sodium nitrite from the PRC with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC. The final countervailing duty determination will be issued on the same date as the final antidumping duty determination, which is currently scheduled to be issued on June 30, 2008.

This notice is issued and published pursuant to section 705(a)(1) of the Act.

Dated: April 18, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–9224 Filed 4–25–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before June 27, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dianne Stephan, (978) 281–9260 or *Dianne.Stephan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. In addition, NMFS must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*). NMFS issues permits to fishing vessels and dealers in order to collect the information necessary to comply with domestic and international obligations, secure compliance with regulations, and disseminate necessary information.

Current regulations at 50 CFR 635.4 require that vessels participating in commercial and recreational fisheries for Atlantic highly migratory species (HMS), and dealers purchasing Atlantic HMS from a vessel, obtain a Federal permit issued by NMFS. Current regulations at 50 CFR 300.182 require that individuals entering for consumption, exporting, or re-exporting consignments of bluefin tuna, southern bluefin tuna, swordfish, or frozen bigeye tuna obtain an HMS International Trade Permit (ITP) from NMFS. This action addresses the renewal of permit applications currently approved under Office of Management and Budget (OMB) Control No. 0648–0327, including vessel permits for Atlantic tunas, HMS charter/headboats, HMS angling, swordfish (directed, incidental, and hand gear), sharks (directed and incidental); dealer permits for the purchase of swordfish, sharks, and Atlantic tunas from vessels; and the HMS ITP.

II. Method of Collection

Applications for Atlantic Tunas, HMS Angling, and HMS Charter/Headboat Vessel Permits may be submitted online at *http://www.hmspermits.gov*, mailed, or faxed. All other applications including dealer permits and other vessel permits must be mailed.

III. Data

OMB Number: 0648–0327.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 40,810.

Estimated Time per Response: 5 minutes for the HMS ITP application, initial and renewal Shark and Swordfish Dealer Permit applications, and renewal Atlantic Tunas Dealer Permit application; 6 minutes for renewal application for the following vessel permits: Atlantic Tunas, HMS Charter/Headboat, and HMS Angling; 15 minutes for initial Atlantic Tunas Dealer Permit application; 20 minutes for initial and renewal shark and swordfish vessel permit applications; and 30 minutes for initial applications for the following vessel permits: Atlantic Tunas, HMS Charter/Headboat, and HMS Angling.

Estimated Total Annual Burden Hours: 8,571.

Estimated Total Annual Cost to Public: $1,239,374.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 23, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–9213 Filed 4–25–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG96

Incidental Takes of Marine Mammals During Specified Activities; Shallow Hazard and Site Clearance Surveys in the Chukchi Sea in 2008

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Arctic Slope Regional Corporation (ASRC) Energy Services (AES) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting shallow hazard and site clearance surveys in the Chukchi Sea between July and November 2008. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposed IHA for these activities.

DATES: Comments and information must be received no later than May 28, 2008.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.0648XG96@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 25, 2008, NMFS received an application from AES for the taking, by Level B harassment, of several species of marine mammals incidental to conducting shallow hazard and site clearance surveys in the Chukchi Sea for up to 100 days from approximately July 1, 2008 until November 30, 2008. The marine surveys would take place in the Chukchi Sea covering the area involved in Minerals Management Service (MMS) Lease Sale 193. The exact locations of proposed surveys would be determined when Lease Sale 193 is final and leases have been awarded to successful bidders. The marine surveys will be performed from a seismic vessel.

Description of the Specified Activity

Shallow hazard and site clearance surveys involve geophysical data collection and interpretation that result in the characterization of potentially hazardous conditions at or below the seafloor. These data are vital not only when planning for the design and construction of a facility, but also to assure that all associated activities are completed safely. The proposed marine surveys are designed to identify and map hazards in the Chukchi Sea using the following methods: seafloor imaging, bathymetry, and high resolution seismic profiling.

Seafloor Imagery

Seafloor imagery would use a side-scan sonar, which is a sideward looking, two channel, narrow beam instrument that emits a sound pulse and listens for its return. The sound energy transmitted is in the shape of a cone that sweeps the sea floor resulting in a two dimensional image that produces a detailed representation of the seafloor and any features or objects on it. The sonar can

either be hull mounted or towed behind the vessel. One of the following systems would be used in the proposed shallow hazard surveys:

(1) EdgeTech 4200 dual-frequency side scan sonar: The side-scan sonar emits sound at frequency of 120 kilohertz (kHz) during operation, occasionally reaching frequencies up to 410 kHz. The pulse length is up to 20 miliseconds (msec), and the source level is approximately 210 dB re 1 microPa-m (rms).

(2) Klein System 3000 dual-frequency digital side scan sonar: This side scan sonar would typically be run at the 132 kHz frequency band. However, the 445 kHz frequency may be used periodically during exploratory testing. The transmission pulse is variable from 25 msec to 400 msec. The peak in the 132 kHz source level beam reaches 234 dB re 1 microPa-m. The peak in the 445 kHz source level beam reaches 242 dB re 1 microPa-m.

Bathymetry

Echo sounders for measuring water depth are generally mounted to the ship hull or on a side-mounted pole. Two different echo sounding systems will be used to provide bathymetric data during the proposed Chukchi Sea shallow hazard surveys.

(1) Odom Hydrotrac Digital Echo Sounder: This device is a single beam echo sounder, which emits a single pulse of sound directly below the ship along the vessel trackline and provides a continuous recording of water depth along the survey track. Generally these records require heave compensation to rectify the data point. The Hydrotrac sonar operates at a frequency of 200 kHz and emits approximately 15 pulses per sec. Each pulse phase is between 0.03 and 0.12 msec. The peak within the source beam level transmits from 202 to 215 dB re 1 microPa-m.

(2) Reson Seabat 8101 Multibeam Echo Sounder: This echo sounder consists of a transducer array that emits a swath of sound. The seafloor coverage swath of the multibeam sonar is water depth dependent, but is usually equal to two to four times the water depth. This sonar operates at a frequency of 240 kHz. It emits approximately 15 pulses per sec with each pulse duration lasting 21 msec to 225 msec for a swath that can cover up to 500 m (1,640 ft) in width. The peak in the source beam level for the Reson Seabat sonar transmits at 210 dB re 1 microPa-m. The multibeam system requires additional non-acoustic equipment including a motion sensor to measure heave, roll, and pitch, a gyrocompass, and a sound velocity probe. A TSSDMS–05 Dynamic Motion Sensor, Hemisphere VS–110 Global Positioning System (GPS)/ Heading System and a Seabird SBE–19 CTD or Odom Digibar Pro will provide these data. The resulting multibeam data will provide a three dimensional (3–D) view of the seafloor in the measured area.

High Resolution Seismic Profiling

An integral part of the shallow hazard and site clearance surveys is high resolution seismic profiling using three different acoustic source systems. Seismic systems operate on the principal that an acoustic impulse will reflect part of its energy upon encountering a density interface. This will be accomplished through the use of a high frequency subbottom profiler, an intermediate frequency seismic profiling system, and a multichannel seismic system. The high resolution profiling systems, which use smaller acoustic sources, will be utilized as opposed to low resolution systems or deep exploration seismic systems. The proposed surveys are geared towards gaining detail of the surficial and shallow subsurface geology and not towards hydrocarbon exploration. The proposed high resolution profiles will provide the detailed information that is not resolved in the deep seismic profiles. The following equipment will be utilized for the high resolution seismic profiling portion of the marine surveys:

(1) High Resolution Subbottom Profiler

A Subbottom Profiler is a high-frequency seismic system that will be used to map geologic features in the proposed survey areas. Many of the modern subbottom profilers are "chirp" systems which are frequency or pulse rate modulated. This allows the energy, amplitude, and phase characteristics of the acoustic pulse to be precisely controlled. One of the following subbottom profiler systems will be used in the proposed marine surveys:

(A) GeoAcoustics GeoPulse subbottom profiling system: The subbottom profiler would be used in the 3.5 to 5 kHz frequency range. Pulse cycles range from 1 to 32 cycles of the selected frequency. The peak in the source level beam reaches 214 dB re 1 microPa-m. The source level beam reaches approximately 214 dB re 1 microPa-m rms (or approximately 225 dB peak).

(B) GeoAcoustics GeoChirp II subbottom profiling system: This subbottom profiler has a frequency range of 500 Hz to 13 kHz, which is programmable. The transmission pulse length is typically 32 msec programmable sweeps or user defined pings. The pulse repetition rate is 4 pulses per sec (at maximum) for a 32 msec chirp sweep or 10 pulses per sec for pinger waveforms. The source level beam reaches 214 dB re 1 microPa-m root mean square (rms), (or approximately 224 dB peak).

(2) Intermediate Frequency Seismic Profiling System

One intermediate-frequency seismic system is referred to as a "Boomer." The "Boomer" transducer is a mechanical means of generating enough sound energy to penetrate the subsurface sediments. Signals are reflected from the various bedding planes (density/ velocity interfaces) and received by a single channel hydrophone streamer. The sound reflections are converted into electrical impulses, filtered, and sent to a graphic recorder. The "Boomer" can effectively detail the upper 40 to 600 m (131 to 1,969 ft) of subbottom, outlining the fine strata and density layers that represent foundation formations for seafloor based structures.

The Boomer system would consist of an Applied Acoustics Model AA300 Boomer plate with housing. The maximum energy that would be used for these surveys is 300 Joules (J) per shot. The pulse length ranges from 150 to 400 msec with a reverberation of less than 1/10 of the initial pulse. The peak in the source level beam reaches 218 dB re 1 microPa-m at 300 J with a frequency range of 0.5 to 300 kHz. A Datasonics Model SPR–1200 seismic profiling system also known as a "bubble pulser" would also be used. It has an electromagnetic source. The frequency of the system is 400 Hz in a narrow band. The peak in the source level beam reaches 200 dB re 1 microPa-m.

(3) Multichannel Seismic System

The multichannel seismic system will consist of an ultra shallow water (USW) array comprised of a SeaSCAN USW Model 40–cubic-inch (cu inch) seismic sound source consisting of four 10–cu-inch Input/Output (I/O) sleeve guns. If desired, the power can also be reduced to 20 cu inches. The reflected energy would be received by a marine digital seismic recording streamer system with 48 channels and 12.5 m (41 ft) groups deployed and retrieved by SeaSCAN streamer reel/winch. This system would provide the lowest resolution of the high-frequency data. The sound source is expected to provide 1.5 to 3 sec of data, two-way travel time with a resolution of 10 msec. It operates at a frequency range of 20 – 200 Hz and a peak sound output of 196 dB for all four guns combined. This tool is useful in finding shallow faults and amplitude anomalies.

Description of Marine Mammals in the Activity Area

In general, the marine mammal species under NMFS' management authority that occur in or near the proposed survey area within the Chukchi Sea are the bowhead (*Balaena mysticetus*), gray (*Eschrichtius robustus*), humpback (*Megaptera novaeangliae*), minke (*Balaenoptera acutorostrata*), beluga (*Delphinapterus leucas*), and killer whales (*Orcinus orca*); harbor porpoises (*Phocoena phocoena*); and the bearded (*Erignathus barbatus*), ringed (*Phoca hispida*), spotted (*P. largha*), and ribbon seals (*P. fasciata*). Among these species, the bowhead, humpback, and fin whales are listed as "Endangered" under the Endangered Species Act (ESA).

A detailed description of the biology, population estimates, and distribution and abundance of these species is provided in the AES' IHA application. Additional information regarding the stock assessments of these species is in NMFS Alaska Marine Mammal Stock Assessment Report (Angliss and Outlaw, 2007), and can also be assessed via the following URL link: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2006.pdf.*

ESA-listed species known to occur in the adjacent Bering Sea, include blue (*B. musculus*), North Pacific right (*Eubalaena japonica*), and sperm whales (*Physeter macrocephalus*); and Steller sea lion (*Eumetopias jubatus*). However, these species are considered to be extra-limital or rare in the Chukchi and Beaufort Seas. Fin whales have been recently reported in the Chukchi Sea in 2007 (Green *et al.*, 2007), but there is a very remote chance of interaction and potential impact. Therefore, these species (Steller sea lion, and sperm, fin, blue, and northern right whale) are not discussed further under this IHA application.

The most numerous marine mammal species seasonally occurring in the Chukchi Sea is the Pacific walrus (*Odobenus rosmarus divergens*). The polar bear (*Ursus maritimus*) is also found in the Chukchi Sea. However, these two marine mammal species fall under the management authority of the U.S. Fish and Wildlife Service (USFWS), and a separate application for an incidental take authorization for walrus and polar bears is being made to USFWS for the Chukchi Sea program.

Additional information on those species that are under NMFS' management authority within or near the proposed survey areas is presented below.

Bowhead Whales

The only bowhead whale found in the proposed project areas is the Western Arctic stock bowhead whale, which is also known as the Bering-Chukchi-Beaufort stock or Bering Sea stock, and they are the only bowhead stock present in U.S. waters. The majority of these bowhead whales migrates annually from wintering (November through March) areas in the northern Bering Sea, through the Chukchi Sea in the Spring (March through June), to the Beaufort Sea where they spend much of the summer (mid-May through September) before returning again to Bering Sea in the fall (September through November) to overwinter (Braham *et al.*, 1980; Moore and Reeves, 1993). Most of the year, bowheads are associated with sea ice (Moore and reeves, 1993). The bowhead spring migration follows fractures in the sea ice around the coast of Alaska.

During the summer, most bowhead whales are in relatively ice-free waters of the Beaufort Sea. Although some bowheads are found in the Chukchi and Bering Seas in summer, these whales are thought to be a part of the expanding Western Arctic stock (Rugh *et al.*, 2003). In the Beaufort sea, distribution of bowhead whales is not uniform with respect to depth, and they are more often observed in continental slope (201 - 2,000 m, or 659 - 6,562 ft, water depth) than in inner shelf (< 50 m or 164 ft water depth) habitat (Moore *et al.*, 2000).

In the fall, bowhead whales are distributed across the Beaufort and Chukchi seas, and are seen more often in inner and outer shelf waters than in slope and basin waters (Moore *et al.*, 2000). During the fall migration, bowheads select shelf waters in all but "heavy ice" conditions, when they select slope habitat (Moore, 2000).

The minimum population estimate of the Western Arctic stock of bowhead whales is 9,472 (Angliss and Outlaw, 2007). Raftery *et al.* (1995) reported that this bowhead stock increased at a rate of 3.1% from 1978 to 1993, during which time abundance increased from approximately 5,000 to 8,000 whales.

Gray Whales

Most of the Eastern North Pacific gray whales spend the summer feeding in the northern Bering and Chukchi Seas (Rice and Wolman, 1971; Berzin, 1984; Nerini, 1984). Moore *et al.* (2000) reported that within the Alaskan Arctic, gray whale summer distribution was concentrated in the northern Bering Sea, especially in the Chirikov Basin. In the Chukchi Sea, gray whale sightings were clustered along the shore, mostly between Cape Lisburne and Point Barrow (Moore *et al.*, 2000). Reflecting this pattern of distribution, gray whales are strongly associated with shallow (< 35 m, or 115 ft) coastal/shoal habitat in the Chukchi Sea and with the somewhat deeper (36 - 50 m, or 118 - 164 ft) Chirikov Basin shelf habitat in the northern Bering Sea (Moore *et al.*, 2000). During the summer surveys, gray whales were seen in ice conditions to 30% surface cover and, more often than expected, in 0 - 20% ice habitat (Moore *et al.*, 2000). Gray whales have also been reported feeding in the summer in waters off of Southeast Alaska, British Columbia, Washington, Oregon, and California (Rice and Wolman, 1871; Darling, 1984; Nerini, 1984; Rice *et al.*, 1984).

Each fall, gray whales migrate south along the coast of North America from Alaska to Baja California, in Mexico (Rice and Wolman, 1971), most of them starting in November or December (Rugh *et al.*, 2001). In the Alaskan Arctic in fall, gray whale distribution in the Chukchi Sea is clustered near shore at Pt. Hope and between Icy Cape and Pt. Barrow, and in offshore waters northwest of Pt. Barrow (Hanna Shoal) and southwest of Pt. Hope (Moore *et al.*, 2000). There are more sightings of gray whales in shelf/trough and coastal/shoal depth habitats than in shelf waters (Moore *et al.*, 2000). As in summer, gray whales are observed far more in open water/light (0 - 30%) ice cover (Moore *et al.*, 2000).

The Eastern North Pacific gray whales winter mainly along the west coast of Baja California, using certain shallow, nearly landlocked lagoons and bays, and calves are born from early January to mid-February (Rice *et al.*, 1981). The northbound migration generally begins in mid-February and continues through May (Rice *et al.*, 1981; 1984; Poole, 1984), with cows and newborn calves migrating northward primarily between March and June along the U.S. West Coast.

Although twice being hunted to the brink of extinction in the mid 1800s and again in the early 1900s, the eastern North Pacific gray whales population has since increased to a level that equals or exceeds pre-exploitation numbers (Jefferson *et al.*, 1993). Angliss and Outlaw (2007) reported the latest abundance estimate of this population is 18,178.

Humpback Whales

The humpback whale is distributed worldwide in all ocean basins, though in the North Pacific region it does not usually occur in Arctic waters. The

historic feeding range of humpback whales in the North Pacific encompassed coastal and inland waters around the Pacific Rim from Point Conception, California, north to the Gulf of Alaska and the Bering Sea, and west along the Aleutian Islands to the Kamchatka Peninsula and into the Sea of Okhotsk (Nemoto, 1957; Tomlin, 1967; Johnson and Wolman, 1984). A vessel survey in the central Bering Sea in July of 1999 documented 17 humpback whale sightings, most of which were distributed along the eastern Aleutian Island chain and along the U.S.-Russia Convention Line south of St. Lawrence Island (Moore *et al.*, 2000). Humpback whales have been known to enter the Chukchi Sea (Johnson and Wolman, 1984), nonetheless, their occurrence inside the proposed project area is rare.

Aerial, vessel, and photo-identification surveys and genetic analyses indicate that there are at least two relatively separate populations that migrate between their respective summer/fall feeding areas to winter/spring calving and mating areas are found in offshore and coastal waters of Alaska during certain part of the year (Calambokidis *et al.*, 1997 Baker *et al.*, 1998): the central North Pacific stock and the western North Pacific stock. It is unknown whether the animals that occasionally sighted off Alaskan Arctic belong to the central or western North Pacific stock of humpback whales. The population estimate of the western North Pacific humpback whale is 394 whales; and the population estimate of the central North Pacific humpback whale is 4,005.

Minke Whales

In the North Pacific, minke whales occur from the Bering and Chukchi seas south to near the Equator (Leatherwood *et al.*, 1982). In offshore and coastal waters off Alaska, the Alaska stock of minke whales are relatively common in the Bering and Chukchi seas and in the inshore waters of the Gulf of Alaska (Mizroch, 1992). Minke whales are known to penetrate loose ice during the summer, and some individuals venture north of the Bering Strait (Leatherwood *et al.*, 1982).

No estimates have been made for the number of the Alaska stock of minke whales in the entire North Pacific (Angliss and Outlaw, 2007).

Beluga Whales

Beluga whales are distributed throughout seasonally ice-covered Arctic and subarctic waters of the Northern Hemisphere (Gurevich, 1982), and are closely associated with open leads and polynyas in ice-covered regions (Hazard, 1988). Beluga whale seasonal distribution is affected by ice cover, tidal conditions, access to prey, temperature, and human interaction (Lowry, 1985).

Among five stocks of beluga whales that are recognized within U.S. waters, the eastern Chukchi Sea beluga whales occur within the proposed project area (Angliss and Outlaw, 2007).

In the Alaskan Arctic in summer beluga whales are seen more often in continental slope (201 - 2,000 m, or or 659 - 6,562 ft, water depth) than in inner shelf (< 50 m or 164 ft water depth) habitat (Moore *et al.*, 2000). Satellite tagging efforts directed at the eastern Chukchi stock of beluga whales showed that whales tagged in the eastern Chuckchi in summer traveled 1,100 km (684 mi) north of the Alaska coastline and to the Canadian Beaufort Sea within 3 months of tagging (Suydam *et al.*, 2001), indicting significant stock overlap with the Beaufort Sea stock of beluga whales.

During the winter, beluga whales occur in offshore waters associated with pack ice. In the spring, they migrate to warmer coastal estuaries, bays, and rivers for molting (Finley, 1982) and calving (Sergeant and Brodie, 1969). Annual migrations may cover thousands of kilometers (Reeves, 1990).

Although population surveys were conducted in 1998 and 2002, several technical issues prevented an acceptable estimation of the population size from these two surveys. As a result, the abundance estimated from the 1989–91 surveys is still considered to be the most reliable for the eastern Chukchi Sea beluga whale stock, with an estimated population of 3,710 whales (Angliss and Outlaw, 2007).

Killer Whales

Killer whales have been observed in all oceans and seas of the world (Leatherwood and Dahlheim, 1978). Along the west coast of North America, killer whales occur along the entire Alaskan coast, and seasonal and year-round occurrence has been noted for killer whales throughout Alaska (Braham and Dahlheim, 1982), including the Bering and southern Chukchi seas (Leatherwood *et al.*, 1986; Lowry *et al.*, 1987). However, little is known about the seasonal distribution of killer whales in the proposed project area in Chukchi Sea. George *et al.* (1994) cited that local hunters in Barrow, Alaska, have seen a few killer whales each year in the Point Barrow region during July and August. In addition, between 1985 and 1994, Eskimo hunters have related two instances of killer whales attacking and killing gray whales in the Chukchi Sea near Barrow (George *et al.*, 1994).

Studies of killer pods based on aspects of morphology, ecology, genetics, and behavior have provided evidence of the existence of "resident," "offshore," and "transient" killer whale ecotypes (Ford and fisher, 1982; Baird and Stacey, 1988; Baird *et al.*, 1992; Hoelzel *et al.*, 1998; 2002; Barrett-Lennard, 2000).

Off the waters of Alaska, six stocks of killer whales have been recognized: the Alaska resident; the northern resident; the Gulf of Alaska, Aleutian Islands, and Bering Sea transient; the AT1 transient; the West Coast transient; and the offshore stocks. It is not clear which stocks killer whales within the proposed project area belong to, however, mostly likely they are of the "transient" ecotype based on their marine mammal based diet (Ford *et al.*, 1998; Saulitis *et al.*, 2000; Herman *et al.*, 2005). The occurrence of killer whales in the vicinity of the proposed area is rare.

The population size of the Gulf of Alaska, Aleutian Islands, and Bering Sea stock of killer whales is estimated at 314 animals.

Harbor Porpoises

In the eastern North Pacific, the harbor porpoise ranges from Point Barrow, along the Alaska coast, and down the west coast of North America to Point Conception, California (Gaskin, 1984). Although it is difficult to determine the true stock structure of harbor porpoise populations in the northeast Pacific, from a management standpoint, it would be prudent to assume that regional populations exist and that they should be managed independently (Rosel *et al.*, 1995; Taylor *et al.*, 1996). Accordingly, three separate harbor porpoise stocks in Alaska are recommended based on management boundaries, with the Bering Sea stock occurring throughout the Aleutian Islands and all waters north of Unimak Pass, including the proposed project area (Angliss and Outlaw, 2007). Nonetheless, the occurrence of harbor porpoise within the proposed project area is not frequent.

The population size of this stock is estimated at 66,078 animals (Angliss and Outlaw, 2007).

Ringed Seals

Ringed seals are widely distributed throughout the Arctic basin, Hudson Bay and Strait, and the Bering and Baltic seas. Ringed seals inhabiting northern Alaska belong to the subspecies *P. h. hispida*, and they are

year-round residents in the Beaufort Sea.

The seasonal distribution of ringed seals in the Beaufort Sea is affected by a number of factors but a consistent pattern of seal use has been documented since aerial survey monitoring began over 20 years ago. During late April through June, ringed seals are distributed throughout their range from the southern ice edge northward (Braham *et al.*, 1984). Recent studies indicate that ringed seals show a strong seasonal and habitat component to structure use (Williams *et al.*, 2006), and habitat, temporal, and weather factors all had significant effects on seal densities (Moulton *et al.*, 2005). The studies also showed that effects of oil and gas development on local distribution of seals and seal lairs are no more than slight, and are small relative to the effects of natural environmental factors (Moulton *et al.*, 2005; Williams *et al.*, 2006).

A reliable estimate for the entire Alaska stock of ringed seals is currently not available (Angliss and Outlaw, 2007). A minimum estimate for the eastern Chukchi and Beaufort Sea is 249,000 seals, including 18,000 for the Beaufort Sea (Angliss and Outlaw, 2007). The actual numbers of ringed seals are substantially higher, since the estimate did not include much of the geographic range of the stock, and the estimate for the Alaska Beaufort Sea has not been corrected for animals missed during the surveys used to derive the abundance estimate (Angliss and Outlaw, 2007). Estimates could be as high as or approach the past estimates of 1 - 3.6 million ringed seals in the Alaska stock (Frost, 1985; Frost *et al.*, 1988).

Bearded Seals

The bearded seal has a circumpolar distribution in the Arctic, and it is found in the Bering, Chukchi, and Beaufort seas (Jefferson *et al.*, 1993). Bearded seals are predominately benthic feeders, and prefer waters less than 200 m (656 ft) in depth. Bearded seals are generally associated with pack ice and only rarely use shorefast ice (Jefferson *et al.*, 1993). Bearded seals occasionally have been observed maintaining breathing holes in annual ice and even hauling out from holes used by ringed seals (Mansfield, 1967; Stirling and Smith, 1977).

Seasonal movements of bearded seals are directly related to the advance and retreat of sea ice and to water depth (Kelly, 1988). During winter they are most common in broken pack ice and in some areas also inhabit shorefast ice (Smith and Hammill, 1981). In Alaska waters, bearded seals are distributed over the continental shelf of the Bering, Chukchi, and Beaufort seas, but are more concentrated in the northern part of the Bering Sea from January to April (Burns, 1981). Recent spring surveys along the Alaskan coast indicate that bearded seals tend to prefer areas of between 70 and 90 percent sea ice coverage, and are typically more abundant greater than 20 nm (37 km) off shore, with the exception of high concentrations nearshore to the south of Kivalina in the Chukchi Sea (Bengtson *et al.*, 2000; Simpkins *et al.*, 2003).

There are no recent reliable population estimates for bearded seals in the Beaufort Sea or in the proposed project area (Angliss and Outlaw, 2007). Aerial surveys conducted by MMS in fall 2000 and 2001 sighted a total of 46 bearded seals during survey flights conducted between September and October (Treacy, 2002a; 2002b). Bearded seal numbers are considerably higher in the Bering and Chukchi seas, particularly during winter and early spring. Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Popov, 1976; Burns, 1981).

Spotted Seals

Spotted seals occur in the Beaufort, Chukchi, Bering, and Okhotsk seas, and south to the northern Yellow Sea and western Sea of Japan (Shaughnessy and Fay, 1977). Based on satellite tagging studies, spotted seals migrate south from the Chukchi Sea in October and pass through the Bering Strait in November and overwinter in the Bering Sea along the ice edge (Lowry *et al.*, 1998). In summer, the majority of spotted seals are found in the Bering and Chukchi seas, but do range into the Beaufort Sea (Rugh *et al.*, 1997; Lowry *et al.*, 1998) from July until September. The seals are most commonly seen in bays, lagoons, and estuaries and are typically not associated with pack ice at this time of the year.

A small number of spotted seal haul-outs are documented in the central Beaufort Sea near the deltas of the Colville and Sagavanirktok rivers (Johnson *et al.*, 1999). Previous studies from 1996 to 2001 indicate that few spotted seals (a few tens) utilize the central Alaska Beaufort Sea (Moulton and Lawson, 2002; Treacy, 2002a; 2002b). In total, there are probably no more than a few tens of spotted seals along the coast of central Alaska Beaufort Sea.

A reliable abundance estimate for spotted seal is not currently available (Angliss and Outlaw, 2005), however, early estimates of the size of the world population of spotted seals was 335,000 to 450,000 animals and the size of the Bering Sea population, including animals in Russian waters, was estimated to be 200,000 to 250,000 animals (Burns, 1973). The total number of spotted seals in Alaskan waters is not known (Angliss and Outlaw, 2007), but the estimate is most likely between several thousand and several tens of thousands (Rugh *et al.*, 1997).

Ribbon Seals

Ribbon seals inhabit the North Pacific Ocean and adjacent parts of the Arctic Ocean. In Alaska waters, ribbon seals are found in the open sea, on the pack ice and only rarely on shorefast ice (Kelly, 1988). They range northward from Bristol Bay in the Bering Sea into the Chukchi and western Beaufort seas. From March to early May, ribbon seals inhabit the Bering Sea ice front (Burns, 1970; 1981; Braham *et al.*, 1984). They are most abundant in the northern part of the ice front in the central and western part of the Bering Sea (Burns, 1970; Burns *et al.*, 1981). As the ice recedes in May to mid-July, the seals move farther to the north in the Bering Sea, where they haul out on the receding ice edge and remnant ice (Burns, 1970; 1981; Burns *et al.*, 1981). There is little information on the range of ribbon seals during the rest of the year. Recent sightings and a review of the literature suggest that many ribbon seals migrate into the Chukchi Sea for the summer (Kelly, 1988).

A recent reliable abundance estimate for the Alaska stock of ribbon seals is currently not available. Burns (1981) estimated the worldwide population of ribbon seals at 240,000 in the mid–1970s, with an estimate for the Bering Sea at 90,000 - 100,000.

Potential Effects on Marine Mammals

Operating a variety of acoustic equipment such as side-scan sonars, echo-sounders, bottom profiling systems, and airguns for seafloor imagery, bathymetry, and seismic profiling has the potential for adverse affects on marine mammals.

Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and, at least in theory, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995).

The potential effects of airguns discussed below are presented without consideration of the mitigation

measures that AES has presented and that will be required by NMFS. When these measures are taken into account, it is unlikely that this project would result in temporary, or especially, permanent hearing impairment or any significant non-auditory physical or physiological effects.

(1) Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Studies have also shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response (tolerance). That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds, and small odontocetes seem to be more tolerant of exposure to airgun pulses than are baleen whales.

(2) Masking

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data of relevance. Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a more recent study reports that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). That has also been shown during recent work in the Gulf of Mexico (Tyack *et al.*, 2003; Smultea *et al.*, 2004). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses. Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a; 2005b). Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds.

(3) Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement.

Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react briefly to an underwater sound by slightly changing its behavior or moving a small distance, the impacts of the change are unlikely to be biologically significant to the individual, let alone the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals could be significant.

(4) Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to sequences of airgun pulses. NMFS advises against exposing cetaceans and pinnipeds to impulsive sounds above 180 and 190 dB re 1 microPa (rms), respectively (NMFS, 2000). Those thresholds have been used in defining the safety (shut down) radii planned for the proposed seismic surveys. Although those thresholds were established before there were any data on the minimum received levels of sounds necessary to cause temporary auditory impairment in marine mammals, they are considered to be conservative.

Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airguns to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment (see Mitigation and Monitoring section below). In addition, many cetaceans are likely to show some avoidance of the area with high received levels of airgun sound. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. It is unlikely that any effects of these types would occur during the proposed project given the brief duration of exposure of any given mammal, and the planned monitoring and mitigation measures (see below).

(5) Strandings and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays.

Nonetheless, the airgun array proposed to be used in the proposed site clearance surveys in Chukchi Sea is small in volume (40 cu inches) and the source level is expected at 196 dB re 1 mircoPa (peak), which is approximately 190 dB re 1 microPa (rms). The 160, 170, and 180 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 32 m (104 ft), 10 m (33 ft), and 3.2 m (10 ft), respectively, for the 40–cu-inch airgun array, assuming spherical spreading.

Possible Effects of Bathymetry Echo Sounder Signals

Two types of bathymetry echo sounders are planned to be used for the proposed surveys. The Odom Hydrotrac Digital Echo Sounder is a single beam echo sounder that emits a single pulse of sound directly below the ship along the vessel trackline and provides a continuous recording of water depth along the survey track. The second sonar is a Reson Seabat 8101 Multibeam Echo Sounder, which consists of a transducer array that emits a swath of sound. The seafloor coverage swath of the multibeam sonar is water depth dependent, but is usually equal to two to four times the water depth. Nonetheless both echo sounders produce acoustic signals above 200 kHz which is below any marine mammal species' upper hearing threshold, therefore, NMFS does not believe that there will be any effects on marine mammals as a result from operating these sonars.

Possible Effects of Sub-bottom Profiler Signals

A high resolution subbottom profiler (GeoAcoustics GeoPulse sub-bottom profiling system or GeoAcoustics GeoChirp II sub-bottom profiling system) and an intermedia frequency seismic profiling system ("boomer") are planned to be used for the proposed surveys.

The frequency range for these high resolution subbottom profilers are 3.5 to 5 kHz for the GeoPulse and 500 Hz to 13 kHz for the GeoChirp II. Either subbottom profiler has a source level at approximately 214 dB re 1 microPa-m (rms). The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 501 m (1,644 ft), 158 m (520 ft), 50 m (164 ft), and 16 m (52 ft), respectively, for either subbottom profiler, assuming spherical spreading.

The Applied Acoustics Model AA300 intermediate frequency seismic profiler ("boomer") has a maximum energy input of 350 J per shot, though the maximum energy would be used in the surveys is 300 J. The pulse length ranges from 150 msec to 400 msec with a reverberation of less than 1/10 of the initial pulse. The peak in the source level beam reaches 218 dB re 1 microPa-m (or 209 dB re 1 microPa-m (rms)) at 300 J with a frequency range of 500 Hz to 300 kHz. The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 282 m (925 ft), 89 m (292 ft), 28 m (92 ft), and 9 m (29 ft), respectively, assuming spherical spreading.

The corresponding distances for an animal in the horizontal direction of these transducers would be much smaller due to the direct downward beam pattern of the subbottom profilers. Therefore, the horizontal received levels of 180 and 190 dB re 1 microPa (rms) would be within much smaller radii than 50 m (164 ft) and 16 m (52 ft) when using the GeoAcoustics subbottom profilers, which have the highest downward source level, respectively. In addition, the pulse duration of these subbottom profilers is extremely short, in the order of tens to hundreds of msec, and the survey is constantly moving. Therefore, for a marine mammal to receive prolonged exposure, the animal has to stay in a very small zone of ensonification and keep with the vessel's speed, which is very unlikely.

Possible Effects of Side-Scan Sonar Signals for Seafloor Imagery

One of the two types of side-scan sonars is planed to be used for the proposed shallow hazard and site clearance surveys for seafloor imagery. The EdgeTech 4200 dual-frequency side scan sonar operates at 120 kHz up to 410 kHz, with source level reaching 210 dB re 1 microPa-m (rms). The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 316 m (1,037 ft), 100 m (328 ft), 32 m (104 ft), and 10 m (33 ft), respectively, assuming spherical spreading.

The Klein System 3000 dual-frequency digital side-scan sonar emits pulses between 25 msec and 400 msec. The peak in the 132 kHz source level beam reaches 234 dB re 1 microPa-m (or 225 dB re 1 microPa-m (rms)). The peak in the 445 kHz source level beam reaches 242 dB re 1 microPa-m. The 445 kHz frequency band is outside any marine mammal species' hearing range, therefore, there would be no effect to marine mammals when this frequency is chosen. The 160, 170, 180, and 190 dB re 1 microPa (rms) radii, in the beam below the transducer, would be 1,778 m (5,834 ft), 562 m (1,844 ft), 178 m (583 ft), and 56 m (184 ft), respectively, assuming spherical spreading.

Nonetheless, these side scan sonars operate in an extremely high frequency range (over 120 kHz) relative to marine mammal hearing (Richardson *et al.*, 1995; Southall *et al.*, 2007). The frequency range from these side scan sonars is beyond the hearing range of mysticetes (baleen whales) and pinnipeds. Therefore, these sonars are not expected to affect bowhead, gray, humpback, and minke whales and pinniped species in the proposed project area. The frequency range from these side scan sonars falls within the upper end of odontocete (toothed whale) hearing spectrum (Richardson *et al.*, 1995), which means that they are not perceived as loud acoustic signals with frequencies below 120 kHz by these animals. Further, in addition to spreading loss for acoustic propagation in the water column, high frequency acoustic energies are more quickly absorbed through the water column than sounds with lower frequencies (Urick, 1983). Therefore, NMFS believes that the potential effects from side scan sonar to marine mammals are negligible.

Numbers of Marine Mammals Estimated to be Taken

All anticipated takes would be takes by Level B harassment, involving temporary changes in behavior. The proposed mitigation measures to be applied would prevent the possibility of injurious takes.

The methods to estimate take by harassment and present estimates of the numbers of marine mammals that might be affected during the proposed seismic surveys in the Chukchi Sea are described below. The density estimates for cetaceans covered under this IHA area based on the estimates developed by LGL (2006) for the GTX IHA and used here for consistency. However, density estimates for these species was not separated by summer and fall. Rather, in a conservative approach, the higher of the two estimates was selected for use in the analysis. Density estimates on summering bowhead, gray, and beluga whales in the Beaufort and Chukchi seas are based on the data from Moore *et al.* (2000). Density estimates on ringed and bearded in the Chukchi Sea are based on Bengtson *et al.* (2005). Since the Bengtson *et al.* (2005) surveys were focused mainly on the coastal zone within 37 km (23 mi) of the shoreline, some adjustments were made to reflect the animals' density in offshore waters where the site clearance surveys are proposed. Ringed seals were relatively common in nearshore fast ice and pack ice, with lower densities in offshore pack ice; while bearded seals were generally more common in offshore pack ice, with the exception of high bearded seal numbers observed near the shore south of Kivalina. To make the adjustment, the average ringed seal density number (1.62 seals/km^2) for the year 2000 was used, while the raw density number (0.18 seal/km^2) for the offshore bearded seas was adopted. In addition, the seal density numbers represent the near-ice animal density, which are higher than open water densities where the site clearance surveys would be conducted.

Specifically, the average estimates of "take" were calculated by multiplying the expected average animal densities by the area of ensonification for the 160 dB re 1 microPa (rms) and 170 dB re 1 microPa (rms) isopleths, for cetaceans and pinnipeds, respectively. The area of ensonification was determined by multiplying the total proposed trackline (760 km or 410 nm) times 2 (both sides of the trackline) times the distance to the 160–dB or 170–dB isopleths. The distance to the 160–dB isopleth was estimated as approximately 4,000 m (13,123 ft) with a corresponding area of ensonification of 6,080 km^2 (1,773 nm^2), while the distance to the 170–dB isopleth was about 860 m (2,822 ft) with an ensonification area of approximately 1,300 km^2 (379 nm^2).

Based on the calculation, it is estimated that up to approximately 7 bowhead, 11 gray, and 21 beluga whales, 2,118 ringed and 235 bearded seals would be affected by Level B behavioral harassment as a result of the proposed shallow hazard and site

clearance surveys. These take numbers represent 0.06, 0.06, and 0.6 percent of the western Arctic stock of bowhead, eastern North Pacific stock of gray, and eastern Chukchi stock of Beluga whales, respectively; and 1 and 0.1 percent of the Alaska stocks of ringed and bearded seal populations within the Chukchi Sea, respectively.

In addition, a numbers of humpback, minke, and killer whales, harbor porpoises, and spotted and ribbon seals could also be affected by Level B behavioral harassment as a result of the proposed marine surveys in the Chukchi Sea. However, since the occurrence of these marine mammals is very rare within the proposed project area in the Chukchi Sea, take numbers cannot be estimated. Nonetheless, NMFS believes their take numbers would be much lower as compared to those marine mammals whose take numbers were calculated.

Potential Impacts to Subsistence Harvest of Marine Mammals

Subsistence hunting and fishing is historically, and continues to be, an essential aspect of Native life, especially in rural coastal villages. The Inupiat participate in subsistence hunting and fishing activities in and around the Chukchi Sea.

Alaska Natives, including the Inupiat, legally hunt several species of marine mammals. Communities that participate in subsistence activities potentially affected by seismic surveys within Lease Sale 193 are Point Hope, Point Lay, Wainwright, and Barrow. Marine animals used for subsistence in the proposed area include: bowhead whales, beluga whales, ringed seals, spotted seals, bearded seals, Pacific walrus, and polar bears. Humpback whales are not typically found within the proposed project area of Lease Sale 193. However, during the summer of 2007, both humpback and fin whales were observed or detected as far as the Beaufort Sea (Joling, 2007). In each village, there are key subsistence species. Hunts for these animals occur during different seasons throughout the year. Depending upon the village's success of the hunt for a certain species, another species may become a priority in order to provide enough nourishment to sustain the village.

Point Hope residents subsistence hunt for bowhead and beluga whales, polar bears and walrus. Bowhead and beluga whales are hunted in the spring and early summer along the ice edge. Beluga whales may also be hunted later in the summer along the shore. Walrus are harvested in late spring and early summer, and polar bear are hunted from October to April (MMS, 2007). Seals are available from October through June, but are harvested primarily during the winter months, from November through March, due to the availability of other resources during the other periods of the year (MMS, 2007).

With Point Lay situated near Kasegaluk Lagoon, the community's main subsistence focus is on beluga whales. Seals are available year-round, and polar bears and walruses are normally hunted in the winter. Hunters typically travel to Barrow, Wainwright, or Point Hope to participate in bowhead whale harvest, but there is interest in reestablishing a local Point Lay harvest.

Wainwright residents subsist on both beluga and bowhead whales in the spring and early summer. During these two seasons the chances of landing a whale are higher than during other seasons. Seals are hunted by this community year-round and polar bears are hunted in the winter.

Barrow residents' main subsistence focus is concentrated on biannual bowhead whale hunts. They hunt these whales during the spring and fall. Other animals, such as seals, walruses, and polar bears are hunted outside of the whaling season, but they are not the primary source of the subsistence harvest (URS Corporation, 2005).

The potential impact of the noise produced by the proposed survey on subsistence could be substantial. If bowhead or beluga whales are permanently deflected away from their migration path, there could be significant repercussions to the subsistence use villages. However, mitigation efforts will be put into action to minimize or avoid completely any adverse affects on all marine mammals. Areas being used for subsistence hunting grounds would be avoided. Communication between the project vessels and land-based Com and Call Centers would provide additional insight to current subsistence activities to further ensure that there will be no negative impacts on subsistence activities.

As part of the application for the IHA, AES is developing a Plan of Cooperation (POC) with the Native communities. The POC specifies measures AES would take to minimize adverse effects on marine mammals where proposed activities may affect the availability of a species or stock of marine mammals for arctic subsistence uses or near a traditional subsistence hunting area. The draft POC will be distributed to the affected subsistence communities.

AES has conducted POC meetings for its seismic operations in the Chukchi Sea in Barrow, Wainwright, Point Lay, and Point Hope, and with the Alaska Eskimo Whaling Commission. Additional meetings will be held with the Alaska Ice Seal Committee, Alaska Beluga Committee, Eskimo Walrus Commission, and Alaska Nanuq Commission prior to operations. At these meetings, AES will present its program and discuss local concerns regarding subsistence activities.

Potential Impacts on Habitat

The proposed site clearance surveys would not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activity would be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed above.

Proposed Monitoring and Mitigation Measures

Monitoring

In order to further reduce and minimize the potential impacts to marine mammals from the proposed site clearance surveys, NMFS proposes the following monitoring and mitigation measures to be implemented for the proposed project in Chukchi Sea.

(1) Proposed Safety Zones

Based on a 214 dB re 1 microPa-m source sound for the GeoChirp II, the loudest acoustic equipment with sound in the sensitive hearing ranges of marine mammals, and a conservative acoustic modeling approach between spherical and cylindrical (i.e., "15 Log R") to estimate sound propagation loss, the calculated distance to the 180 dB isopleth is approximately 185 m (607 ft), and the distance to the 190 dB isopleth is about 40 m (131 ft). Because these values are based on calculation instead of field measurement during actual operations, NMFS proposes, as a precautionary measure, safety radii of 250 m (820 ft) for cetaceans and 75 m (246 ft) for pinnipeds.

(2) Vessel-based Visual Monitoring

Marine mammal monitoring during the site clearance surveys would be conducted by qualified, NMFS-approved marine mammal observers (MMOs). Vessel-based MMOs would be on board the seismic source vessel to ensure that no marine mammals would enter the relevant safety radii while noise-generating equipment is operating.

(3) Communication between Vessel and Shore

Communication of vessel operations and transit would occur in accordance

with protocols set forth by the Com and Call Centers proposed to be operated in Barrow, Point Hope, and Point Lay. This would further enable vessel operators to be aware of marine mammals and subsistence activity in the area.

Mitigation

Proposed mitigation measures include (1) vessel speed or course alteration, provided that doing so will not compromise operational safety requirements, (2) acoustic equipment shut down, and (3) acoustic source ramp up.

(1) Speed or Course Alteration

If a marine mammal is detected outside the relevant safety zone but appears likely to enter it based on relative movement of the vessel and the animal, then if safety and survey objectives allow, the vessel speed and/or course would be adjusted to minimize the likelihood of the animal entering the safety zone.

(2) Shut down Procedures

If a marine mammal is detected within, or appears likely to enter, the relevant safety zone of the array in use, and if vessel course and/or speed changes are impractical or will not be effective to prevent the animal from entering the safety zone, then the acoustic sources that relate to the seismic surveys would be shut down.

Following a shut down, acoustic equipment would not be turned on until the marine mammal is outside the safety zone. The animal would be considered to have cleared the safety zone if it (1) is visually observed to have left the 250–m or 75–m safety zone, for a cetacean or a pinniped species, respectively; or (2) has not been seen within the relevant safety zone for 15 min in the case of odontocetes or pinnipeds and 30 min in the case of mysticetes.

Following a shut down and subsequent animal departure as above, the acoustic sources may be turned on to resume operations following ramp-up procedures described below.

(3) Ramp-up Procedures

A ramp-up procedure will be followed when the acoustic sources begin operating after a specified period without operations. It is proposed that, for the present survey, this period would be 30 min. Ramp up would begin with the power on of the smallest acoustic equipment for the survey at its lowest power output. The power output would be gradually turned up and other acoustic sources would be added in a way such that the source level would increase in steps not exceeding 6 dB per 5-min period. During ramp-up, the MMOs would monitor the safety zone, and if marine mammals are sighted, decisions about course/speed changes and/or shutdown would be implemented as though the acoustic equipment is operating at full power.

Data Collection and Reporting

MMOs would record data to estimate the numbers of marine mammals present and to document apparent disturbance reactions or lack thereof. Data would be used to estimate numbers of animals potentially "taken" by harassment. They would also provide information needed to order a shut down of acoustic equipment when marine mammals are within or entering the safety zone.

When a sighting is made, the following information about the sighting would be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, and apparent reaction to the acoustic sources or vessel.

(2) Time, location relative to the acoustic sources, heading, speed, activity of the vessel (including whether and the level at which acoustic sources are operating), sea state, visibility, and sun glare.

The data listed under (2) would also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

A final report will be submitted to NMFS within 90 days after the end of the shallow hazard and site clearance surveys. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report also will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and the amount and nature of potential take of marine mammals by harassment or in other ways.

Endangered Species Act

Under section 7 of the ESA, the MMS has begun consultation on the proposed seismic survey activities in the Chukchi Sea during 2008. NMFS will also consult on the issuance of the IHA under section 101(a)(5)(D) of the MMPA to AES for this activity. Consultation will be concluded prior to NMFS making a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

In 2006, the MMS prepared Draft and Final Programmatic Environmental Assessments (PEAs) for seismic surveys in the Beaufort and Chukchi seas. NMFS was a cooperating agency in the preparation of the MMS PEAs. On November 17, 2006, NMFS and MMS announced that they were jointly preparing a Draft Programmatic Environmental Impact Statement (PEIS) to assess the impacts of MMS' annual authorizations under the Outer Continental Shelf (OCS) Lands Act to the U.S. oil and gas industry to conduct offshore geophysical seismic surveys in the Chukchi and Beaufort seas off Alaska, and NMFS' authorizations under the MMPA to incidentally harass marine mammals while conducting those surveys. On March 30, 2007, the Environmental Protection Agency (EPA) noted the availability for comment of the NMFS/MMS Draft PEIS. Based upon several verbal and written requests to NMFS for additional time to review the Draft PEIS, EPA has twice announced an extension of the comment period until July 30, 2007 (72 FR 28044, May 18, 2007; 72 FR 38576, July 13, 2007). Because of this delay in completion of a Final PEIS, NMFS determined that it would need to update the 2006 PEA in order to meet its NEPA requirements. This approach was warranted as it was reviewing five proposed Arctic seismic survey IHAs for 2008, well within the scope of the PEA'S eight consecutive seismic surveys. To update the 2006 Final PEA, NMFS is currently preparing a Supplemental EA which incorporates by reference the 2006 Final PEA and other related documents.

Preliminary Determination

Based on the preceding information, and provided that the proposed mitigation and monitoring are incorporated, NMFS has preliminarily determined that the impact of conducting the shallow hazard and site clearance surveys in Chukchi Sea may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise from the airguns, side-scan sonars, seismic profilers, and other acoustic equipment, these behavioral changes are expected to have a negligible impact on the affected species and stocks of marine mammals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the area of site clearance operations, the number of potential harassment takings is estimated to be relatively small in light of the population size. NMFS anticipates the actual take of individuals to be lower than the numbers presented in the analysis because those numbers do not reflect either the implementation of the mitigation measures or the fact that some animals will avoid the sound at levels lower than those expected to result in harassment.

In addition, no take by death and/or injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the required mitigation measures described in this document. This determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up of the acoustic equipment, marine mammals are expected to move away from a noise source that it is annoying prior to its becoming potentially injurious; (2) TTS is unlikely to occur, especially in odontocetes, until levels above 180 dB re 1 microPa (rms) are reached; and (3) the fact that injurious levels of sound are only likely very close to the vessel.

Proposed Authorization

NMFS proposes to issue an IHA to AES for shallow hazard and site clearance surveys in Chukchi Sea between July and November 2008, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 22, 2008.

James H. Lecky

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–9264 Filed 4–25–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD61

Marine Mammals; File No. 10080

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Kathryn A. Ono, Department of Biological Sciences, University of New England, Biddeford, ME, has been issued an amendment to scientific research Permit No. 10080.

ADDRESSES: The amendment 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.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Jaclyn Daly, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 11, 2008, notice was published in the **Federal Register** (73 FR 7715) that an amendment to Permit No. 10080, issued December 18, 2007 (72 FR 72996), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The amendment allows researchers to harass an additional 1000 gray seals (Halichoerus grypus) annually incidental to boat approaches to target seals on ledges and other haul outs. No other aspect of the permit or authorized research has been changed. The purpose of increasing the numbers of gray seals that may be harassed during boat approaches is to account for the increasing size of the gray seal population in the area.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: April 22, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–9256 Filed 4–25–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XH47

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Allocation Committee (GAC) and Ad Hoc Groundfish Trawl Individual Quota Committee (TIQC) will hold working meetings, which are open to the public.

DATES: The GAC will meet Tuesday, May 13, 2008, from 1 p.m. until business for the day is completed, and reconvene on Wednesday, May 14 and Thursday, May 15 at 8:30 a.m. each day until business for each day is completed. The TIQC will attend the GAC meeting and convene its meeting Thursday, May 15 upon adjournment of the GAC meeting. The TIQC will reconvene on Friday, May 16, 2008 at 8:30 a.m. and continue until their business is completed.

ADDRESSES: The GAC meeting will be held at the Embassy Suites Portland Airport, 7900 NE 82nd, Avenue Portland, OR 97220; telephone: (503) 460–3000. The TIQC meeting will be held at the Pacific Fishery Management Council, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GAC and TIQC meetings is to develop recommendations to the Council on a preferred trawl rationalization alternative scheduled to be sent out for public review after the Council's June 2008 meeting.

Although non-emergency issues not contained in the meeting agenda may come before the Groundfish Management Team (GMT) or the Committee for discussion, those issues may not be the subject of formal GMT or Committee action during these meetings. GMT or Committee action will be restricted to those issues

specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 23, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–9189 Filed 4–25–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities for RRTCs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes certain funding priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes four priorities for RRTCs. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2008 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 28, 2008.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, Potomac Center Plaza (PCP), Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

You must include the priority title in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@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 under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: This notice of proposed priorities is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). Background information on the NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Invitation To Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority or topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 6029, 550 12th Street, SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in one or more notices in the **Federal Register.** We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register.** When inviting applications we designate the priorities as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or

absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

In this notice, we are proposing four priorities for RRTCs.

- Priority 1—Enhancing the Functional and Employment Outcomes of Individuals Who Experience a Stroke.
- Priority 2—Enhancing the Functional and Employment Outcomes of Individuals With Multiple Sclerosis.
- Priority 3—Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation, Including Employment.
- Priority 4—Participation and Community Living for Individuals With Psychiatric Disabilities.

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority, which was published in a notice of final priorities in the **Federal Register** on February 1, 2008 (72 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Priority 1—Enhancing the Functional and Employment Outcomes of Individuals Who Experience a Stroke

Background

According to the American Heart Association's most recent estimates, each year approximately 780,000 individuals in the United States (U.S.) experience a stroke and nearly 5.7 million individuals in the U.S. today have survived a stroke. Stroke patients continue to be the largest diagnostic group in medical rehabilitation, and stroke is a leading cause of serious, long-term physical and cognitive disabilities (American Heart Association, 2008).

Significant progress has been made in the development of rehabilitation interventions and in the assessment of outcomes for those who experience a stroke. An example of recent advances in rehabilitation interventions includes constraint-induced movement therapy. This repetitive training of the arms on task-oriented activities has been shown to improve the functional abilities of stroke survivors (Wolf *et al.*, 2006). Another novel and promising technology that is in development is the BION, a family of implantable neuromuscular microstimulation devices that are designed to treat complications of paralysis and disuse atrophy, including shoulder subluxation, hand contractures, drop foot and osteoarthritis (Loeb *et al.*, 2006).

Given the large and growing incidence of stroke in the U.S. and the high levels of physical and cognitive disabilities often associated with strokes, there is a need for further research on promising new interventions, such as CI therapy, bodyweight supported treadmill training (BWS–TT), electrical stimulation, and robotic technology (Bassett, 2006). In addition, research is needed to develop more sensitive measures of neuro-recovery and post-stroke secondary health conditions, as well as interventions to prevent a variety of post-stroke secondary health conditions, such as fatigue (Gladstone *et al.*, 2002; Roth, 2005; Campbell, Sheets, & Strong, 1999).

Individuals who experience a stroke are at increased risk for depression, and depression among stroke survivors is associated with poor functional outcomes (Goodwin & Devanand, 2008).

Typical clinical assessments of depression ask patients questions to detect the presence of negative affect and the absence of positive affect. However, the connection between emotional well-being and stroke outcomes is not yet very well understood. Additional research is needed to investigate whether interventions aimed at improving an individual's level of positive affect can improve recovery from stroke.

Post-stroke rehabilitation interventions that focus on health and function and emotional well-being may improve employment outcomes of this population. Emotional well-being in the general population is related to many positive outcomes, including employment (Seligman, 1991, 2002). However, this connection has not been validated nor explored for the population of individuals with disabilities, including individuals who experience a stroke. The employment statistics for the post-stroke population are poor. Estimates of rates of return to work following stroke vary widely (Wozniak & Kittner, 2002). According to the U.S. Department of Education's Rehabilitation Services Administration's Case Service Report, also called the RSA–911 database, in 2006, of the more than 5,300 individuals with disabilities caused by a stroke who exited the State Vocational Rehabilitation Services program after receiving services, only about 25 percent were employed when they left the program.

References

American Heart Association (AHA) (2008). Heart Disease and Stroke Statistics—2008 Update At-A-Glance: Our Guide to Current Statistics and the Supplement to our Heart and Stroke Facts. See: *http://www.americanheart.org/downloadable/heart/1200078608862HS_Stats%202008.final.pdf.*

Bassett, J. (2006). A Lifelong Journey. Advance for Directors in Rehabilitation, 15(10), 42–48.

Campbell, M.L., Sheets, D., & Strong, P.S. (1999). Secondary health conditions among middle-aged individuals with chronic physical disabilities: implications for unmet needs for services. Assistive Technology. 11(2): 105–122.

Gladstone, D.J., Danells, C.J., & Black, S.E. (2002). The fugl-meyer assessment of motor recovery after stroke: a critical review of its measurement properties. Neurorehabilitation and Neural Repairs. 16(3): 232–40. See: *http://www.medscape.com/medline/abstract/12234086.*

Goodwin, R.D. & Devanand, D.P. (2008). Stroke, depression, and functional health outcomes among adults in the community. Journal of Geriatric Psychiatry and Neurology. 21(1): 41–46.

Loeb, G.E., Richmond, F.J.R., & Baker, L.L. (2006). The BION Devices: Injectable interfaces with peripheral nerves and muscles. Neurosurgery Focus, 20(5) E2. See: *http://www.medscape.com/viewarticle/542356*.

Roth, E. (2005). Aging Issues: Neurological Disorders: crosscutting breakout session. Neurorehabilitation and Neural Repair, 10(1), S70.

Seligman, M.E.P. (1991). Learned Optimism. New York: Pocket Books.

Seligman, M.E.P. (2002). Authentic Happiness. Simon & Schuster.

U.S. Department of Education: Case Service Report (RSA–911), FY 2006. (2006). Washington, DC. Aggregated 911 data by state is available. See: *http://rsamis.ed.gov*.

Wolf, S.L., Weinstein, C.J., Miller, J.P., Taub, E., Uswatte, G., Morris, D., Giuliani, C., Light, K.E., & Nichols-Larsen, D. (2006). Effect of constraint-induced movement therapy on upper extremity function 3 to 9 months after stroke. Journal of the American Medical Association, 296(17), 2095–2104.

Wozniak, M. & Kittner, S. (2002). Return to Work After Ischemic Stroke: A Methodological Review. Neuroepidemiology, 21, 159–166.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Enhancing the Functional and Employment Outcomes of Individuals Who Experience a Stroke. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to enhance the functional and employment outcomes of individuals who experience a stroke.

In doing so, the RRTC must focus on no more than two of the following dimensions: Improved mobility; secondary conditions (e.g., pain, fatigue); and emotional well-being. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved outcome measures for use with individuals who experience a stroke. The RRTC must contribute to this outcome by identifying or developing and testing methods and measures to assess outcomes in the dimensions that the RRTC chooses to focus on (e.g., mobility, secondary conditions, emotional well-being).

(b) Improved medical rehabilitation or community-based rehabilitation interventions for individuals who experience a stroke. The RRTC must contribute to this outcome by identifying or developing and testing new rehabilitation interventions that are designed to improve mobility, reduce the onset of secondary conditions, or improve emotional well-being among individuals who have experienced a stroke. Where possible, the Center must use scientifically based research (as this term is defined in section 9101(34) of the Elementary and Secondary Education Act of 1965, as amended) methods to test these interventions.

(c) Improved employment outcomes among individuals who experience a stroke. The RRTC must contribute to this outcome by conducting research on the experiences and outcomes of individuals who experience stroke and who seek to return to work. The RRTC's research must include research on individuals who are served by the State Vocational Rehabilitation Services program or who receive stroke/neuro-rehabilitation services from other sources, and must identify neuro-rehabilitation services that are associated with positive outcomes in the treatment of specific stroke-related impairments and functional limitations thereby allowing individuals to return to work.

Priority 2—Enhancing the Functional and Employment Outcomes of Individuals With Multiple Sclerosis

Background

While prevalence estimates vary, according to the National Multiple Sclerosis Society, approximately 400,000 Americans have multiple sclerosis (MS) (National Multiple Sclerosis Society, 2005). For most individuals, the age of onset for the disease is in early adulthood. Individuals with MS may have symptoms such as fatigue, motor weakness, spasticity, poor balance, heat sensitivity, pain, cognitive impairments, and mood disorders (Wynn, 2006; Mikol, 2006). The variety of symptoms that an individual with MS may experience and the uncertain prognosis of MS can impair an individual's routine activities; vocational, social, and interpersonal functioning; and quality of life (Kalb, 2004).

While some research has been conducted regarding the functional outcomes of individuals with MS, there is a significant need for further research in the areas of outcomes measurement and rehabilitation interventions to maximize the health, well-being, and community and workplace participation of individuals with MS. Experienced MS care providers participating in a recent survey identified a number of areas in which clinical consultation and continuing medical education (CME) would improve their ability to treat individuals with MS, and the wide range of symptoms associated with MS (Turner *et al.*, 2006). Fatigue, depression, cognitive impairment, and pain were among the most frequently cited areas for consultation and CME (Mikol, 2006). Research that addresses the frequent co-occurrence of these four symptoms, and the effect of central-nervous-system-active medications that are typically used to treat them, is also needed (Oken *et al.*, 2006). For individuals with MS, there is a "continued need for effective therapeutic approaches to symptom management" (Joy & Johnston, 2001).

The relatively early age of onset, the variety of symptoms and secondary conditions associated with MS, and the intermittent and uncertain course of the disease present a variety of challenges to continuous participation by individuals with MS in the labor force. Estimates are that as many as 50 percent of individuals with MS report they cannot work due to their disabilities (Buchanan *et al.*, 2006). Interventions to improve the health and function of individuals with MS may improve their employment outcomes. Recent data from the U.S. Department of Education's Rehabilitation Services Administration's Case Service Report, also called the RSA–911 database, suggest that vocational rehabilitation services can be improved for this population. According to the RSA–911 database, in 2006, of the more than 3,000 individuals with MS who exited the State Vocational Rehabilitation Services program, after being determined eligible and receiving a service, only one-third were employed when they exited the program.

References

Buchanan, R.J., Schiffer, R., Stuifbergen, A., Zhu, L., Wang, S., Chakravorty, B.J., & Kim, M. (2006). Demographic and Disease Characteristics of People with Multiple Sclerosis Living in Urban and Rural Areas. International Journal of MS Care, 8(11), 89–97.

Joy, J.E. & Johnston, R.B. (Eds.). (2001). Multiple Sclerosis: Current Status and Strategies for the Future. Washington, D.C.: National Academy Press.

Kalb, R.C. (2004). Multiple Sclerosis: The Questions You Have—The Answers You Need, 3rd Edition. New York: Demos Medical Publishing.

National Multiple Sclerosis Society (2005). Multiple Sclerosis Information Sourcebook. New York: National Multiple Sclerosis Society. See: *http://www.nationalmssociety.org/Sourcebook-Topic.asp*.

Oken, B.S., Flegal, K., Zajdel, D., Kishiyama, S.S., Lovera, J., Bagert, B., & Bourdette, D.N. (2006). Cognition and Fatigue in Multiple Sclerosis: Potential Effects of Medications With Central Nervous System Activity. Journal of Rehabilitation Research & Development, 43(1), 83–90.

Turner, A.P., Martin, C., Williams, R.M.,

Goudreau, K., Bowen, J.D., Hatzakis, M., Whitham, R.H., Bourdette, D.N., Walker, L., & Haselkorn, J.K. (2006). Exploring Educational Needs of Multiple Sclerosis Care Providers: Results of a Care-Provider Survey. Journal of Rehabilitation Research & Development, 43(1), 25–34.

U.S. Department of Education: Case Service Report (RSA–911), FY 2006. (2006). Washington, DC: Author.

Wynn, D.R. (2006). Management of Physical Symptoms. International Journal of MS Care, 8, Supplement 1, 13–20.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Enhancing the Functional and Employment Outcomes of Individuals With Multiple Sclerosis. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to enhance the functional and employment outcomes of individuals with multiple sclerosis (MS).

In doing so, the RRTC must focus on how one or both of the following dimensions affect the employment outcomes of individuals with MS: The prevention or reduction of secondary conditions (e.g., pain, fatigue, depression, cognitive impairment) and improved mobility. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved outcome measures for use with individuals with MS. The RRTC must contribute to this outcome by identifying or developing and testing methods and measures to assess outcomes in the dimensions on which the RRTC chooses to focus.

(b) Improved medical rehabilitation or community-based rehabilitation interventions. The RRTC must contribute to this outcome by improving the ability of individuals with MS to remain in the workforce and to live in community-based settings through identifying or developing and testing new rehabilitation interventions. Where possible, the Center must use scientifically based research (as this term is defined in section 9101(34) of the Elementary and Secondary Education Act of 1965, as amended) methods to test these interventions.

(c) Improved employment outcomes among individuals with MS. The RRTC must contribute to this outcome by conducting research on the experiences and outcomes of individuals with MS who are served by the State Vocational Rehabilitation Services program or who receive MS-rehabilitation services from other sources, and by identifying rehabilitation services that are associated with the reduction of specific MS-related symptoms and functional limitations. Research must include investigation of job modifications and accommodations associated with successful employment.

Priority 3—Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation, Including Employment

Background

With recent medical and technological advancements, many individuals with early onset of physical disabilities acquired at birth or in childhood or young adulthood are surviving long enough to experience the rewards and challenges of aging (Campbell, Sheets, & Strong, 1999). Determining the size of this emerging segment of the disabled population has been difficult due to the lack of sufficient population data on age of onset and duration of disability (Kemp, 2005). The only national estimate available to date comes from a secondary analysis of the 1990 U.S. Census data, which suggests that there may be as many as 25,000,000 Americans who are aging with various long-term physical disabilities (McNeil, 1994).

As many researchers have documented, a primary challenge associated with increased longevity among this population is an increased risk of secondary conditions (Kemp & Mosqueda, 2004). Although there is widespread agreement that secondary conditions can be debilitating, costly in terms of financial and social consequences, and potentially fatal in some circumstances, how to define secondary conditions remains an active debate within the disability community (Wilber *et al.*, 2002; Rimmer, 2005).

While a precise definition of secondary conditions is still evolving, the emerging consensus is that secondary conditions often increase the severity of an individual's physical disability (Brandt & Pope, 1997). As individuals with long-term physical disabilities age into middle and later adulthood, there is an enormous physical and psychological burden associated with having to manage various secondary health conditions, in addition to managing the chronic health effects related to the aging process generally (Rimmer, 2005). There is, however, widespread agreement that certain secondary conditions are preventable, and that learning how to prevent the onset or reduce the severity and impact of these new or increased impairments, functional limitations, and age-related health problems is vital to enhancing the health and participation of individuals aging with long-term physical disabilities (Simeonsson *et al.*, 1999; Lollar, 2002; Wilber *et al.*, 2002).

To date there are no national estimates of the number of individuals with long-term physical disabilities who are experiencing one or more types of secondary conditions. Most of what is known about the prevalence and consequences of secondary conditions for health and participation comes from clinical studies of patients, a handful of community-based studies and secondary analyses of population surveys, and the evolving theoretical understanding of the general aging process (Cristian, 2005; Kemp, 2005; Seekins *et al.*, 1994; Campbell, Sheets, & Strong, 1999; Wilber *et al.*, 2002; Verbrugge & Yang, 2002; Kinne *et al.*, 2004).

Results of these studies underscore the importance of improving treatment options to prevent or reduce the consequences of secondary conditions. Exercise, lifestyle and behavioral changes, and psychosocial and environmental factors are known to influence the development of secondary health conditions (Seekins *et al.*, 1994; Wilber *et al.*, 2002; Kemp, 2005; Rimmer, 2005). However, research on these factors has been limited by the lack of measurement tools to characterize the types and severity of secondary conditions experienced by individuals aging with physical disabilities, and the lack of experimental and quasi-experimental studies to test the effectiveness of various intervention strategies (Wilber *et al.*, 2002; Rimmer, 2005).

The variety of secondary conditions that individuals aging with physical disability are at risk of developing, and the relatively early age of onset of those conditions, pose challenges to maintaining their participation in the labor force. In some cases, secondary conditions can lead to premature retirement and the loss of economic self-sufficiency. The employment consequences of aging with a physical disability have yet to be examined in large-scale national surveys. However, results of a recent quasi-experimental study indicate that those aging with polio, cerebral palsy, rheumatoid arthritis, and stroke reported a 50 percent reduction in employment compared to a 35 percent reduction for the non-disabled comparison group (Mitchell, Adkins, & Kemp, 2006). Given the economic consequences of premature disruptions in labor force participation, vocational rehabilitation

strategies need to be identified and tested for their effectiveness in improving the employment outcomes of the growing segment of the population experiencing the challenges of aging with long-term physical disabilities.

References

Brandt, E.N. & Pope, A.M. (1997). Enabling America: Assessing the Role of Rehabilitation Science and Engineering. Committee on Disability Research, Institute of Medicine, National Academy of Sciences. Washington, DC: National Academies Press.

Campbell, M.L., Sheets, D.S., & Strong, P.S. (1999). Secondary health conditions among middle-aged individuals with chronic physical disabilities: Implications for "unmet needs" for services. Assistive Technology, 11(2), 3–18.

Cristian, A. (Ed.) (2005). Aging with a Disability: Physical Medicine and Rehabilitation Clinics of North America 16. Oxford, UK: Elsevier.

Kemp, B.J. (2005). What the rehabilitation professional and the consumer need to know. In Adrian Cristian (ED), Aging with a Disability: Physical Medicine and Rehabilitation Clinics of North America, 16 (pp. 1–18). Oxford, UK: Elsevier.

Kemp, B.J. & Mosqueda, L. (Eds.) (2004). Aging with a Disability. Baltimore: The Johns Hopkins University Press.

Kinne, S., Patrick, D.L., & Lochner, D.D. (2004). Prevalence of secondary conditions among people with disabilities. American Journal of Public Health, 94(3), 443–445.

Lollar, D. (2002). Public health and disability: emerging trends. Public Health Report, 117, 131–136.

McNeil, J. (1994). Americans with Disabilities, Bureau of the Census, Statistical Brief, SB/94–1..

Mitchell, J.M., Adkins, R.H., & Kemp, B.J. (2006). The effects of aging on employment of people with and without disabilities. Rehabilitation Counseling Bulletin, 49(3), 157–165.

Rimmer, J.L. (2005). Exercise and physical activity in persons aging with a physical disability. In A. Cristian (Ed), Aging with a Disability: Physical Medicine and Rehabilitation Clinics of North America, 16, (pp. 41–56). Oxford, UK: Elsevier.

Seekins, T., Clay, J., & Ravesloot, C.H. (1994). A descriptive study of secondary conditions reported by a population of adults with physical disabilities served by 3 independent living centers in a rural state. Journal of Rehabilitation, 60, 47–51.

Simeonsson, R.J., Bailey, D.B., Scandlin, D., Huntington, G.S., & Roth, M. (1999). Disability, health, secondary conditions and quality of life: Emerging issues in public health. In R.J. Simeonsson & L.N. McDevitt (Eds.), Issues in Disability and Health: The Role of Secondary Conditions and Quality of Life (pp. 51–72). Chapel Hill: University of North Carolina Press.

Wilber, N., Mitra, M., Walker, D.K., Allen, D., Meyers, A.R., & Tupper, P. (2002). Disability as a public health issue: Findings and reflections from the Massachusetts Survey of Secondary Conditions. Milbank Quarterly, 80, 393–421.

Verbrugge, L.M., & Yang, L. (2002). Aging with Disability and Disability with Aging. Journal of Disability Policy Studies, 12(4), 253–267.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation, Including Employment. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to improve rehabilitation outcome measures and rehabilitation interventions that can be applied in clinical or community-based settings and used by other researchers. The intended outcome of the RRTC is to enhance community participation, including employment, of individuals aging with long-term physical disabilities by advancing knowledge about the identification, assessment, treatment, and improved management of the secondary conditions likely experienced by individuals aging with a physical disability.

In addressing this priority, the RRTC must propose a limited number of high-quality, cross-disability research projects to address the secondary conditions that are most relevant to the lives of individuals with physical disabilities. To ensure the feasibility of the RRTC's proposed activities and increase the likelihood of achieving planned outcomes, the RRTC must focus on two to four discrete impairment groups (e.g., spinal cord injury, cerebral palsy, multiple sclerosis, rheumatoid arthritis, stroke, post-polio), and must limit intervention strategies to no more than two of the following modalities: Exercise, health promotion, psychological adaptation, life planning or self-management skills, and environmental or technological supports. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Enhanced understanding of the natural course of aging with a physical disability. The RRTC must contribute to this outcome by documenting the life trajectories and average age of onset of the major types of secondary conditions experienced by individuals living with long-term physical disabilities in the selected impairment groups, and examining the interrelationships among different types of secondary conditions and the consequences of variations in timing of onset for health and community participation.

(b) Improved tools and measures for use with individuals aging with long-term physical disabilities. The RRTC must contribute to this outcome by identifying, developing or modifying, and testing measurement tools that improve the identification and assessment of the major types of secondary conditions affecting individuals in the selected impairment groups, as well as the outcomes of interventions designed to prevent or reduce these conditions.

(c) Improved rehabilitation or community-based interventions that enhance the health and participation in work and the community of individuals aging with physical disabilities. The RRTC must contribute to this outcome by identifying, developing or modifying, and testing interventions that show promise in preventing the onset of or improving the management and reducing the impact of secondary conditions on individuals in the selected impairment groups. Where possible, the Center must use scientifically based research (as this term is defined in section 9101(34) of the Elementary and Secondary Education Act of 1965, as amended) methods to test these interventions.

(d) Improved employment outcomes among working-age individuals aging with long-term physical disabilities. The RRTC must contribute to this outcome by conducting research on the experiences, including employment outcomes, of individuals aging with long-term physical disabilities in the selected impairment groups who are served by the State Vocational Rehabilitation Services program or who receive rehabilitation services from other sources, and by identifying specific secondary conditions that require improved and unique vocational rehabilitation services and approaches.

Priority 4—Participation and Community Living for Individuals With Psychiatric Disabilities

Background

Individuals with psychiatric disabilities have one of the lowest rates of employment of any disability group—only one in three individuals with psychiatric disabilities in the United States is employed (Kaye, 2002). They also comprise the largest diagnostic category of working-age adults receiving Supplemental Security Income or Social Security Disability Insurance (McAlpine and Warner, 2001).

In addition, individuals with psychiatric disabilities constitute a large proportion of the homeless population. Of 2 million adults experiencing an episode of homelessness, for example, 46 percent have a psychiatric disability (Burt, 2001).

In April 2002, the President signed Executive Order 13263 establishing a New Freedom Commission on Mental Health, and charged the Commission with completing a comprehensive study of the mental health service delivery system in the United States. The Commission's report, *Achieving the Promise: Transforming Mental Health Care in America,* set the course for public and private efforts across the country to improve the state of mental health care (New Freedom Commission on Mental Health, 2003). The Commission calls for a transformation of the mental health service delivery system, focusing on recovery and resilience for individuals with psychiatric disabilities. As stated in the Commission's report, recovery is, in part, "the process in which people are able to live, work, learn, and participate fully in their communities," while resilience indicates "the personal and community qualities that enable us to rebound from adversity, trauma, tragedy, threats, or other stresses—and to go on with life with a sense of mastery, competence, and hope" (New Freedom Commission on Mental Health, 2003).

Federal legislation has long aimed to facilitate the full inclusion of individuals with psychiatric disabilities into the mainstream of society. For example, the centers for independent living, established by title VII of the Rehabilitation Act of 1973, as amended, provide information and referral, advocacy, peer support, and independent living skill building to individuals with disabilities, including individuals with psychiatric disabilities. Grantee-reported data from the U.S. Department of Education's Centers for Independent Living program indicate that nearly 31,000 individuals with psychiatric disabilities were served by centers for independent living in 2006. However, there is a general lack of evidence on what independent living services are most effective in addressing the needs of individuals with psychiatric disabilities. Increased knowledge in this area could lead to more effective independent living services for individuals with psychiatric disabilities, and result in enhanced community living and participation for this population.

In addition, there is a strong need for research on understudied aspects of community participation and community living for individuals with psychiatric disabilities. Two examples, among many, are emergency preparedness and mental health disparities for traditionally underserved populations (e.g., individuals from diverse racial, ethnic, and linguistic backgrounds, and individuals with multiple disabilities) with psychiatric disabilities (National Council on Disability, 2006; New Freedom Commission on Mental Health, 2003; U.S. Public Health Service, Office of the Surgeon General, 2001).

According to the Institute on Medicine report, *Crossing the Quality Chasm: A New Health System for the 21st Century,* the time lag between the discovery of effective medical treatments and the incorporation of those treatments into practice is 15 to 20 years. The President's New Freedom Commission on Mental Health called for a reduction in this delay as part of an overall transformation of mental health care in America (Substance Abuse and Mental Health Services Administration, 2005; New Freedom Commission on Mental Health, 2003; Institute of Medicine, 2001).

References

Burt, M.R. (2001). What will it take to end homelessness? Urban Institute Brief. Washington, DC: Urban Institute.

Institute of Medicine. (2001). Crossing the Quality Chasm: A New Health System for the 21st Century. Washington, DC: National Academy Press.

Kaye, H.S. (2002). Employment and Social Participation Among People with Mental Health Disabilities. San Francisco, CA: National Disability Statistics & Policy Forum.

McAlpine, D.D. & Warner, L. (2001). Barriers to Employment Among Persons with Mental Illness: A Review of the Literature. New Brunswick, NJ: Institute for Health.

National Council on Disability (July 7, 2006). The Needs of People with Psychiatric Disabilities During and After Hurricanes Katrina and Rita: Position Paper and Recommendations. Washington, DC: Author. *http://www.ncd.gov/newsroom/publications/2006/peopleneeds.htm.*

Department of Health and Human Services. (2003). New Freedom Commission on Mental Health (2003). Achieving the Promise: Transforming Mental Health Care in America. (DHHS Pub. No. SMA–03–3832). Rockville, MD: Author.

U.S. Department of Health and Human Services. (2005). Transforming Mental Health Care in America. Federal Action Agenda: First Steps. (DHHS Pub. No. SMA–05–4060). Rockville, MD: Author.

U.S. General Accounting Office. (1996, April). SSA disability: Program redesign necessary to encourage return to work. (GAO/HEHS 96–62). Washington, DC: Author.

United States Public Health Service Office of the Surgeon General. (2001). Mental Health: Culture, Race, and Ethnicity: A Supplement to Mental Health: A Report of the Surgeon General. Rockville, MD: Author.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Participation and Community Living for Individuals With Psychiatric Disabilities. The RRTC must conduct rigorous research, training, technical assistance, and dissemination activities that contribute to improved community participation and community living outcomes for individuals with psychiatric disabilities. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved individual and system capacity to maximize the involvement of individuals with psychiatric disabilities in community life. The RRTC must contribute to this outcome by:

(1) Generating new knowledge through research on effective strategies to meet the needs of individuals with psychiatric disabilities who are served by centers for independent living and identifying independent living services and service-delivery approaches that meet the unique needs of this population.

(2) Increasing the knowledge base and advancing the application of theories, measures, methods, or interventions that facilitate participation and community living of individuals with psychiatric disabilities. In this regard, the RRTC must focus its efforts on at least three of the following areas: Employment, housing, education, health and mental health care, recreation, social relationships, or other public and private sector activities related to community living. If the Center engages in interventions testing, the Center must use scientifically based research (as this term is defined in section 9101(34) of the Elementary and Secondary Education Act of 1965, as amended) methods.

(3) Reducing disparities in service delivery and program development by focusing its work on one or more of the following understudied areas: (i) Emergency preparedness for individuals with psychiatric disabilities; (ii) individuals with psychiatric disabilities from diverse racial, ethnic, and linguistic backgrounds; or (iii) individuals with psychiatric disabilities who have co-occurring sensory or physical disabilities.

(b) Increased incorporation of mental health research findings into practice or policy. The RRTC must contribute to this outcome by coordinating with appropriate NIDRR-funded knowledge translation grantees to advance or add to their work in the following areas:

(1) Developing and implementing procedures to evaluate the readiness of mental health research findings for translation into practice.

(2) Collaborating with stakeholder groups to develop, evaluate, or implement strategies to increase utilization of mental health research findings.

(3) Conducting training, technical assistance, and dissemination activities to increase utilization of mental health research findings.

Information on knowledge translation projects funded by NIDRR can be found at *http://www.naric.com/research/pd/priority.cfm.*

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These proposed priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these proposed priorities is that the establishment of new RRTCs will support the President's NFI and improve the lives of individuals with disabilities. The new RRTCs will generate, disseminate, and promote the use of new information that will improve employment and community living options for individuals with disabilities.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 part 79.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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

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

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers 84.133B Rehabilitation Research and Training Centers Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: April 23, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–9237 Filed 4–25–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–196–C]

Application to Export Electric Energy; Minnesota Power

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: ALLETE, Inc., d/b/a/ Minnesota Power has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests or requests to intervene must be submitted on or before May 28, 2008.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On February 11, 1999, the Department of Energy (DOE) issued Order No. EA–196 authorizing Minnesota Power to transmit electric energy from the United States to Canada for a two-year term. That Order was renewed for a two-year term on May 23, 2001, and again, for a five-year term on April 8, 2003. The current export authorization will expire on May 23, 2008. On April 18, 2008, Minnesota Power filed an application with DOE to renew the export authority contain in Order No. EA–196–B for an additional five-year term.

Minnesota Power will arrange for the delivery of exports to Canada over the international transmission facilities currently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Rainbow has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

DOE notes that the electricity export authorization held by Minnesota Power in Order No. EA–196–B will expire on May 23, 2008, prior to the close of the public comment period in this proceeding. Minnesota Power has advised DOE that it will cease all electricity export activities after May 23rd until such time as it has obtained a valid export authorization. Minnesota Power is aware that continuing to export in the absence of such an Order is a violation of the FPA and may result in a denial of its authorization to export

and subject it to sanctions and penalties under the FPA.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Minnesota Power application to export electric energy to Canada should be clearly marked with Docket No. EA–196–C. Additional copies are to be filed directly with Christopher D. Anderson, Associate General Counsel, ALLETE, Inc., 30 West Superior Street, Duluth, MN 55802.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://oe.energy.gov/permits.htm*.

Issued in Washington, DC, on April 23, 2008.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E8–9211 Filed 4–25–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Pub. L. No. 109–58; 119 Stat. 849. The Federal Advisory Committee Act, Pub. L. No. 92–463, as amended, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**. To attend the meeting and/or to make oral statements during the public comment period, please e-mail *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting both days or a specific day, if you want to make an oral statement on May 14, 2008, and what organization you represent (if appropriate).

DATES: Tuesday, May 13, 2008, from 9 a.m.–6 p.m. and Wednesday, May 14, 2008, from 8:30 a.m.–3 p.m.

ADDRESSES: Courtyard by Marriott Pentagon South, 4641 Kenmore Ave., Arlington, VA 22304.

FOR FURTHER INFORMATION CONTACT: *HTAC@nrel.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice, information, and recommendations to the Secretary on the program authorized by title VIII of EPACT.

Tentative Agenda (Subject to change; updates will be posted on *http://hydrogen.energy.gov* and copies of the final agenda will available the date of the meeting). The following items will be covered on the agenda:

- Update on the Department of Energy (DOE) 2009 Budget Request for Hydrogen Activities.
- Briefing on the Planning and Policy Subcommittee.
- Briefing on the Executive Subcommittee.
- Report on the National Academy of Science (NAS) FreedomCAR Partnership Review.
- Report on NAS Resources Study.
- Briefing on the Government Accountability Office Report on DOE's Hydrogen Program.
- Department of Transportation Hydrogen Plan.
- Review and Revision of the DOE Pathway Analysis.
- Discussion of HTAC Vision Statement.
- Hydrogen in the Overall Energy Strategy.
- Facilitated Discussion on the Energy Strategy and Climate Change.
- Overview of Ongoing Industry Programs (e.g. GM Project Driveway and Honda Lease Program).
- Next Steps.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the meeting of HTAC and to make oral statements during the specified period for public comment. The public comment period will take place between 2:30 p.m. and 3 p.m. on May 14, 2008. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting on both days or a particular day, if you want to make an oral statement, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the committee, you may do so either by submitting a hard copy at the meeting or by submitting an electronic copy to *HTAC@nrel.gov*.

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov*.

Issued at Washington, DC on April 24, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–9335 Filed 4–25–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed revisions and three-year extension to the following Petroleum Supply Forms: EIA–800, "Weekly Refinery and Fractionator Report;" EIA–801, "Weekly Bulk Terminal Report;" EIA–802, "Weekly Product Pipeline Report;" EIA–803, "Weekly Crude Oil Stocks Report;" EIA–804, "Weekly Imports Report;" EIA–805, "Weekly Terminal Blenders Report;" EIA–810, "Monthly Refinery Report;" EIA–811, "Monthly Bulk Terminal Report;" EIA–812, "Monthly Product Pipeline Report;" EIA–813, "Monthly Crude Oil Report;" EIA–814, "Monthly Imports Report;" EIA–815, "Monthly Terminal Blenders Report;" EIA–816, "Monthly Natural Gas Liquids Report;" EIA–817,

"Monthly Tanker and Barge Movement Report;" EIA–819, "Monthly Oxygenate Report;" and EIA–820, "Annual Refinery Report."

DATES: Comments must be filed by June 27, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Sylvia Norris. To ensure receipt of the comments by the due date, submission by FAX (202–586–1076) or e-mail (*sylvia.norris@eia.doe.gov*) is recommended. The mailing address is Petroleum Division, EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Sylvia Norris may be contacted by telephone at 202–586–6106.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Sylvia Norris at the address listed above. The proposed forms and changes in definitions and instructions are also available on the Internet at: *http://www.eia.doe.gov/oil_gas/petroleum/survey_forms/pet_survey_forms.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval for this collection by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The weekly petroleum supply surveys (Forms EIA–800, EIA–801, EIA–802, EIA–803, EIA–804, and EIA–805) are designed to highlight information on petroleum refinery operations, inventory levels, and imports of selected petroleum products in a timely manner. The information appears in the publications listed below and is also available electronically through the Internet at *http://www.eia.doe.gov/.*

Publications: Internet only publications are the *Weekly Petroleum Status Report, Short-Term Energy Outlook,* and *This Week in Petroleum.*

The monthly petroleum supply surveys (Forms EIA–810, EIA–811, EIA–812, EIA–813, EIA–814, EIA–815, EIA–816, EIA–817, and EIA–819) are designed to provide statistically reliable and comprehensive information not available from other sources to EIA, other Federal agencies, and the private sector for use in forecasting, policy making, planning, and analysis activities. The information appears in the publications listed below and is also available electronically through the Internet at *http://www.eia.doe.gov/.*

Publications: Internet only publications are the *Petroleum Supply Monthly, Petroleum Supply Annual,* and *Short-Term Energy Outlook.* Hardcopy and internet publications are the *Monthly Energy Review* (DOE/EIA–0035), the *Annual Energy Review* (DOE/EIA–0384), and the *Annual Energy Outlook* (DOE/EIA–0383).

The annual petroleum supply survey (Form EIA–820) provides data on the operations of all operating and idle petroleum refineries (including new refineries under construction), blending plants, refineries shutdown with useable storage capacity, and refineries shutdown during the previous year. The information appears in the *Refinery Capacity Report* and in the *Petroleum Supply Annual, Volume 1* are available electronically through the Internet at *http://www.eia.doe.gov/.*

II. Current Actions

The EIA will request the collection approval for each of the above-referenced surveys for a three-year period. Additionally, as a means of improving its petroleum supply surveys to reflect changing regulations and changes in the petroleum industry, the EIA proposes the following changes effective with the 2009 collection period:

EIA–810 (Monthly Refinery Report)—Collect hydrogen input as a separate product. Currently, hydrogen input is included with input of "other" hydrocarbons; collect ethanol production due to addition of denaturant at refineries; collect inputs, production, and stocks of renewable fuels including biomass-based diesel fuel, other renewable diesel fuel, and other renewable fuels.

EIA–811 (Monthly Bulk Terminal Report)—Collect stocks of renewable fuels including biomass-based diesel fuel, other renewable diesel fuel, and other renewable fuels.

EIA–812 (Monthly Product Pipeline Report)—Collect stocks and inter-PAD District movements of renewable fuels including fuel ethanol, biomass-based diesel fuel, other renewable diesel fuel, and other renewable fuels.

EIA–814 (Monthly Imports Report)—Collect imports of renewable fuels including biomass-based diesel fuel, other renewable diesel fuel, and other renewable fuels; Collect hydrogen input as a separate product (currently, hydrogen input is included with input of "other" hydrocarbons).

EIA–815 (Monthly Terminal Blenders Report)—Change the survey name to Monthly Bulk Terminal and Blender Report. Extensive modifications are proposed on Form EIA–815 including addition of beginning stocks, receipts, shipments, fuel use and loss, and ending stocks to the existing input and production columns currently reported on the survey. In addition, Form EIA–815 will be expanded to collect data for all of the products currently listed on Form EIA–811 as well as new renewable fuels products. The Form EIA–815 will collect data at the site level, while the Form EIA–811 will collect data at the state level for comparison purposes. Specific product additions include biomass-based diesel fuel, other renewable diesel fuel, other renewable fuels, finished aviation gasoline, special naphthas (solvents), kerosene, kerosene-type jet fuel, distillate fuel oil by sulfur category (15 ppm sulfur and under, greater than 15 ppm to 500 ppm sulfur (inclusive), and greater than 500 ppm sulfur), lubricants, asphalt and road oil, miscellaneous products, residual fuel oil by sulfur category (under 0.31% sulfur, 0.31%–1.00% sulfur (inclusive), and over 1.00% sulfur), ethane/ethylene, ethylene, propane/propylene, propylene (nonfuel use), Normal Butane/Butylene (replaces current normal butane), refinery-grade butane, isobutane/isobutylene, and unfinished oils including separate categories for naphthas and lighter, kerosene and light gas oils, heavy gas oils, and residuum. The product "other hydrocarbons" and hydrogen (code 094) will be removed from the updated version of Form EIA–815. Changes to Form EIA–815 are

intended as preparation for phase-out of Form EIA–811 "Monthly Bulk Terminal Report" in 2010. All bulk terminals will report on a site basis with a full material balance in order to more fully capture product blending activity for motor gasoline, distillate fuel oil, and other products.

EIA–817 (Monthly Tanker and Barge Movement Report)—Collect inter-PAD District movements of fuel ethanol, biomass-based diesel fuel, other renewable diesel fuel, and other renewable fuels.

EIA–819 (Monthly Oxygenate Report)—Collect data by site instead of by PAD District; collect inputs of fuel ethanol; collect inputs and stocks of pentanes plus; collect inputs, production and stocks of finished reformulated gasoline (blended with ether), finished reformulated gasoline (blended with alcohol), finished reformulated (non-oxygenated), finished conventional (blended with alcohol), finished conventional (other), reformulated blendstock for oxygenate blending (RBOB) for blending with ether, reformulated blendstock for oxygenate blending (RBOB) for blending with alcohol, conventional blendstock for oxygenated blending (CBOB), reformulated and conventional gasoline treaded as blendstock (GTAB), and all other motor gasoline blending components.

EIA–820 (Annual Refinery Report)—Add natural gas feedstock use for hydrogen production as a separate category; Collect isooctane barrels per stream day production capacity. This category is being added to pickup capacity from converted MTBE units that produce isooctane.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average:

Estimated hours per response are: EIA–800, "Weekly Refinery and Fractionator Report,"—1.58 hours; EIA–801, "Weekly Bulk Terminal Report,"—0.95 hours; EIA–802, "Weekly Product Pipeline Report,"—0.95 hours; EIA–803, "Weekly Crude Oil Stocks Report,"—0.50 hours; EIA–804, "Weekly Imports Report,"—1.58 hours; EIA–805, "Weekly Terminal Blenders Report,"—0.58 hours; EIA–810, "Monthly Refinery Report,"—5.00 hours; EIA–811, "Monthly Bulk Terminal Report,"—2.50 hours; EIA–812, "Monthly Product Pipeline Report,"—3.00 hours; EIA–813, "Monthly Crude Oil Report,"—1.50 hours; EIA–814, "Monthly Imports Report,"—2.55 hours; EIA–815, "Monthly Bulk Terminal and Blender Report,"—3.55 hours; EIA–816, "Monthly Natural Gas Liquids Report,"—0.95 hours; EIA–817, "Monthly Tanker and Barge Movement Report,"—2.25 hours; EIA–819, "Monthly Oxygenate Report,"—1.50 hours; EIA–820, "Annual Refinery Report"—2.40 hours. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the forms. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*), and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*).

Issued in Washington, DC, April 22, 2008.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E8–9215 Filed 4–25–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed new survey, entitled the "Monthly Biodiesel Production Survey, EIA–22M." When fielded, beginning in 2009, this new form will collect information on the status, production, feedstock inputs, sales, revenue, and stocks of biodiesel from each biodiesel plant. In addition, the EIA will be attaching a one-time "Supplement to EIA Biodiesel Production Survey, EIA–22S" to the first monthly survey form sent to producers. The purpose of the supplement is to collect annual biodiesel and co-product production data for 2006, 2007, and 2008.

DATES: Comments must be filed by June 27, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to: Mary Joyce, Coal, Nuclear, and Renewable

Fuels Division, (EI–52), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mary Joyce may be contacted by telephone at (202) 586–1468, FAX at (202) 287–1946, or e-mail at *mary.joyce@eia.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Marie LaRiviere. Marie LaRiviere may be contacted by telephone at (202) 586–1475, FAX at (202) 287–1946, or e-mail at *marie.lariviere@eia.doe.gov.* Copies of the EIA–22M and EIA–22S forms and instructions can be found at *http://www.eia.doe.gov/fuelrenewable.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501, *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The proposed form EIA–22M will collect information on plant location, capacity, and operating status; biodiesel and co-product production, feedstock inputs, sales, revenues, tax credits and end of month stocks for each biodiesel plant. Section 1508 of the Energy Policy Act of 2005 (EPACT 2005) charges EIA "* * * to survey and publish monthly the renewable fuels demand in the motor vehicle fuels market." To accomplish this, EIA will need to collect monthly data on the production, blending, demand, market price, and conduct other analysis for renewable motor vehicle fuels, including biodiesel. Subsection 2 of Section 1508 also directs EIA to collect, or estimate, similar data for the 5 years prior to survey implementation. EIA–22M will fulfill this Congressional mandate by collecting monthly data beginning in 2009. Data for years 2004 and 2005 have already been estimated. The form EIA–22S will collect the annual biodiesel and co-product production data from 2006, 2007, and 2008. Additionally, the new survey will carry out the EIA's mission of presenting relevant statistical data to the public. Very little statistical data is currently collected on the biodiesel industry; therefore this survey will serve as the unique source of non-biased statistical data for the biodiesel industry as it continues to grow.

Please refer to the proposed forms and instruction for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

EIA is proposing a new, mandatory survey, EIA–22M, that will collect information from all commercial biodiesel producers in the United States. Once the new form is fielded, EIA will continue to conduct the survey on a monthly basis. Attached to the first monthly form will be EIA–22S to collect annual data from 2006, 2007, and 2008. The EIA–22S will be sent only the first time that a producer completes the EIA–22M. Respondents who are added to the frame will be required to complete EIA–22S only once. It will not be submitted to producers more than once.

Forms EIA–22M and EIA–22S, along with instructions, can be found at *http://www.eia.doe.gov/fuelrenewable.html.*

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to be 2 hours for the EIA–22M and 1 hour for the EIA–22S. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? EIA plans to use electronic versions of the form, along with the possibility to mail or fax the information.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(j)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35.), Federal Energy Administration Act of 1974 (Pub. L.

93–275, 15 U.S.C. 761 *et seq.*), and the DOE Organization Act (Pub. L. 95–92, 42 U.S.C. 7101 *et seq.*).

Issued in Washington, DC, April 22, 2008.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E8–9221 Filed 4–25–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OAR–2008–0216–200812; FRL–8558–9]

Adequacy Status of the Northern Kentucky Attainment Demonstration 8-Hour Ozone Motor Vehicle Emission Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: EPA is notifying the public that it has found that the motor vehicle emissions budgets (MVEBs) in the Northern Kentucky Attainment Demonstration State Implementation Plan (SIP) revision, submitted on December 7, 2007, by the Kentucky Division of Air Quality (KDAQ) are adequate for transportation conformity purposes. As a result of EPA's finding, the Northern Kentucky Area (Boone, Campbell and Kenton Counties) must use the MVEBs from the December 7, 2007, Northern Kentucky Attainment Demonstration SIP for future conformity determinations for the 1997 8-hour ozone standard.

DATES: These MVEBs are effective May 13, 2008.

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Ms. Benjamin can also be reached by telephone at (404) 562–9040, or via electronic mail at *benjamin.lynorae@epa.gov*. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*.

SUPPLEMENTARY INFORMATION: This notice is simply an announcement of a finding that EPA has already made. EPA Region 4 sent a letter to KDAQ on March 14, 2008, stating that the MVEBs in the Northern Kentucky Attainment Demonstration SIP, submitted on December 7, 2007, are adequate. The tri-state Cincinnati-Hamilton 8-hour ozone nonattainment area (Area) is comprised of the following counties: Boone, Campbell and Kenton in Kentucky; Butler, Clermont, Clinton, Hamilton and Warren in Ohio; and a portion of Dearborn in Indiana. Kentucky's Attainment Demonstration submittal addresses only MVEBs for the Kentucky portion of this Area. The MVEBs for the Ohio and Indiana portions of this Area are addressed in a separate submittal provided by Ohio and Indiana. In a separate letter, EPA made a similar determination for the MVEBs associated with the Ohio and Indiana portions of this Area. EPA is addressing the adequacy of the Ohio and Indiana MVEBs through a separate notice. EPA's adequacy comment period for the Kentucky submittal ran from December 18, 2007, through January 17, 2008. During EPA's adequacy comment period, no adverse comments were received. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/pastsips.htm*. The adequate MVEBs are provided in the following table:

NORTHERN KENTUCKY 8-HOUR OZONE MVEBS

[Tons per day]

	2008
NO_X	21.36
VOC	9.91

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEBs are adequate for transportation conformity purposes are outlined in 40 Code of Federal Regulations (CFR) 93.118(e)(4). We have also described the process for determining the adequacy of submitted SIP budgets in our July 1, 2004, final rulemaking entitled, " Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (69 FR 40004). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds the MVEBs adequate, the Agency may later determine that the SIP itself is not approvable.

Within 24 months from the effective date of this notice, the transportation partners will need to demonstrate conformity to the new MVEBs if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). See, 73 FR 4419 (January 24, 2008).

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

Dated: April 17, 2008.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E8–9244 Filed 4–25–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8559–2]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed administrative settlement concerning the Webster-Gulf Nuclear Superfund Site, Gulf Nuclear Superfund Site, and the Tavenor-Gulf Nuclear Superfund Site, collectively known as the Gulf Nuclear Superfund Site (the Sites). The Sites are located in Webster, Harris County, Texas; Odessa, Ector County, Texas; and Houston, Harris County, Texas.

The Settling Party, the Texas Department of State Health Services (DSHS) has provided to EPA In-Kind Services valued at $124,592.40. A $102,000 portion of the value of the In-Kind Services already provided shall be valued as consideration in the Settlement Agreement. The remaining In-Kind Services value of $22,592.40 will be available to the Settling Party to use as credit for any expenditure of costs at the Sites that go beyond EPA's estimated response costs of $29,864,194.82. The purpose of this Agreement is to settle the claims for past costs incurred by EPA against DSHS, a

potentially responsible party (PRP) who arranged for the disposal or treatment of hazardous substances at the Sites. The settlement includes a covenant not to sue which includes, but is not limited to: (1) Any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund pursuant to Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9607, 9611, 9612, or 9613; (2) any claims arising out of the response actions at or in connection with the Sites; and (3) any claims against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613, relating to the Sites.

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 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before May 28, 2008.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Kenneth Talton, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–7475. Comments should reference the Webster-Gulf Nuclear Superfund Site, Gulf Nuclear Superfund Site, and the Tavenor-Gulf Nuclear Superfund Site, collectively known as the Gulf Nuclear Superfund Site, Webster and Odessa, Texas, EPA Docket Number 06–01–08 and should be addressed to Kenneth Talton at the address listed above.

FOR FURTHER INFORMATION CONTACT: Amy Salinas, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–8063.

Dated: April 18, 2008.

Lawrence E. Starfield,

Deputy Regional Administrator (6RA), Region 6.

[FR Doc. E8–9249 Filed 4–25–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

April 21, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 28, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your comments to Nicholas A. Fraser, Office of Management and Budget (e-mail address: *nfraser@omb.eop.gov*), and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the e-mails the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below or, if there is no OMB control number, the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information contact Leslie Smith via e-mail at *PRA@fcc.gov* or at (202) 418–0217. To view or obtain a copy of an information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of the ICR you want to view (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0056.

Title: Part 68—Connection of Terminal Equipment to the Telephone Network.

Form Number: N/A.

Type of Review: Extension without change of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 58,520 respondents; 70,450 responses.

Estimated Time per Response: 0.05–24 hours.

Frequency of Response: On occasion reporting requirement; recordkeeping requirement; and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 32,027 hours.

Total Annual Cost: $1,160,000.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The purpose of 47 CFR part 68 is to protect the telephone network from certain types of harm and interference to other subscribers. To ensure that consumers, providers of telecommunications, the Administrative Council, telecommunications certification bodies (TCBs), and the Commission are able to trace products to the party responsible for warranting that terminal equipment placed on the

market will not cause proscribed harms, it is essential to require manufacturers and suppliers to provide the information required by part 68. In addition, it is necessary that incumbent local exchange carriers (ILECs) provide the information in part 68 to warn their subscribers of impending disconnection of service when subscriber terminal equipment is causing telephone network harm.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–9093 Filed 4–25–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 16, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments June 27, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by email send them to: *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called "Currently Under Review", (3) click the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an email to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0291.

Title: Section 90.477(a), (b)(2), (d)(2) and (d)(3), Interconnected Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 10,294 respondents; 10,294 responses.

Estimated Time per Response: .25 hours for 9,768 responses and 2 hours for 526 responses.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 3,494 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting, recordkeeping and/or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

This rule section allows commercial and private land mobile radio licensees to use common point telephone interconnection with telephone service costs distributed on a non-profit cost sharing basis. Records of such arrangements must be placed in the licensee's station file and made available to participants in the sharing arrangement and the Commission upon request. Licensees in the Industrial/Business Pool and those licensees who establish eligibility pursuant to 47 CFR 90.20(a)(2), other than persons or organizations charged with specific fire protection activities, persons or organizations charged with specific forestry-conservative activities, or medical emergency systems in the 450–470 MHz band, and who seek to connect within 120 km (75 miles) of 25 cities specified in 47 CFR 90.477(d)(3), must obtain the consent of all co-channel licenses located both within 120 km of the center of the city, and within 120 km of the interconnected base station transmitter. Consensual agreements must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all co-channel licensees have consented to the use of interconnection.

These requirements to keep records when the land stations involved are multiple licensed or shared is mandated by the requirements set forth in 47 U.S.C. 332(c) of the Communications Act of 1934, as amended, regarding inter-service sharing opportunities in the private mobile services. The information is used by the participating licensees to effect the required cost sharing.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–9178 Filed 4–25–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval; Comments Requested

April 23, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 28, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Number: 3060–0568.

Title: Commercial Leased Access.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions.

Number of Respondents/Responses: 7,365 respondents; 152,315 responses.

Estimated Time per Response: 0.50 hours to 45 hours.

Frequency of Response: Annual reporting requirement; On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Total Annual Burden: 173,610.

Total Annual Cost::$105,000.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) and 612 of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On February 1, 2008, the Commission released a Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Leased Commercial Access, MB Docket No. 07–42, FCC 07–208. In this Report and Order, we modify the leased access rules. With respect to leased access, we modify the leased access rate formula; adopt customer service obligations that require minimal standards and equal treatment of leased access programmers with other programmers; eliminate the requirement for an independent accountant to review leased access rates; and require annual reporting of information on leased access. We also adopt expedited time frames for resolution of complaints and improve the discovery process. The commercial leased access requirements are set forth in Section 612 of the Communications Act of 1934, as amended. The statute and corresponding leased access rules require a cable operator to set aside channel capacity for commercial use by unaffiliated video programmers. The Commission's rules implementing the statute require that cable operators with 36 or more channels calculate rates for leased access channels, maintain and provide on request information pertaining to leased access channels, and provide billing and collection services as required. The Commission may be required to resolve complaints about rates, terms and conditions of leased access. Changes to the rules increased the quantity of information maintained and provided, increase the information needed to calculate rates and require the filing of an annual report with the Commission on the status of leased access channels.

In addition, the Commission is consolidating information collection OMB Control Number 3060–0569 (Commercial Leased Access Dispute Resolution) into this collection OMB Control Number 3060–0568.

Federal Communications Commission.

Jackie Coles,

Associate Secretary.

[FR Doc. E8–9233 Filed 4–25–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission; Comments Requested

April 23, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 27, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them

to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0027.

Type of Review: Revision of a currently approved collection.

Title: Application for Construction Permit for Commercial Broadcast Station.

Form Number: FCC Form 301.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents/Responses: 4,278.

Estimated Time per Response: 2 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i), 303, and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Total Annual Burden: 11,072 hours.

Total Annual Costs: $51,802,197.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a Report and Order and Order on Reconsideration in its 2006 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 06–121, FCC 07–216. Section 202 requires the Commission to review its broadcast ownership rules every four years and determine whether any of such rules are necessary in the public interest. Further, Section 202 requires the Commission to repeal or modify any regulation it determines to be no longer in the public interest.

Consistent with actions taken by the Commission in the 2006 Quadrennial Regulatory Review, the following changes are made to Form 301: The instructions to Form 301 are revised to include a reference to the 2006 Quadrennial Regulatory Review as a source of information regarding the Commission's multiple ownership attribution policies and standards. Also, the language in Section A, IV of Worksheet #2 in Form 301 is changed. This worksheet is used in connection with Section II, Item 4 of Form 301 to determine the applicant's compliance with the Commission's multiple ownership rules and cross-ownership rules set forth in 47 CFR 73.3555. The revisions to the worksheet account for changes made by the Commission in the 2006 Quadrennial Review to 47 CFR 73.3555(d), the Daily Newspaper Cross-Ownership Rule. The revised rule changes the circumstances under which an entity may own a daily newspaper and a radio station or television station in the same designated market area. In conjunction with this same rule change, language from 47 CFR 73.3555(d) is added to Section B of Worksheet #2 to assist applicants in their determination of compliance with the Daily Newspaper Cross-Ownership Rule. 47 CFR 73.3555(d) (daily newspaper cross-ownership rule) states:

(1) No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

(i) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or

(ii) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or

(iii) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.

(2) Paragraph (1) shall not apply in cases where the Commission makes a finding pursuant to Section 310(d) of the Communications Act that the public interest, convenience, and necessity would be served by permitting an entity that owns, operates or controls a daily newspaper to own, operate or control an AM, FM, or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1).

(3) In making a finding under paragraph (2), there shall be a presumption that it is not inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper in a top 20 Nielsen DMA and one commercial AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1), provided that, with respect to a combination including a commercial TV station,

(i) The station is not ranked among the top four TV stations in the DMA, based on the most recent all-day (9 a.m.–midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and

(ii) At least 8 independently owned and operating major media voices would remain in the DMA in which the community of license of the TV station in question is located (for purposes of this provision major media voices include full-power TV broadcast stations and major newspapers).

(4) In making a finding under paragraph (2), there shall be a presumption that it is inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper and an AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1) in a DMA other than the top 20 Nielsen DMAs or in any circumstance not covered under paragraph (3).

(5) In making a finding under paragraph (2), the Commission shall consider:

(i) Whether the combined entity will significantly increase the amount of local news in the market;

(ii) Whether the newspaper and the broadcast outlets each will continue to employ its own staff and each will exercise its own independent news judgment;

(iii) The level of concentration in the Nielsen Designated Market Area (DMA); and

(iv) The financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations.

(6) In order to overcome the negative presumption set forth in paragraph (4) with respect to the combination of a major newspaper and a television station, the applicant must show by clear and convincing evidence that the co-owned major newspaper and station will increase the diversity of independent news outlets and increase competition among independent news sources in the market, and the factors set forth above in paragraph (5) will inform this decision.

(7) The negative presumption set forth in paragraph (4) shall be reversed under the following two circumstances:

(i) The newspaper or broadcast station is failed or failing; or

(ii) The combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours per week of local news programming after the combination.

Federal Communications Commission.

Jackie Coles,

Associate Secretary.

[FR Doc. E8–9234 Filed 4–25–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2863]

Petition for Reconsideration of Action in Rulemaking Proceeding

April 17, 2008.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by May 13, 2008. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Leased Commercial Access (MB Docket No. 07–42).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–9179 Filed 4–25–08; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[ME–2008–NO1; Docket GSA 2008–0005; Sequence 1]

Financial Systems Integration Office (FSIO); Federal Acquisition System Requirements

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice with request for comments.

SUMMARY: The Office of Governmentwide Policy invites comments on the proposed "Federal Acquisition System Requirements." This document gives functional, process technical and data standards requirements for software developers of Government acquisition and contract writing systems, and is regarded as a draft document that will be revised to consider input from comments solicited from industry and other government agencies during this open comment period. This document will be a baseline (as-is) document with the understanding that it will be revised as processes and data standards are harmonized within the acquisition domain and later as it harmonized with other domains—primarily the Financial Management Line of Business (FMLoB). This document does not supersede or obsolete documents, standards or requirements issued by the Joint Financial Management Improvement Program (JFMIP), Financial Systems Integration Office (FSIO) or the Financial Management Line of Business (FMLoB). Over time, efforts will be made to harmonize across these domains.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Warrington, Director, Integrated Acquisition Environment, by telephone at (703) 872–8609 or via e-mail to *earl.warrington@gsa.gov*.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before June 27, 2008.

ADDRESSES: Submit comments identified by ME–2008–N01, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting "ME–2008–N01" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with ME–2008–N01. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "ME–2008–N01" on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

Instructions: Please submit comments only and cite ME–2008–N01, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION: The FSIO Federal Financial Management Systems Requirements is a series of publications entitled Federal Financial Management System Requirements (FFMSR). The FFMSR documents specify the functional and technical requirements that all financial management-related systems must meet in order to be considered compliant with Federal standards as mandated by the Federal Financial Management Improvement Act (FFMIA). In the future Federal Acquisition System Requirements will evolve to create harmonization between the Federal Financial and Acquisition Communities.

This notice requests comments on the Acquisition System Requirements document, located at *http://www.acquisition.gov*. This document specifies the functional and technical requirements that acquisition systems must satisfy for Federal agency use. The document was developed at the request of the Chief Acquisition Officers Council (CAOC) and Chief Financial Officers Council (CFOC), demonstrating a commitment to starting the process of integrating the acquisition and finance functions more effectively. These requirements were drafted by the Acquisition Requirements Team (ART), consisting of representatives from both communities. The ART members recognize that agencies face major challenges in streamlining and automating procurement processes. Having access to better acquisition software is a first step toward this end. A key prerequisite to developing better software is to clearly define the requirements that the software product must meet.

The Office of Management and Budget (OMB) Circular A–130, Management of Federal Information Resources, requires agencies to use commercially available off-the-shelf (COTS) software to reduce costs, improve the efficiency and effectiveness of system improvement projects, and reduce the risks inherent in developing and implementing a new system. To support this OMB mandate, vendors will be required to offer acquisition system products utilizing COTS software to the greatest extent practicable.

This document is part of a long-term plan to have integration. The first document, *Joint Financial Management Improvement Program (JFMIP)-Federal Financial Management System Requirements (FFMSP),* [Document No. JFMIP–SR–01–03, dated December 7, 2001], gave the list of touch points between the financial and acquisition domains and still stands. The current document goes more in depth to

articulate the way the processes and data are defined. It is understood that significant definitions and harmonization needs to occur in the future.

The requirements in this document are intended to address the needs of Federal Acquisition Regulation (FAR)-based contracts. They are not intended to replace or modify the FAR, FAR supplements, or internal agency acquisition policy. Further, agencies have considerable leeway in how they use any system-delivered capability. In practice, the applicability of an individual requirement depends on business circumstances. Agencies may apply sound business judgment to the use of a compliant acquisition system, provided it:

- Is consistent with the FAR, FAR supplements, or other regulations that apply to agencies and organizations not covered by the FAR;
- Does not violate laws, executive orders, or other regulations; and
- Is in the best interests of the government.

The document provides a framework for connecting program planning, ccr financial, and a zet management processes with agencies' acquisition systems in order to deliver fully integrated acquisition support. Detailed acquisition system requirements are presented within the functional and technical requirements sections. They incorporate the latest changes in laws and regulations governing acquisition systems as well as required system interfaces such as the Federal Procurement Data System and Central Contractor Registration. When finalized, these requirements are expected to become the standard for qualifying COTS acquisition systems for Federal agency acquisition.

The requirements listed in this document address common Governmentwide functionality. This document was not designed to deal with classified information. The following are examples of common system capabilities needed by all Federal agencies:

- Deliver a template for an SF 1449; Solicitation/Contract/Order for Commercial Items;
- Verify funds availability;
- Capture receiving report data; and
- Generate a checklist of contract closeout items.

The requirements in this document do not constitute a complete system specification. Requirements are deliberately stated in functional terms to give software developers maximum flexibility in engineering technical solutions. Individual agencies will also have, in many cases, additional mandatory requirements necessary to support their specific business processes.

Dated: April 11, 2008.

Keith Thurston,

Acting Deputy Associate Administrator, Office of Technology Strategy.

[FR Doc. E8–9183 Filed 4–25–08; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0223]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of the reinstatement of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluation of the Cash and Counseling Demonstration—OMB No. 0990–0223—Reinstatement with Changes—Assistant Secretary of Planning and Evaluation (ASPE).

Abstract: The original evaluation of the national Cash and Counseling Demonstration was intended to include three groups: Self-directing consumers, a control group, and non-participants. When funding was not available to survey all groups, the non-participant sample was removed. The subsequent evaluations showed that self-directing consumers were more satisfied with their supportive services, reported fewer unmet needs, and enjoyed greater well-being than other Medicaid programs. Still, despite these apparent benefits, relatively few of the beneficiaries who were eligible to participate in Cash and Counseling demonstrations elected to do so (8 to 15 percent). Since that time, the Cash and Counseling program has been expanded under the 1915(j)(2) Section of the Deficit Reduction Act of 2005 and beginning January 1, 2007, states were permitted to offer the program to Medicaid recipients without demonstrating budget neutrality and without a requirement for periodic renewal of the state plan amendment as required for "1115" or "1915(c)" waivers.

This study involves drawing a sample from Medicaid beneficiaries in New Jersey who are eligible to enroll in the state's Cash and Counseling program. The qualifications for enrollment have not changed since the original research. This study will include only individuals who did not enroll (non-participants) who will be compared to those who did enroll (and about whom data were collected) during the original demonstration/evaluation data collection as well as those who have enrolled since (about whom the state of New Jersey collects descriptive data for Medicaid program administrative purposes). The government will conduct 600 one-time telephone interviews over a three-month period. The survey includes questions asked in the original evaluation of the Cash and Counseling demonstration surveys, as well as original questions designed to measure factors related to nonparticipation. These questions will allow comparisons between participants and non-participants of the Cash and Counseling demonstration.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Non-Participants (or Proxies)	Telephone Interview	600	1	27/60	270

Mary Oliver-Anderson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–9176 Filed 4–25–08; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood Safety and Availability (ACBSA) will hold a meeting. The meeting will be open to the public on both Thursday, May 29 and Friday, May 30, 2008.

DATES: The meeting will take place Thursday, May 29 and Friday, May 30, 2008 from 9 a.m. to 5 p.m.

ADDRESSES: The Hilton Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852 Phone: (301) 468–1100.

FOR FURTHER INFORMATION CONTACT: Jerry A. Holmberg, PhD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852, (240) 453–8803, Fax (240) 453–8456, e-mail *ACBSA@hhs.gov.*

SUPPLEMENTARY INFORMATION: Updates will be provided to the Committee on previous recommendations as follows:

At the January 2003 meeting of the ACBSA, the Committee recognized that the leading causes of transfusion related fatalities were: bacterial contamination of platelets; hemolysis, primarily due to errors in release and administration of incorrect blood; and transfusion related acute lung injury (TRALI). Progress has been made on all three of these causes of transfusion related fatalities. Updates will be provided on the rate of bacterial contamination and reports of sepsis associated with 5 day and 7 day dating of apheresis platelets and on the use of improved methods to reduce errors in the identification of patients and transfusion products. In addition, the Committee will review progress made to reduce the risk of TRALI. In 2007, the AABB recommended to its institutional members to devise strategies to reduce the risk of TRALI in transfused patients. Total voluntary implementation was to be complete by November 2008. To this end, many blood centers and hospitals have implemented strategies to decrease the adverse risk of TRALI by using male only apheresis platelets and plasma donors. Various strategies will be presented and discussed as well as messaging to potential donors.

The Committee will also hear an update from the Food and Drug Administration's sponsored public workshop entitled: "Hemoglobin Based Oxygen Carriers: Current Status and Future Directions," which will be held on April 29 and 30, 2008. The Committee will also hear an update from Health Resources and Services Administration (HRSA) regarding its April 4, 2008 meeting on potential rulemaking with respect to vascularized composite allografts and whether vascularized composite allografts should be included within the definition of organs covered by the regulations governing the operation of the Organ Procurement and Transplantation Network and covered by section 301 of the National Organ Transplant Act of 1984.

The Committee will then be asked to discuss and make recommendations on reports of adverse outcomes associated with transfusion of older red cells. There have been additional studies and peer reviewed publications reporting adverse outcomes associated with the administration of red cells older than 14 days of storage. Currently human red cells for transfusion are good for up to 42 days of storage depending on the anticoagulant and additive solutions used in storage. Presentations and discussions will review current blood distribution and transfusion practices as well as available outcome data related to clinical studies with older red cells.

Public comment will be solicited on both May 29 and 30, 2008. Comments will be limited to five minutes per speaker and must be pertinent to the discussion. Anyone planning to comment is encouraged to contact the Executive Secretary at his/her earliest convenience. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business May 27, 2008. Likewise, those who wish to utilize electronic data projection to the Committee must submit their materials to the Executive Secretary prior to close of business May 27, 2008.

Dated: April 22, 2008.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. E8–9230 Filed 4–25–08; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Physical Fitness and Sports

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the President's Council on Physical Fitness and Sports will hold a meeting. This meeting is open to the public. A description of the Council's functions is included also with this notice.

DATES: May 14, 2008, from 9 a.m. to 4 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Melissa Johnson, Executive Director, President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738H, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–5187.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports (PCPFS) was established originally by Executive Order 10673, dated July 16, 1956. PCPFS was established by President Eisenhower after published reports indicated that American boys and girls were unfit compared to the children of Western

Europe. The Council has undergone two name changes and several reorganizations. Authorization to continue Council operations has been given at appropriate intervals by subsequent Executive Orders. Authority to continue Council operations was most recently directed by Executive Order 13446, dated September 28, 2007. A program office to support PCPFS activities is located organizationally in the Office of Public Health and Science within the Office of the Secretary, DHHS.

On June 6, 2002, President Bush signed Executive Order 13265 to reestablish the PCPFS. Executive Order 13265 was established to expand the focus of the Council. This directive instructed the Secretary to develop and coordinate a national program to enhance physical activity and sports participation. The Council currently operates under the stipulations of the new directive. The primary functions of the Council include: (1) To advise the President, through the Secretary, on the progress made in carrying out the provisions of the enacted directive and recommend actions to accelerate progress; (2) to advise the Secretary on ways and means to enhance opportunities for participation in physical fitness and sports, and, where possible, to promote and assist in the facilitation and/or implementation of such measures; (3) to advise the Secretary regarding opportunities to extend and improve physical activity/fitness and sports programs and services at the national, state, and local levels; and (4) to monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council and advise the Secretary, as necessary, concerning such needs. The PCPFS holds at a minimum, one meeting in the calendar year to (1) assess ongoing Council activities and (2) discuss and plan future projects and programs.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the building. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person.

Dated: April 18, 2008.

Melissa Johnson,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. E8–9232 Filed 4–25–08; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0154] (formerly Docket No. 2007N–0444)

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Recordkeeping and Records Access Requirements for Food Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Recordkeeping and Records Access Requirements for Food Facilities" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 2008 (73 FR 7564), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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 has now approved the information collection and has assigned OMB control number 0910–0560. The approval expires on March 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–9155 Filed 4–25–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0240]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's current good manufacturing practice (CGMPs) regulations for finished pharmaceuticals.

DATES: Submit written or electronic comments on the collection of information by June 27, 2008.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44

U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

CGMP Regulations for Finished Pharmaceuticals—21 CFR Parts 210 and 211 (OMB Control Number 0910–0139)—Extension

Under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(a)(2)(B)), a drug is adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with CGMPs to ensure that such drug meets the requirements of the act as to safety, and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

FDA has the authority under section 701(a) of the act (21 U.S.C. 371(a)) to issue regulations for the efficient enforcement of the act regarding CGMP procedures for manufacturing, processing, and holding drugs and drug products. The CGMP regulations help ensure that drug products meet the statutory requirements for safety and have their purported or represented identity, strength, quality, and purity characteristics. The information collection requirements in the CGMP regulations provide FDA with the necessary information to perform its duty to protect public health and safety. CGMP requirements establish accountability in the manufacturing and processing of drug products, provide for meaningful FDA inspections, and enable manufacturers to improve the quality of drug products over time. The CGMP recordkeeping requirements also serve preventive and remedial purposes and provide crucial information if it is necessary to recall a drug product.

The general requirements for recordkeeping under part 211 (21 CFR part 211) are set forth in § 211.180. Any production, control, or distribution record associated with a batch and required to be maintained in compliance with part 211 must be retained for at least 1 year after the expiration date of the batch and, for certain over-the-counter (OTC) drugs, 3 years after distribution of the batch (§ 211.180(a)). Records for all components, drug product containers, closures, and labeling are required to be maintained for at least 1 year after the expiration date and 3 years for certain OTC products (§ 211.180(b)).

All part 211 records must be readily available for authorized inspections during the retention period (§ 211.180(c)), and such records may be retained either as original records or as true copies (§ 211.180(d)). In addition, 21 CFR 11.2(a) provides that "for records required to be maintained but not submitted to the agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that the requirements of this part are met." To the extent this electronic option is used, the burden of maintaining paper records should be substantially reduced, as should any review of such records.

In order to facilitate improvements and corrective actions, records must be maintained so that data can be used for evaluating, at least annually, the quality standards of each drug product to determine the need for changes in drug product specifications or manufacturing or control procedures (§ 211.180(e)). Written procedures for these evaluations are to be established and include provisions for a review of a representative number of batches and, where applicable, records associated with the batch; provisions for a review of complaints, recalls, returned or salvaged drug products; and investigations conducted under § 211.192 for each drug product.

The specific recordkeeping requirements provided in table 1 of this document are as follows:

- Section 211.34—Consultants advising on the manufacture, processing, packing, or holding of drug products must have sufficient education, training, and experience to advise on the subject for which they are retained. Records must be maintained stating the name, address, and qualifications of any consultants and the type of service they provide;
- Section 211.67(c)—Records must be kept of maintenance, cleaning, sanitizing, and inspection as specified in §§ 211.180 and 211.182;
- Section 211.68—Appropriate controls must be exercised over computer or related systems to assure that changes in master production and control records or other records are instituted only by authorized personnel;
- Section 211.68(a)—Records must be maintained of calibration checks, inspections, and computer or related system programs for automatic, mechanical, and electronic equipment;
- Section 211.68(b)—All appropriate controls must be exercised over all computers or related systems and control data systems to assure that changes in master production and controls records or other records are instituted only by authorized persons;
- Section 211.72—Filters for liquid filtration used in the manufacture, processing, or packing of injectable drug products intended for human use must not release fibers into such products;
- Section 211.80(d)—Each container or grouping of containers for components or drug product containers or closures must be identified with a distinctive code for each lot in each shipment received. This code must be used in recording the disposition of each lot. Each lot must be appropriately identified as to its status;
- Section 211.100(b)—Written production and process control procedures must be followed in the execution of the various production and process control functions and must be documented at the time of performance. Any deviation from the written procedures must be recorded and justified;
- Section 211.105(b)—Major equipment must be identified by a distinctive identification number or code that must be recorded in the batch production record to show the specific equipment used in the manufacture of each batch of a drug product. In cases where only one of a particular type of equipment exists in a manufacturing facility, the name of the equipment may be used in lieu of a distinctive identification number or code;
- Section 211.122(c)—Records must be maintained for each shipment received of each different labeling and packaging material indicating receipt, examination, or testing;
- Section 211.130(e)—Inspection of packaging and labeling facilities must be made immediately before use to assure

that all drug products have been removed from previous operations. Inspection must also be made to assure that packaging and labeling materials not suitable for subsequent operations have been removed. Results of inspection must be documented in the batch production records;

- Section 211.132(c)—Certain retail packages of OTC drug products must bear a statement that is prominently placed so consumers are alerted to the specific tamper-evident feature of the package. The labeling statement is required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-evident feature chosen is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement;
- Section 211.132(d)—A request for an exemption from packaging and labeling requirements by a manufacturer or packer is required to be submitted in the form of a citizen petition under 21 CFR 10.30;
- Section 211.137—Requirements regarding product expiration dating and compliance with 21 CFR 201.17 are set forth;
- Section 211.160(a)—The establishment of any specifications, standards, sampling plans, test procedures, or other laboratory control mechanisms, including any change in such specifications, standards, sampling plans, test procedures, or other laboratory control mechanisms, must be drafted by the appropriate organizational unit and reviewed and approved by the quality control unit. These requirements must be followed and documented at the time of performance. Any deviation from the written specifications, standards, sampling plans, test procedures, or other laboratory control mechanisms must be recorded and justified;
- Section 211.165(e)—The accuracy, sensitivity, specificity, and reproducibility of test methods employed by a firm must be established and documented. Such validation and documentation may be accomplished in accordance with § 211.194(a)(2);
- Section 211.166(c)—Homeopathic drug product requirements are set forth;
- Section 211.173—Animals used in testing components, in-process materials, or drug products for compliance with established specifications must be maintained and controlled in a manner that assures their suitability for their intended use. They must be identified, and adequate records must be maintained showing the history of their use;
- Section 211.180(e)—Written records required by part 211 must be maintained so that data can be used for evaluating, at least annually, the quality standards of each drug product to determine the need for changes in drug product specifications or manufacturing or control procedures. Written procedures must be established and followed for such evaluations and must include provisions for a representative number of batches, whether approved or unapproved or rejected, and a review of complaints, recalls, returned or salvaged drug products, and investigations conducted under § 211.192 for each drug product;
- Section 211.180(f)—Procedures must be established to assure that the responsible officials of the firm, if they are not personally involved in or immediately aware of such actions, are notified in writing of any investigations, conducted under §§ 211.198, 211.204, or 211.208, any recalls, reports of inspectional observations issued, or any regulatory actions relating to good manufacturing practices brought by FDA;
- Section 211.182—Specifies requirements for equipment cleaning records and the use log;
- Section 211.184—Specifies requirements for component, drug product container, closure, and labeling records;
- Section 211.186—Specifies master production and control records requirements;
- Section 211.188—Specifies batch production and control records requirement;
- Section 211.192—Specifies the information that must be maintained on the investigation of discrepancies found in the review of all drug product production and control records by the quality control staff;
- Section 211.194—Explains and describes laboratory records that must be retained;
- Section 211.196—Specifies the information that must be included in records on the distribution of the drug;
- Section 211.198—Specifies and describes the handling of all complaint files received by the applicant; and
- Section 211.204—Specifies that records be maintained of returned and salvaged drug products and describes the procedures involved.

Written procedures, referred to in this paragraph as standard operating procedures (SOPs), are required for many part 211 records. The current SOP requirements were initially provided in a final rule published in the **Federal Register** of September 29, 1978 (43 FR 45014), and are now an integral and familiar part of the drug manufacturing process. The major information collection impact of SOPs results from their creation. Thereafter, SOPs need to be periodically updated. A combined estimate for routine maintenance of SOPs is provided in table 1 of this document. The 25 SOP provisions under part 211 in the combined maintenance estimate include:

- Section 211.22(d)—Responsibilities and procedures of the quality control unit;
- Section 211.56(b)—Sanitation procedures;
- Section 211.56(c)—Use of suitable rodenticides, insecticides, fungicides, fumigating agents, and cleaning and sanitizing agents;
- Section 211.67(b)—Cleaning and maintenance of equipment;
- Section 211.68(a)—Proper performance of automatic, mechanical, and electronic equipment;
- Section 211.80(a)—Receipt, identification, storage, handling, sampling, testing, and approval or rejection of components and drug product containers or closures;
- Section 211.94(d)—Standards or specifications, methods of testing, and methods of cleaning, sterilizing, and processing to remove pyrogenic properties for drug product containers and closures;
- Section 211.100(a)—Production and process control;
- Section 211.110(a)—Sampling and testing of in-process materials and drug products;
- Section 211.113(a)—Prevention of objectionable micro-organisms in drug products not required to be sterile;
- Section 211.113(b)—Prevention of microbiological contamination of drug products purporting to be sterile, including validation of any sterilization process;
- Section 211.115(a)—System for reprocessing batches that do not conform to standards or specifications, to insure that reprocessed batches conform with all established standards, specifications, and characteristics;
- Section 211.122(a)—Receipt, identification, storage, handling, sampling, examination and/or testing of labeling and packaging materials;
- Section 211.125(f)—Control procedures for the issuance of labeling;
- Section 211.130—Packaging and label operations, prevention of mixup and cross contamination, identification and handling of filed drug product containers that are set aside and held in unlabeled condition, and identification of the drug product with a lot or control number that permits determination of

the history of the manufacture and control of the batch;

- Section 211.142—Warehousing;
- Section 211.150—Distribution of drug products;
- Section 211.160—Laboratory controls;
- Section 211.165(c)—Testing and release for distribution;
- Section 211.166(a)—Stability testing;
- Section 211.167—Special testing requirements;
- Section 211.180(f)—Notification of responsible officials of investigations, recalls, reports of inspectional observations, and any regulatory actions relating to good manufacturing practice;
- Section 211.198(a)—Written and oral complaint procedures, including quality control unit review of any complaint involving specifications failures, and serious and unexpected adverse drug experiences;
- Section 211.204—Holding, testing, and reprocessing of returned drug products; and
- Section 211.208—Drug product salvaging.

Although most of the CGMP provisions covered in this document were created many years ago, there will be some existing firms expanding into new manufacturing areas and startup firms that will need to create SOPs. As provided in table 1 of this document, FDA is assuming that approximately 100 firms will have to create up to 25 SOPs for a total of 2,500 records, and the agency estimates that it will take 20 hours per recordkeeper to create 25 new SOPs for a total of 50,000 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
SOP maintenance (See list of 25 SOPs in the **SUPPLEMENTARY INFORMATION** section of this document)	4,184	1	4,184	25	104,600
New startup SOPs	100	25	2500	20	50,000
211.34	4,184	.25	1,046	.5	523
211.67(c)	4,184	50	209,200	.25	52,300
211.68	4,184	2	8,368	1	8,368
211.68(a)	4,184	10	41,840	.5	20,920
211.68(b)	4,184	5	20,920	.25	5,230
211.72	4,184	.25	1,046	1	1,046
211.80(d)	4,184	.25	1,046	.1	105
211.100(b)	4,184	3	12,552	2	25,104
211.105(b)	4,184	.25	1,046	.25	262
211.122(c)	4,184	50	209,200	.25	52,300
211.130(e)	4,184	50	209,200	.25	52,300
211.132(c)	1,698	20	33,960	.5	16,980
211.132(d)	1,698	.2	340	.5	170
211.137	4,184	5	20,920	.5	10,460
211.160(a)	4,184	2	8,368	1	8,368
211.165(e)	4,184	1	4,184	1	4,184
211.166(c)	4,184	2	8,368	.5	4,184
211.173	1.077	1	1,077	.25	269
211.180(e)	4,184	.2	837	.25	209
211.180(f)	4,184	.2	837	1	837
211.182	4,184	2	8,368	.25	2,092
211.184	4,184	3	12,552	.5	6,276
211.186	4,184	10	41,840	2	83,680
211.188	4,184	25	104,600	2	209,200

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
211.192	4,184	2	8,368	1	8,368
211.194	4,184	25	104,600	.5	52,300
211.196	4,184	25	104,600	.25	26,150
211.198	4,184	5	20,920	1	20,920
211.204	4,184	10	41,840	.5	20,920
Total					848,625

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov.*

Dated: April 17, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–9157 Filed 4–25–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0239]

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on regulations for in vivo radiopharmaceuticals used for diagnosis and monitoring.

DATES: Submit written comments on the collection of information by June 27, 2008.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each collection of information, including each extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring—(OMB Control Number 0910–0409—Extension)

FDA is requesting OMB approval of the information collection requirements contained in 21 CFR 315.4, 315.5, and 315.6. These regulations require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical.

In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), FDA published a final rule in the **Federal Register** of May 17, 1999 (64 FR 26657) amending its regulations by adding provisions that clarify the agency's evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The regulation describes the kinds of indications of diagnostic radiopharmaceuticals and some of the criteria that the agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and section 351 of the PublicHealth

Service Act (the PHS Act) (42 U.S.C. 262). Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The rule clarifies existing FDA requirements for approval and evaluation of drug and biological products already in place under the authorities of the act and the PHS Act. The information, which is usually submitted as part of a new drug application or biologics license application or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50). Under 21 CFR part 315, information required under the act and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals still needs to be reported.

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA receives, the agency estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the regulations. Based on FDA's experience, the agency estimates the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulation does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (collection of information approved by OMB under OMB control number 0910–0001). In fact, clarification in these regulations of FDA's standards for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well established, low risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies. Table 1 of this document contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
315.4, 315.5, and 315.6	2	1	2	2,000	4,000
Total					4,000

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: April 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–9159 Filed 4–25–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support the World Health Organization International Programme on Chemical Safety

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

I. Funding Opportunity Description

The Food and Drug Administration (FDA) is announcing its intention to receive and consider a single source application for the award of a cooperative agreement (U01), a new Sole Source, Competitive Continuation in fiscal year 2008 to the World Health Organization (WHO) International Programme on Chemical Safety (IPCS). This Request for Applications (RFA) is supported by the Center for Food Safety and Applied Nutrition (CFSAN) and the Center for Veterinary Medicine (CVM). This program is described in the Catalog of Federal Domestic Assistance No. 93.103 under RFA Number: RFA–FD–08–002. A copy of the complete RFA can also be viewed on CFSAN's Web site (*http://www.cfsan.fda.gov*) and on CVM's Web site (*http://www.fda.gov/cvm*).

This RFA will strengthen and allow WHO to continue their work in important international risk assessment and standard setting activities for food ingredients, contaminants, and veterinary drug residues in food. WHO/IPCS is an umbrella organization that provides for timely international collaboration on multinational cooperative activities. Various programs under the WHO/IPCS, such as the Joint Food and Agriculture (FAO)/WHO Expert Committee on Food Additives (JECFA), significantly contribute to internationally-recognized, science-based risk assessments of food additives, contaminants, and residues of veterinary drugs in foods. The Codex Alimentarius Commission (CAC) relies on JECFA's scientific advice when establishing international standards for foods. The WHO/IPCS also supports

FAO/WHO Expert Consultations on risk assessments for emerging or cross-cutting issues (e.g., non-dioxin-like polychlorinated biphenyls (PCBs), allergenicity of foods derived from biotechnology, risk-benefit assessment of the use of active chlorine species in food processing). The evaluations that are produced by these Expert Consultations provide a sound scientific basis for Codex's standard-setting activities that contribute to improved public health and food safety worldwide.

The following activities are to be supported by this cooperative agreement:

1. Schedule, plan, and conduct appropriate work groups, consultations, and committee meetings, which have emphasis on, but are not limited to, food additives, contaminants, and residues of veterinary drugs in food.

2. Identify advisers, and prepare written working papers summarizing the data on substances under consideration.

3. Prepare written working papers and technical documents for the JECFA, and for the FAO/WHO Expert Consultations related to food additives, contaminants, and residues of veterinary drugs in food.

II. Award Information

A. Mechanism of Support

This funding opportunity will use a cooperative agreement award mechanism. In the cooperative agreement mechanism, the Project Director/Principal Investigator (PD/PI) retains the primary responsibility and dominant role for planning, directing, and executing the proposed project, with NIH staff being substantially involved as a partner with the Principal Investigator.

Receipt Date: Within 45 days after the publication of this announcement in the **Federal Register**.

B. Funds Available

The estimated amount of funds available for support of this cooperative agreement is $120,000 (direct and indirect costs) for fiscal year 2008. It is anticipated that an additional 4 years of support will be available at $90,000 per year, depending on annual appropriations and successful performance.

This award will be funded based on the quality of the application received and is subject to the availability of Federal funds to support the project. In addition, if a cooperative agreement is awarded, the grantee will be informed of any additional documentation that should be submitted to the FDA.

III. Eligibility Information

Eligible Institutions

Competition is limited to the WHO/IPCS because, as the parent organization of the JECFA, it is solely responsible for providing scientific advice, including risk assessments, to the CAC on matters related to food additives, contaminants, and residues of veterinary drugs in food. Thus, the programs under the IPCS are unique. It is essential that the WHO/IPCS be able to provide science-based risk assessments that are of the highest integrity, as these assessments form the basis of international standards that both protect public health and promote fair trade practices. Awarding this cooperative agreement to the WHO/IPCS will ensure that JECFA's risk assessments are science-based, will enhance the safe use of food additives, will ensure that residues of veterinary drugs in imported foods are safe, and will help to ensure that food sold in the United States is safe.

IV. Application and Submission Information

The PHS 398 application instructions are available at *http://grants.nih.gov/grants/funding/phs398/phs398.html* in an interactive format. Applicants must use the currently approved version of the PHS 398. For further assistance contact Grants Info at 301–435–0714, e-mail: *GrantsInfo@nih.gov*.

Telecommunications for the hearing impaired: TTY 301–451–0088.

A. Content and Form of Application Submission

Applications must be prepared using the most current PHS 398 research grant application instructions and forms. Applications must have a Dun & Bradstreet Data Universal Numbering System (DUNS) number as the universal identifier when applying for Federal grants or cooperative agreements. The DUNS number can be obtained by calling 866–705–5711 or through the Web site at *http://www.dnb.com/us/*. The DUNS number should be entered on line 11 of the face page of the PHS 398 form.

The title and number of this funding opportunity must be typed on lines 1 and 2 of the face page of the application form and the YES box must be checked.

Required 398 Application Components must be submitted in Non Modular format as follows:

Form Page 1: Face Page; Form Page 2: Description, Performance Sites, Key Personnel, Other Significant Contributors; Form Page 3: Table of Contents; Form Page 4: Detailed Budget for Initial Budget Period: Form Page 5: Budget for Entire Proposed Period of Support: Biographical Sketch Format Page; Resources Format Page; Checklist Form Page: Personal Data Form Page; Other Support Format Page; Personnel Report Format Page.

B. Sending an Application to FDA

The application must be prepared using the forms found in the PHS 398 instructions for preparing a research grant application. Applications will be accepted in hard copy or electronically at *http://www.grants.gov*. A signed hard copy original application and three signed photocopies should be sent to:

Food and Drug Administration/OAGS/GAAT/Gladys M. Bohler, 5630 Fishers Lane, rm. 2105, HFA–500, Rockville, MD 20857 (U.S. Postal Service Express or regular mail).

FDA will also accept the application for this program electronically via *http://www.grants.gov*. The applicant is encouraged to apply electronically by visiting the Web site *http://www.grants.gov* and following instructions under "Apply for Grants." The required application, SF 424 (R&R) can be completed and submitted online. The package should be labeled, "Response to RFA FD–08–002." If you experience technical difficulties with your online submission you should contact Gladys M. Bohler by telephone at 301–827–7168 or by e-mail at *gladys.melendez-bohler@fda.hhs.gov*

Information about submitting an application electronically can be found on the *http://www.grants.gov* Web site.

PHS 398 Research Plan Component Sections via Grants.gov

Items 2 through 5 of the PHS 398 Research Plan component are limited to 25 pages. While each section of the Research Plan component needs to be uploaded separately as a PDF attachment, applicants are encouraged to construct the Research Plan component as a single document, separating sections into distinct PDF attachments just before uploading the files. This approach will enable applicants to better monitor formatting requirements such as page limits. All attachments must be provided to FDA in PDF format, filenames must be included with no spaces or special characters, and a pdf extension must be used.

In order to apply electronically the applicant must have a DUNS number and register in the central contractor registration (CCR) database.

C. Intergovernmental Review

This initiative is not subject to intergovernmental review under the terms of Executive Order 12372.

D. Other Submission Requirements and Information

Several additional separate actions are required before an applicant institution/organization can submit an application.

Organizational DUNS—As of October 1, 2003, applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number applicants should go to *http://www.grants.gov/RequestaDUNS.*

Central Contractor Registration—Applicants must register with the CCR database. This database is a government-wide warehouse of commercial and financial information for all organizations conducting business with the Federal Government. The preferred method for completing a registration is at *http://www.ccr.gov.* This Web site provides a CCR handbook with detailed information on data you will need prior to beginning the online preregistration as well as steps to walk you through the registration process. You must have a DUNS number to begin your registration. For foreign entities the Web site is *http://www.grants.gov/RequestaDUNS.gov.* In order to access Grants.gov an applicant will be required to register with the Credential Provider. Information about this is available at *https://apply.grants.gov/OrcRegister.*

A copy of the complete RFA can also be viewed on FDA's Center for Food Safety and Applied Nutrition Web site at *http://www.cfsan.fda.gov/list.html.*

Foreign Applications (Non-domestic (non-U.S.) Entity)

- Indicate how the proposed project has specific relevance to the mission and objectives of FDA and has the potential for significantly advancing sciences in the United States.
- Research grant applications from foreign or international organizations may not be funded unless approved by the National Cancer Institute National Advisory Board.

IV. Agency Contacts

A. Scientific/Research Contacts

For issues regarding the programmatic aspects of this document, contact Susan E. Carberry at 301–436–1269 or by e-mail: *susan.carberry@fda.hhs.gov.*

B. Financial or Grants Management Contacts

For issues regarding the administrative and financial management aspects, contact Gladys Melendez-Bohler at 301–827–7168 or by e-mail: *gladys.melendez-bohler@fda.hhs.gov.*

Dated: April 22, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–9251 Filed 4–25–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0233]

Draft Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion and Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion and Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)" dated April 2008. This draft guidance is intended for establishments that collect Whole Blood and blood components intended for transfusion and establishments that make donor eligibility determinations for donors of human cells, tissues, and cellular and tissue-based products (HCT/Ps). The document provides recommendations for testing of donations of Whole Blood and blood components and HCT/P donor specimens for West Nile Virus (WNV) using an FDA-licensed donor screening assay. FDA believes that the use of a licensed nucleic acid test (NAT) will reduce the risk of transmission of WNV, and therefore recommend use of a licensed NAT to screen donors of Whole Blood and blood components intended for transfusion and for testing donors of HCT/Ps for infection with WNV. FDA recommends the use of licensed NAT testing for WNV within 6 months after a final guidance is issued.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by July 28, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Industry: Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Donors of Whole Blood and Blood Components Intended for Transfusion and Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)" dated April 2008. This draft guidance is intended for establishments that collect Whole Blood and blood components intended for transfusion and establishments that make donor eligibility determinations for donors of human cells, tissues, and cellular and tissue-based products HCT/Ps. The document provides recommendations for testing of donations of Whole Blood and blood components and HCT/P donor specimens for WNV using an FDA-licensed donor screening assay. FDA believes that the use of a licensed NAT will reduce the risk of transmission of WNV, and therefore recommend use of a licensed NAT to screen donors of Whole Blood and blood components intended for transfusion and for testing donors of HCT/Ps for infection with WNV. FDA recommends the use of licensed NAT testing for WNV within 6 months after a final guidance is issued.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under 0910–0014; 21 CFR part 601 have been approved under 0910–0338; CFR part 606 have been approved under 0910–0116; and 21 CFR part 7, subpart C, have been approved under 0910–0249.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.regulations.gov*.

Dated: April 22, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–9253 Filed 4–25–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0226]

Risk Communication Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Risk Communication Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on effective risk communication.

Date and Time: The meeting will be held on May 15, 2008, from 8 a.m. to 5 p.m. and May 16, 2008, from 8 a.m. to 2 p.m.

Addresses: Submit electronic comments and information to *http://www.regulations.gov* . Comments are to be identified with the docket number found in brackets in the heading of this document. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, by close of business on June 16, 2008. All comments received will be posted without change, including any personal information provided. Comments received on or before May 8, 2008, will be provided to the committee before or at the meeting; comments received after that time will still be considered in preparing the report that was specified in the FDA Amendments Act of 2007 (see docket and committee background for further information).

Location: Hilton Washington DC/ Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD, 20852–1699.

Contact Person: Lee L. Zwanziger, Office of the Commissioner, Office of Planning (HFP–60), Food and Drug Administration, 5600 Fishers Lane (for express delivery: rm. 15–22), Rockville, MD, 20857, 301–827–2895, FAX: 301–827–5340, Food and Drug Administration, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732112560. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On May 15, 2008, the committee will meet for presentations and discussion of direct-to-consumer (DTC) advertising, including how it relates to communicating to subsets of the general population, such as the elderly, children, and racial and ethnic minority communities, and increased access to health information and decreased health disparities for these populations. On May 16, 2008, the committee will discuss studying the appropriateness of including, in televised DTC ads, a statement encouraging consumers to report negative side effects of prescription drugs to MedWatch, as is currently required for print DTC prescription drug ads.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 8, 2008. Written submissions may also be made to the docket at the address above (see the docket for further information on topics of particular interest for comment in connection with this meeting). Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on May 15th and between 10:30 a.m. and 11:30 a.m. on May 16th. Those desiring to make formal oral presentations should notify the contact person on or before May 8,

2008, and should submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 9, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lee L. Zwanziger at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 18, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–9177 Filed 4–25–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0238]

Determination That TAPAZOLE Tablets and 18 Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the 19 drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to the drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6308, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved or (2) whenever a listed drug is voluntarily withdrawn from sale, and ANDAs that refer to the listed drug have been approved. Section 314.161(d) provides that if FDA determines that a listed drug was removed from sale for safety or effectiveness reasons, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed. (As requested by the applicants, FDA withdrew approval of NDA 7–517 for TAPAZOLE Tablets in the **Federal Register** of November 7, 2007 (72 FR 62858), NDA 18–754 for ORUDIS Capsules in the **Federal Register** of June 16, 2006 (71 FR 34940), NDA 18–062 for PROVENTIL Syrup in the **Federal Register** of March 4, 2005 (70 FR 10651), and NDA 8–604 for PHENERGAN VC Syrup in the **Federal Register** of May 5, 2004 (69 FR 25124).

NDA No.	Drug	Applicant
7–517	TAPAZOLE (methimazole) Tablets, 5 milligrams (mg) and 10 mg	King Pharmaceuticals, Inc., 501 Fifth St., Bristol, TN 37620
7–935	PHENERGAN (promethazine hydrochloride (HCl)) Tablets, 25 mg	Wyeth Pharmaceuticals,Inc., P.O. Box 8299, Philadelphia, PA 19101–8299
8–306	PHENERGAN with Codeine (codeine phosphate and promethazine HCl) Syrup, 6.25 mg/5 milliliters (mL), 10 mg/5 mL	ANI Pharmaceuticals, Inc., 7131 Ambassador Rd., Woodlawn, MD 21244

NDA No.	Drug	Applicant
8–306	PHENERGAN VC with Codeine (codeine phosphate; phenylephrine HCl; promethazine HCl) Syrup, 5 mg/5 mL; 6.25 mg/5 mL; 10 mg/5 mL	Do.
8–381	PHENERGAN FORTIS (promethazine HCl) Syrup, 25 mg/5 mL	Do.
8–381	PHENERGAN Plain (promethazine HCl) Syrup, 6.25 mg/5 mL	Do.
8–604	PHENERGAN VC (phenylephrine HCl; promethazine HCl) Syrup, 5 mg/5 mL; 6.25 mg/5 mL	Do.
9–000	CAFERGOT (caffeine; ergotamine tartrate) Suppository, 100 mg/2 mg	Novartis Pharmaceuticals Corp., One Health Plaza, East Hanover, NJ 07936–1080
9–509	ARAMINE (metaraminol bitartrate) Injection, equivalent to (EQ) 10 mg base/mL	Merck & Co., Inc., 770 Sumneytown Pike, BLA–20, P.O. Box 4, West Point, PA 19486
11–265	PHENERGAN with Dextromethorphan (dextromethorphan hydrobromide; promethazine HCl) Syrup, 6.25 mg/5 mL; 15 mg/5 mL	ANI
11–459	VISTARIL (hydroxyzine pamoate EQ hydroxyzine HCl) Capsules, 100 mg	Pfizer, Inc., 235 East 42nd St., New York, NY 10017
11–689	PHENERGAN (promethazine HCl) Suppository, 50 mg	Wyeth
12–125	CARBOCAINE (mepivacaine HCl) Injection, 3 % (30 mg/mL/1.8 mL cartridge)	Eastman Kodak Co., Dental Products, 343 State St., Rochester, NY 14612–1122
18–062	PROVENTIL (albuterol sulfate) Syrup, EQ 2 mg base/5mL	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033
18–152	ESKALITH CR (lithium carbonate) Extended Release Tablets, 450 mg	GlaxoSmithKline, One Franklin Plaza, P.O. Box 7929, Philadelphia, PA 19101–7929
18–200	MIDAMOR (amiloride HCl) Tablets, 5 mg	Merck
18–201	MODURETIC 5–50 (amiloride HCl; hydrochlorothiazide) Tablets, 5 mg/50 mg	Merck
18–754	ORUDIS (ketoprofen) Capsules, 25 mg, 50 mg, and 75 mg	Wyeth
20–460	CYTOVENE (ganciclovir) Capsules, 250 mg and 500 mg	Roche Laboratories, Inc., 340 Kingsland St., Nutley, NJ 07110–1199

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list the drug products listed in this document in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs for the products may also be approved by the agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: April 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–9161 Filed 4–25–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 73 FR 12742–12744 dated March 10, 2008).

This notice reflects organizational changes in the Health Resources and Services Administration. Specifically, this notice moves the Office of Management (RS) under the Immediate

Office of the Administrator (RA) and transfers the Division of Procurement Management (RS4) from the Office of Management (RS) to the Office of Financial Management (RB). The notice also creates the Office of Commissioned Corps Affairs (RAH2) within the Office of International Health Affairs (RAH).

Chapter RA—Office of the Administrator

Section RA–10, Organization

Delete in its entirety and replace with the following:

The Office of the Administrator (RA) is headed by the Administrator, Health Resources and Services Administration, who reports directly to the Secretary. The OA includes the following components:

(1) Immediate Office of the Administrator (RA);
(2) Office of Equal Opportunity and Civil Rights (RA2);
(3) Office of Planning and Evaluation (RA5);
(4) Office of Communications (RA6);
(5) Office of Minority Health and Health Disparities (RA9);
(6) Office of Legislation (RAE);
(7) Office of Information Technology (RAG);
(8) Office of International Health Affairs (RAH); and
(9) Office of Management (RAM).

Section RA–20, Functions

(1) Delete the functional statement for the Division of Procurement Management (RS4) and transfer the function to the Office of Financial Management (RB); (2) delete the functional statement for the Office of International Health Affairs and replace in its entirety; and (3) delete the functional statement for the Office of Management (RS) and replace in its entirety.

Office of International Health Affairs (RAH)

(1) Provides leadership, coordination, and advancement of international health activities relating to health care services for vulnerable and at-risk populations and for training programs for health professionals; (2) provides leadership within HRSA for the support for international health and coordinates policy development with the Office of Global Health Affairs (OGHA) and other Departmental agencies; (3) serves as a focal point within HRSA for the implementation of the Secretary's vision for a transformed commissioned corps and will ensure that HRSA's current and future force is better-equipped to meet the public health needs and necessities for the future; and (4) oversees the day-to-day management and administration of HRSA's commissioned corps activities.

Office of Commissioned Corps Affairs (RAH2)

The Office carries out the following functions to the extent authorized by laws within the authority of HRSA. Specifically, the OCCA: (1) Oversees the day-to-day management and administration of HRSA's commissioned corps operational functions; (2) ensures HRSA's commissioned corps is ready to respond to public health challenges and emergencies identified by the Secretary; (3) in conjunction with the Office of Force Readiness and Deployment, ensures the readiness and deployment capability of officers assigned to HRSA; (4) in partnership with the Office of the Surgeon General (OSG), Office of Commissioned Corps Force Management (OCCFM), and the Office of Commissioned Corps Operations (OCCO) serves on inter-agency work groups and on government and non-government work groups and programs designed to further the goals of transformation; and (5) advises the HRSA Administrator on strategies to maximize the participation of the Agency and its components in transformation programs and activities.

Office of Management (RAM)

Provides Agency-wide leadership, program direction, and coordination to all phases of administrative management. Specifically, the Office of Management: (1) Provides management expertise and staff advice and support to the Administrator in program and policy formulation and execution; (2) provides administrative management services including human resources, procurement, property, space planning, safety, physical security, and general administrative services; (3) conducts Agency-wide workforce analysis studies and surveys; (4) plans, directs, and coordinates the Agency's activities in the areas of human resources management, including labor relations, personnel security, performance and alternative dispute resolution; (5) coordinates the development of policy and regulations; (6) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; (7) directs and coordinates the Agency's organization, functions and delegations of authority programs; (8) manages the Continuity of Operations (COOP) program for the Offices supported by the Office of Management; (9) administers the Agency's Executive Secretariat and committee management functions; (10) provides staff support to the Agency Chief Travel Official; and (11) provides staff support to the Deputy Ethics Counselor.

Division of Management Services (RAM1)

(1) Provides administrative management services including procurement, property, space planning, safety, physical security, and general administrative services; (2) ensures implementation of statutes, Executive Orders, and regulations related to official travel, transportation, and relocation; (3) provides oversight for the HRSA travel management program involving use of travel management services/systems, passenger transportation, and travel charge cards; (4) provides planning, management and oversight of all interior design projects, move services and furniture requirements; (5) develops space and furniture standards and related policies; (6) provides analysis of office space requirements required in supporting decisions relating to the acquisition of commercial leases and manages the furniture inventory; (7) provides advice, counsel, direction, and support to employees to fulfill the Agency's primary safety responsibility of providing a workplace free from recognizable safety and health concerns; (8) manages, controls, and/or coordinates all matters relating to mail management within HRSA, including developing and implementing procedures for the receipt, delivery, collection, and dispatch of mail; (9) maintains overall responsibility for the HRSA Forms Management Program that includes establishing internal controls to assure conformity with Departmental policies and standards, including adequate systems for reviewing, clearing, costing, storing and controlling forms; and (10) manages the Continuity of Operations (COOP) program for the Offices supported by the Office of Management.

Division of Workforce Management (RAM2)

(1) Conducts Agency-wide workforce analysis studies and surveys; (2) develops comprehensive workforce strategies that meet the requirements of the President's Management Agenda, programmatic needs of HRSA, and the governance and management needs of HRSA leadership; (3) evaluates employee development practices to develop and enhance strategies to ensure HRSA retains a cadre of public health professionals and reduces risks associated with turnover in mission

critical positions; (4) provides advice and guidance for the establishment or modification of organization structures, functions, and delegations of authority; (5) manages ethics and personnel security programs; (6) administers the Agency's performance management programs, including the SES Performance Review Board; (7) manages quality of work life, flexiplace, and incentive and honor awards programs; (8) coordinates with the service provider the provision of human resources management, working with the service provider to communicate human resources requirements and monitor the provider's performance; (9) directs and serves as a focal point for the Agency's intern and mentoring programs; (10) manages the Alternative Dispute Resolution Program; and (11) provides support and guidance on human resources issues for the Offices supported by the Office of Management.

Division of Policy Review and Coordination (RAM3)

(1) Advises the Administrator and other key Agency officials on cross-cutting policy issues and assists in the identification and resolution of cross-cutting policy issues and problems; (2) establishes and maintains tracking systems that provide Agency-wide coordination and clearance of policies, regulations and guidelines; (3) plans, organizes and directs the Agency's Executive Secretariat with primary responsibility for preparation and management of written correspondence; (4) arranges briefings for Department officials on critical policy issues and oversees the development of necessary briefing documents; (5) administers administrative early alert system for the Agency to assure senior Agency officials are informed about administrative actions and opportunities; (6) coordinates the preparation of proposed rules and regulations relating to Agency programs and coordinates Agency review and comment on other Department regulations and policy directives that may affect the Agency's programs; (7) manages and maintains a records management program for the Agency; (8) oversees and coordinates the Agency's committee management activities; (9) coordinates the review and publication of Federal Register Notices; (10) provides advice and guidance for the establishment or modification of administrative delegations of authority; (11) contributes to the analysis, development and implementation of Agency-wide administrative policies through coordination with relevant Agency program components and other related sources; and (12) provides advice and guidance for the establishment or modification of program delegations of authority.

Section RA–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

Chapter RB—Office of Financial Management

Section RB–10, Organization

Delete in its entirety and replace with the following:

The Office of Financial Management (RB) is headed by the Chief Financial Officer who reports directly to the Administrator, Health Resources and Services Administration. The Office of Financial Management includes the following components:

(1) Office of the Chief Financial Officer (RB);

(2) Division of Budget (RB1);

(3) Division of Financial Policy and Controls (RB2); and

(4) Division of Procurement Management (RB3).

Section RB–20, Functions

Delete the functional statement for the Office of Financial Management and replace in its entirety.

Office of the Chief Financial Officer (RB)

(1) Provides leadership and coordination in the development and administration of the Health Resources and Services Administration's (HRSA) financial management policies; (2) develops budget submissions for HRSA; (3) collaborates with the HRSA Office of the Administrator (OA) in the development and implementation of long-range program and financing plans; (4) participates in budget reviews and hearings; (5) manages HRSA's system of internal budgetary planning and control of funds; (6) develops and implements HRSA-wide budgetary, financial systems and procedures; (7) conducts HRSA-wide FTE tracking; (8) prepares all applicable financial reports; (9) analyzes data and makes recommendations to assure effective safeguards are in place to prevent fraud, waste and abuse; (10) identifies or conducts special financial management training programs for OCFO and HRSA staff components; (11) plans, directs, and coordinates the Agency's activities in the areas of procurement management; (12) plans, directs and coordinates the Agency's competitive sourcing program; (13) manages the intra- and interagency agreements process; and (14) maintains liaison with the Department of Health and Human Services (HHS), Office of Management and Budget, Appropriations Committees, and other Government organizations on financial management matters.

Division of Budget (RB1)

(1) Reviews funds control measures to assure that no program, project or activity of HRSA obligates or disburses funds in excess of appropriations or obligates funds in violation of authorized purposes; (2) provides advice and assistance to senior HRSA management to verify the accuracy, validity, and technical treatment of budgetary data in forms, schedules, and reports, or the legality and propriety of using funds for specific purposes; (3) maintains primary liaison to expedite the flow of financial management work and materials within the Agency and/or between Agency components and HHS, OMB, and congressional staff; (4) provides overall financial-based analyses and fiduciary review for senior HRSA management in order to assure appropriate workforce planning, funds control guidance, and analytical technical assistance in all phases of the budgetary process; and (5) develops the long-range program and financial plan for the Agency in collaboration with the Office of Planning and Evaluation, and other administrative Agency components.

Division of Financial Policy and Controls (RB2)

(1) Provides leadership to define the control environment with senior HRSA management to perform risk assessments identifying the most significant areas necessary for internal control placements; (2) maintains overall responsibility for policies, procedures, monitoring of internal controls and systems related to payment and disbursement activities; (3) coordinates the development and improvement of HRSA's financial systems with the UFMS; (4) samples obligation documents and payment requests from a variety of private sector and Government sources to determine the validity and legality of the requests; (5) compiles and submits a variety of cash management and travel reports required by the Department of the Treasury and various other outside agencies; (6) serves as liaison with all HRSA Bureau/Office components and outside customers to provide financial information, resolve problems, and

provide information on payment and disbursement issues; (7) analyzes internal reports to provide management information on special interest topics; (8) develops needs assessment for financial management training based on Government-Wide and HHS standards; and (9) assures Treasury requirements and OMB suggestions for best practices are implemented in training plan for Agency-wide use.

Division of Procurement Management (RB3)

(1) Provides leadership in the planning, development, and implementation of policies and procedures for contracts; (2) exercises the sole responsibility within HRSA for the award and management of contracts; (3) provides advice and consultation of interpretation and application of the Department of Health and Human Services policies and procedures governing contracts management; (4) develops operating procedures and policies for the Agency's contracts programs; (5) establishes standards and guides for and evaluates contracts operations throughout the Agency; (6) coordinates the Agency's positions and actions with respect to the audit of contracts; (7) maintains liaison directly with or through Agency Bureaus or Offices with contractors, other organizations, and various components of the Department; and (8) provides leadership, guidance, and advice on the promotion of the activities in HRSA relating to procurement and material management governed by the Small Business Act of 1958, Executive Order 11625, and other statutes and national policy directives for augmenting the role of private industry, and small and minority businesses as sources of supply to the Government and Government contractors.

Section RB–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon the date of signature.

Dated: April 18, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8–9201 Filed 4–25–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Extension of a currently approved collection, OMB Number 1660–0061, No Forms.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 a continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the need to continue collecting information from individuals and States in order to provide and/or administer disaster assistance through the Federal Assistance to Individuals and Households Program (IHP).

SUPPLEMENTARY INFORMATION: Section 206(a) of the Disaster Mitigation Act of 2000 (DMA 2000) (Public Law 106–390) consolidated the "Temporary Housing Assistance" and the "Individual and Family Grant Programs" into a single program called "Federal Assistance to Individuals and Households" (IHP) at section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended). To implement this consolidation, which is intended to streamline the provision of assistance to disaster victims, FEMA published an interim final rule (67 FR 61446) which became effective on September 30, 2002. Pursuant to this rule applicants are able to request approval of late registrations, request continued assistance, and appeal program decisions. Similarly, States can partner with FEMA for delivery of disaster assistance under the "Other Needs" provision of the IHP through Administrative Option Agreements and Administration Plans addressing the level of managerial and resource support necessary.

Collection of Information

Title: Federal Assistance to Individuals and Households Program (IHP).

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0061.

Form Numbers: No Forms.

Abstract: The Federal Assistance to Individuals and Households Program (IHP) enhances applicants' ability to request approval of late applications, request continued assistance, and appeal program decisions. Similarly, it allows States to partner with FEMA for delivery of disaster assistance under the "Other Needs" provision of the IHP through Administrative Option Agreements and Administration Plans addressing the level of managerial and resource support necessary.

Affected Public: Individuals and Households; State, Local or Tribal Governments.

Estimated Total Annual Burden Hours: 29,716 hours.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (D)= (A × B)	Total annual burden hours (C × D)
Individuals:					
Request for Approval of Late Registration	8,000	1	0.75	8,000	6,000
Request for Continued Assistance	2,000	1	0.5	2,000	1,000
Appeal of Program Decision (to include review and use of supplemental guidance	30,000	1	0.75	30,000	22,500
States:					
Review of Administrative Option Agreement for the Other Needs provision of IHP	56	1	3	56	168

ANNUAL BURDEN HOURS—Continued

Project/activity (survey, form(s), focus group, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (D)= (A × B)	Total annual burden hours (C × D)
Development of State Administrative Plan for the Other Needs provision of IHP	16		3	16	48
Total				40,072	29,716

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is $173,354. The estimated annual cost to the Federal Government is $855,971.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before June 27, 2008.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Lumumba Yancey, Program Analyst, (202) 212–1133 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: April 21, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–9208 Filed 4–25–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Revision of a currently approved collection, OMB Number 1660–0058, FEMA Form 90–58; FEMA Form 90–133; FEMA Form 90–32.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on a continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information collections required for Fire Management Assistance Grant Program (FMAGP) eligibility determinations, grants management, and compliance with other Federal laws and regulations.

SUPPLEMENTARY INFORMATION: FMAGP was established under Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5187, as amended by section 303 of the Disaster Mitigation Act of 2000, and authorizes the President to provide assistance to any State or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster. Title 44 CFR Part 204 specifies the information collections necessary to facilitate the provision of assistance under the Fire Management Assistance Grant Program.

Collection of Information

Title: Fire Management Assistance Grant Program.

Type of Information Collection: Revision of currently approved collection.

OMB Number: 1600–0058.

Form Numbers: FEMA Form 90–58, Request for Fire Management Assistance Declaration; FEMA Form 90–133, Request for Fire Management Assistance Subgrant; FEMA Form 90–32, Principal Advisor's Report.

Abstract: The information collection is used by both State and FEMA Regional staff to facilitate the declaration request and grant administration processes of FMAGP, as well as end of year internal reporting of overall declaration requests and estimated grant outlays. When a State's request for a fire management assistance declaration is denied, the Governor of a State or Governor's Authorized Representative (GAR) may appeal the decision in writing. Applicants are required to notify FEMA of all benefits, actual or anticipated, received from other sources for the same loss for which they are applying to FEMA for assistance. Notification can be accomplished in a letter, accompanied by supporting documentation. Training Sessions are provided primarily for Regional staff and State officials who administer FMAGP for the purpose of instructing and updating attendees on the laws, regulations, policies, and process that govern the program, as well as to discuss any program issues. A State Administrative Plan for FMAGP must be developed annually by the State for the administration of fire management assistance grants. The plan must describe the procedures for the administration of FMAGP, designate the State agency to serve as Grantee, and ensure State compliance with the provisions of law and regulation applicable to fire management assistance grants. Federal assistance under Section 420 of the Stafford Act must be provided in accordance with the FEMA-State Agreement for FMAGP. The State Governor and the Regional Director must sign the Agreement, which contains the necessary terms and conditions consistent with the provisions of applicable laws, executive

orders, and regulations, and specifies the type and extent of Federal assistance to be provided. The Agreement is an annual agreement applicable only for the calendar year in which it is signed.

Affected Public: State, local, or Tribal Government.

Estimated Total Annual Burden Hours: 631.5 Hours.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
FEMA-State Agreement and Amendment	18	1	0.083	18	1.5
State Administrative Plan for Fire Management Assistance	18	1	8	18	144
FEMA Form 90–58, Request for Fire Management Assistance Declaration	18	4	1	72	72
FEMA Form 90–133, Request for Fire Management Assistance Subgrant (Locals Only)	18	4	0.167	72	12
FEMA Form 90–32, Principal Advisor's Report	18	4	0.333	72	24
Appeals	18	4	1	72	72
Duplication of Benefits	18	4	1	72	72
Training Sessions	18	1	13	18	234
Total				414	631.5

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is $16, 949.46. The estimated annual cost to the Federal Government is $387,795.32.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before June 27, 2008.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Clifford Brown, Program Specialist, Public Assistance Division, (202) 646–4136 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: April 21, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–9223 Filed 4–25–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved collection, OMB No. 1660–0044, FEMA Form 95–56.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the need to conduct a continuous evaluation of emergency management training programs as it relates to the knowledge and skills gained by participants through various courses.

SUPPLEMENTARY INFORMATION: Title 44 CFR part 360 implements the Emergency Management Training Program, designed to increase States' emergency management capabilities through training of personnel with responsibilities over preparedness, response, and recovery from all types of disasters. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288) as amended, authorizes training programs for emergency preparedness for State, local and tribal government personnel. In response to the Government Performance and Results Act (GPRA), the information obtained from the Emergency Management Institute "Follow-up Evaluation Survey," will be a follow-up tool used to evaluate the knowledge and/or skills participants obtained at EMI during training courses, and to improve Emergency Management Institute courses. The information is critical to determine if the Emergency Management Institute is meeting strategic goals and objectives established by FEMA in order to fulfill its mission.

Collection of Information

Title: Emergency Management Institute Follow-up Evaluation Survey.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0044.

Form Numbers: FEMA Form 95–56, Follow-Up Evaluation Survey.

Abstract: FEMA Form 95–56 is a continuous self-assessment qualitative tool used to identify trainees'

knowledge and skills gained through emergency management-related courses and the extent to which they have been beneficial and applicable in the conduct of their official positions. The information collected is primarily used to review course content and offerings for program planning and management purposes. Results are combined with other program metrics to document performance per GPRA mandates.

Affected Public: Individuals or households, State, local or tribal governments.

Estimated Total Annual Burden Hours: 950 burden hours.

ANNUAL HOUR BURDEN

Data collection activity/instrument	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
FF 95–56	3800	1	.25	3800	950
Total				3800	950

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is estimated to be $22,344 annually. The estimated annual cost to the Federal Government is $26,480.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before June 27, 2008.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Jennifer Ogle, Training Specialist, Emergency Management Institute, (301) 447–1585 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: April 21, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–9238 Filed 4–25–08; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1751–DR]

Arkansas; Amendment No. 4 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 Arkansas (FEMA–1751–DR), dated March 26, 2008, and related determinations.

EFFECTIVE DATE: April 21, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas 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 March 26, 2008.

Conway, Garland, and Newton Counties for Individual Assistance (already designated for Public Assistance.)

Hot Spring and Washington Counties for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

Arkansas County for Public Assistance.

Pulaski County for Public Assistance (already designated for Individual Assistance.)

(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; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–9228 Filed 4–25–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3285–EM]

Wisconsin; Amendment No. 1 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 Wisconsin (FEMA–3285-EM), dated March 19, 2008, and related determinations.

EFFECTIVE DATE: April 18, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency

Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Wisconsin 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 March 19, 2008.

Kenosha, Racine, and Waukesha Counties 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; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–9229 Filed 4–25–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–12]

Notice of Proposed Information Collection: Comment Request; Multifamily Insurance Benefits Claims Package

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date: June 27, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Steven A. Trojan, Insert your Position Title Here, Office of Financial Service, Multifamily Insurance Operations Division, Multifamily Claims Branch, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2823 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

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 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 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: Multifamily Insurance Benefits Claims Package.

OMB Control Number, if applicable: 2502–0418.

Description of the need for the information and proposed use: The claims package requests from the mortgagee the necessary fiscal data required for HUD to determine the insurance owned to mortgage lenders that filed an insurance claim. When terms of a multifamily contract are breached or when a mortgagee meets conditions stated within the multifamily contact for an automated assignment, the holder of the mortgage may file for insurance benefits. The law, which supports this action, is statute 12 U.S.C. 1713(g) and Title II, Section 207(g) of the National Housing Act. This Act provides in part that "* * *" the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of (1) All rights and interest arising under the mortgage so in default; (2) all claims of the mortgagee against the mortgagor or others, arising under the mortgage transaction; (3) all policies of title or other insurance or surety bonds or guaranties and any or all claims there under; (4) any balance of the mortgage loan not advanced to the mortgagor; (5) any cash or property held by the mortgagee, or to which it is entitled, as deposits made for account of the mortgagor and which have been applied in reduction of the principal of the mortgage indebtedness; and (6) all records, documents, books, papers and accounts relating to the mortgage transaction." These provisions are further spelled out in 24 CFR 207 Subpart B, Contract Rights and Obligations. To receive these benefits, the mortgagee must prepare and submit to HUD the Multifamily Insurance Benefits Claims Package.

Agency form numbers, if applicable: HUD–2742, 2744–A. 2744–B, 2744–C, 2744–D, and 2744–E.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 497; the number of respondents is 118 generating approximately 118 annual responses; the frequency of response is on occasion, and the estimated time needed to prepare the response varies from 15 minutes to 1½ hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 18, 2008.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–9130 Filed 4–25–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–11]

Notice of Proposed Information Collection: Comment Request; Certification of Multifamily Housing Compliance With State and Local Housing Codes

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date:* June 27, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Angie Scott Hamilton, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Room 6180, Washington, DC 20410, telephone number (202) 402–2601 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

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 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 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: Purchaser's Certification of Compliance with State and Local Housing Laws and Requirements.

OMB Control Number, if applicable: 2502–0559.

Description of the need for the information and proposed use: This information collection will be used by HUD to ensure that all projects owned by potential purchasers are in compliance with state and local housing codes in the same locality of the HUD-owned project to be purchased.

Agency form numbers, if applicable: HUD–9840.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of respondents is estimated to be 14,758; the frequency of responses is 1; the estimated number of responses is 10; the estimated time to prepare form is approximately 15 minutes per response, and the total annual burden hours requested is approximately 3 hours.

Status of the proposed information collection: This is an extension of an already approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 18, 2008.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–9131 Filed 4–25–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–24]

Use Restriction Agreement Monitoring and Compliance

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.

This information is necessary for HUD to ensure that owners of certain multifamily housing projects comply with use restriction requirements once the mortgage agreement is terminated. The information is also used to monitor owner compliance with the Use Restriction Agreement provisions. This information is also monitored by HUD (via form HUD–90075) to ensure compliance with the executed and recorded Use Agreement.

DATES: *Comments Due Date: May 28, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Use Restriction Agreement Monitoring and Compliance.

OMB Approval Number: 2502–NEW.

Form Numbers: HUD–90060, HUD–90061, HUD–90065, HUD–90066, HUD–93140, HUD–93142, HUD–93143, HUD–93144, HUD–90067, HUD–90068, HUD–

90069, HUD–90070 HUD–93150, HUD–93155, HUD–90075.

Description of the Need for the Information and Its Proposed Use

This information is necessary for HUD to ensure that owners of certain multifamily housing projects comply with use restriction requirements once the mortgage agreement is terminated. The information is also used to monitor owner compliance with the Use Restriction Agreement provisions. This information is also monitored by HUD (via form HUD–90075) to ensure compliance with the executed and recorded Use Agreement.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	23,154	0.117	....	0.319	....	870

Total Estimated Burden Hours: 870.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 22, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–9235 Filed 4–25–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Intent To Establish an Indian Oil Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of intent to establish an Indian Oil Valuation Negotiated Rulemaking Committee; request for nominees and comments.

SUMMARY: The Minerals Management Service (MMS) is announcing its intent to establish an Indian Oil Valuation Negotiated Rulemaking Committee (Committee). The Committee will develop specific recommendations regarding proposed revisions to the existing Indian Oil regulations for oil production from Indian leases, especially the major portion valuation requirement. The Committee will include representatives of parties who would be affected by a final rule. The MMS solicits comments on this initiative and requests interested parties to nominate representatives for membership on the Committee.

DATES: You must submit written comments and requests for membership on or before May.28, 2008.

ADDRESSES: Submit written comments to Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of this **Federal Register** notice in the "Attention" line of your comment. Also include your name and return address. If you do not receive a confirmation that we have received your e-mail, contact Ms. Hurst at (303) 231–3495.

FOR FURTHER INFORMATION CONTACT: John Barder, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3702; fax (303) 231–3755; e-mail to *John.Barder@mms.gov*. Mailing address: Minerals Management Service, Minerals Revenue Management, Compliance and Asset Management, Indian Oil and Gas Compliance and Asset Management, P.O. Box 25165, MS 396B2, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION:

I. Background

The existing rule for valuation of oil produced from Indian leases, codified at 30 CFR 206.50, was published on March 1, 1988 (53 FR 1184). Since then, many changes have occurred in the oil market. Also, concerns have arisen about the need for revised valuation methodologies to address paragraph 3(c) of standard Indian oil and gas leases, such as the major portion analysis requirement for valuation of oil production from Indian leases.

The MMS published proposed rules for Indian oil valuation in February 1998 (63 FR 7089) and in January 2000 (65 FR 403). Each of these proposed rules was subsequently withdrawn because of market changes and the passage of time. In addition, the MMS held a series of eight public meetings during 2005 to consult with Indian tribes and individual Indian mineral owners and to obtain information from interested parties. Then MMS published a third proposed rule in February 2006 (71 FR 7453). Tribal and industry commenters on the 2006 proposed rule did not agree on most issues regarding oil valuation, and none of the commenters supported the major portion provisions.

The Royalty Policy Committee Indian Oil Valuation Subcommittee evaluated the 2006 proposed rule but was unable to reach consensus about how the Department should proceed. Thus, MMS decided to make only technical amendments to the existing Indian oil valuation regulations and to convene a negotiated rulemaking committee to make specific recommendations regarding the major portion provision. On December 17, 2007, MMS published a final rule that addressed the technical amendments (72 FR 71231).

II. Statutory Provisions

The Negotiated Rulemaking Act of 1996 (NRA) (5 U.S.C. 561 et seq.); the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2, section 1 et. seq.); the Indian Mineral Development Act of 1982 (25 U.S.C. 2101–2108); 30 CFR part 206 (2007), 25 CFR part 225 (2007); and Indian oil and gas lease and agreement terms.

III. The Committee and Its Process

In a negotiated rulemaking, a proposed rule is developed by a committee composed of representatives of government and the interests that will be significantly affected by the rule. Decisions are made by "consensus."

> "[C]onsensus" means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under this subchapter, unless such committee (A) agrees to define such term to mean a general but not unanimous concurrence; or (B) agrees upon another specified definition.
>
> 5 U.S.C. 562(2)(A) and (B)

The negotiated rulemaking process is initiated by the agency's identification of interests potentially affected by the rulemaking under consideration. By this notice, MMS is soliciting comments on this action.

Following receipt of comments, MMS will establish a negotiated rulemaking

committee representing the identified interests to negotiate the provisions of a proposed rule. The MMS will be a member of the committee to represent the Federal Government's statutory mission. The committee will be chaired by a facilitator. After the committee reaches consensus on the provisions of a proposed rule, MMS will develop a proposed rule to be published in the **Federal Register**.

Section 563 of the NRA requires the head of the agency to determine that the use of the negotiated rulemaking procedure is in the public interest. In making such a determination, the agency head must consider certain factors. The MMS has determined a negotiated rulemaking is in the public interest because:

1. A rule is needed. Royalty payors have considerable difficulty in complying with the current regulations.

2. A limited number of identifiable interests will be significantly affected by the rule. Such interests are oil and gas companies who produce oil and pay royalties on Indian leases, and Indian tribes and individual Indian mineral owners who receive royalties from oil produced from Indian leases located on their lands.

3. There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the interests discussed in paragraph (2), and MMS will be able to determine that the interests are willing to negotiate in good faith to attempt to reach a consensus on provisions of a proposed rule.

4. There is a reasonable likelihood that the committee will reach consensus on a proposed rule within a fixed period of time.

5. The use of negotiated rulemaking will not unreasonably delay the development of a proposed rule if time limits are placed on the negotiation. It is anticipated that negotiation will expedite a proposed rule and ultimately the acceptance of a final rule.

6. The MMS is making a commitment that it will ensure the committee has sufficient resources to complete its work in a timely fashion.

7. The MMS, to the maximum extent possible, consistent with its statutory mission and the legal obligations of the agency, will seek to use the consensus of the committee as the basis for a proposed rule for public notice and comment.

IV. Negotiated Rulemaking Procedures

In compliance with FACA and NRA, MMS will use the following procedures and guidelines for this negotiated rulemaking. The MMS may modify them in response to comments received on this notice or during the negotiation process.

A. Committee Formation

A committee will be formed and operated in full compliance with the requirements of FACA and NRA and specifically under the guidelines of its charter.

B. Interests Involved

The MMS intends to ensure full and adequate representation of those interests that are expected to be significantly affected by the proposed rule. Under Section 562(5) of the NRA, "interest means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner." As discussed above, MMS believes the interests significantly affected are oil and gas companies who produce oil and pay royalties on Indian leases, and Indian tribes and individual Indian mineral owners who receive royalties from oil produced from Indian leases located on their lands.

C. Members

The committee should not exceed 25 members, and MMS prefers 15. The MMS will provide at least two members plus a facilitator. The facilitator will not count against the membership.

Section 568(c) of the NRA states:

> Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation in such committee, except that an agency may, in accordance with section 7(d) of the FACA, pay for a member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation, if
>
> (1) Such member certifies a lack of adequate financial resources to participate in the committee; and
>
> (2) The agency determines that such member's participation in the committee is necessary to assure an adequate representation of the member's interest.

Therefore, MMS commits to pay the travel and per diem expenses of committee members if appropriate under the NRA and the Federal travel regulations.

D. Request for Nominations

The MMS solicits nominations for appointment to membership on the committee. Members can be individuals or representatives of organizations. An organization should identify the individual who will be its representative.

Committee members need to have authorization to negotiate on behalf of their interests and be willing to negotiate in good faith. MMS interprets good faith to include: (1) A willingness to bring all issues to the table; and (2) not to discuss the issues in other forums. Good faith also includes a willingness to move away from taking adversarial positions and instead to explore openly all relevant and productive ideas that may emerge from the discussion of the committee.

Authorization for each application or nomination must include:

1. The name of the applicant or nominee and a description of the interests such person will represent;

2. A description of the person's qualifications and expertise regarding those interests;

3. Whether the participant will be seeking agency resources to participate on the committee; and

4. A written commitment of the applicant or nominee to actively participate in good faith in the negotiated rulemaking and keep all issues at the table.

E. Tentative Schedule

When MMS publishes a notice establishing the committee and appointing its members, it will include a proposed agenda and schedule for completing the work of the committee, including a date for the first meeting. The committee will agree on dates, times, and locations of future meetings. The MMS plans to terminate the committee if it does not reach consensus on the provisions of a proposed rule within 24 months of the first meeting. The committee may end earlier if the committee itself so recommends.

V. Request for Nominations and Comments

To comply with negotiated rulemaking procedures, MMS invites written comments on this initiative and nominations for the negotiated rulemaking committee. Written comments are specifically requested on the suitability of using the negotiated rulemaking procedure to develop a proposed valuation rule for oil production from Indian leases. Nominations are for all interests that could be affected by an Indian oil valuation rulemaking and must comply with paragraph IV, D, Request for Nominations, of this notice. All written comments and nominations must be sent to an appropriate address as listed in the **ADDRESSES** section of this notice.

Certification

For the above reasons, I hereby certify that the Indian Oil Valuation Negotiated Rulemaking Committee is in the public interest.

Dated: April 16, 2008.

C. Stephen Allred,

Assistant Secretary for Land and Minerals Management.

[FR Doc. E8–9248 Filed 4–25–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 12, 2008. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 13, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ALABAMA

Chambers County

Vines Funeral Home and Ambulance Service, 211 B St. SW., Lafayette, 08000434

Jefferson County

King, A.D., House, (Civil Rights Movement in Birmingham, Alabama 1933–1979 MPS) 721 12th St. Ensley, Birmingham, 08000428

Mobile County

Tanner Farmhouse, 6885 Walter Tanner Rd., Wilmer, 08000429.

ARIZONA

Pima County

Catalina American Baptist Church, 1900 N. Country Club Rd., Tucson, 08000430

ARKANSAS

Benton County

Benton County Poor Farm Cemetery, W. side NE. Young Ave. approx. 200 ft. N. of NE. Carnahan Ct., Bentonville, 08000431

Boone County

Carrollton Road—Carrollton Segment, (Cherokee Trail of Tears MPS) Co. Rd. 917, Terrapin Cr. Rd. & Dunkard Rd. between U.S. 412 & Green Hill Rd., Carrollton, 08000432

Calhoun County

Hampton Masonic Lodge Building, 115 S. 2nd St., Hampton, 08000433

Columbia County

Magnolia Commercial Historic District, Roughly bounded by Madison Ave., Calhoun St., Jackson Ave. & Union St., Magnolia, 08000435

Dallas County

Fordyce Commercial Historic District, Roughly bounded by Oak, 5th & Spring Sts. & AR 274, Fordyce, 08000436

Hempstead County

Oakhaven Historic District, 359–383 Oakhaven, Oakhaven, 08000437

Jefferson County

Pine Bluff Commercial Historic District, Roughly bounded by U.S. 65B, Walnut St., 01th Ave. & S. Alabama St., Pine Bluff, 08000438

Little River County

Ashdown Commercial Historic District, Roughly bounded by Keller, E. Main Commerce & N. Constitution Sts., Ashdown, 08000439

Miller County

Old Arkansas 2—Mayton Segment, (Arkansas Highway History and Architecture MPS) Co. Rds. 122 & 123, Garland, 08000440

GEORGIA

Chatham County

Johnson, J. Herbert and Julia, Raised Tybee Cottage, 1306 Jones Ave., Tybee Island, 08000441

Clarke County

Owens, Hubert Bond, House, 215 W. Rutherford St., Athens, 08000442

IOWA

Webster County

Wahkonsa Hotel, 927 Central Ave., Fort Dodge, 08000443

Woodbury County

Sioux City Fire Station Number 3, 1211 5th St., Sioux City, 08000444

MASSACHUSETTS

Plymouth County

War Memorial Park, River St., West Bridgewater, 08000445

NEW YORK

Broome County

Bevier—Wright House, 776 Chenango St., Port Dickinson, 08000446

Patterson—Hooper Family Cemetery, River Rd., Endwell, 08000447

Cayuga County

Howland, Augustus, House, 1395 Sherwood Rd., Sherwood, 08000448

Chemung County

Chemung District School No. 10, Old NY 17 at Lowman Rd., Lowman, 08000449

New York County

House at 146 East 38th St., (Murray Hill, New York County, New York MPS) 146 E. 38th St., New York, 08000450

Niagara County

Chase—Crowley—Keep House, (Stone Buildings of Lockport, New York MPS) 305 High St., Lockport, 08000451

Chase—Hubbard—Williams House, (Stone Buildings of Lockport, New York MPS) 327 High St., Lockport, 08000452

RHODE ISLAND

Providence County

French Worsted Company Mill Historic District, 153 Hamlet Ave., Woonsocket, 08000453

VERMONT

Bennington County

Downtown Bennington Historic District (Boundary Increase), North, Main & Silver Sts., Bennington, 08000454

[FR Doc. E8–9153 Filed 4–25–08; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Environmental Water Account

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Supplemental Environmental Impact Statement/Environmental Impact Report to the Final Environmental Impact Statement/ Environmental Impact Report (Final Supplemental EIS/EIR).

SUMMARY: The Bureau of Reclamation (Reclamation) is the National Environmental Policy Act Federal lead agency, and the U.S. Fish and Wildlife Service (Service) and National Marine Fisheries Service (NMFS) are the Federal Cooperating Agencies. The California Department of Water Resources (DWR) is the California Environmental Quality Act State lead agency, and the California Department of Fish and Game (DFG) is the State Responsible and Trustee Agency. Together, these five agencies have prepared a Final Supplemental EIS/EIR for the Environmental Water Account (EWA).

The EWA Program provides for fish protection and recovery in the San Francisco Bay/Sacramento-San Joaquin Delta (Delta) while at the same time improving water supply reliability for Central Valley Project (CVP) and State

Water Project (SWP) water users. The Draft Supplemental EIS/EIR addressed changes to the regulatory and physical environment that have occurred since completion of the Final EIS/EIR in January 2004 (69 FR 3599) and the Records of Decision in March 2004 and September 2004.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after release of the Final Supplemental EIS/EIR. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: A compact disk of the Final Supplemental EIS/EIR may be requested from Ms. Sammie Cervantes, by writing to Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825; by calling 916–978–5189 (TDD 916–978–5608); or by e-mailing *scervantes@mp.usbr.gov*. The Final Supplemental EIS/EIR is also accessible from the following Web sites: *http://www.mp.usbr.gov* or *http://www.dwr.water.ca.gov*. See **SUPPLEMENTARY INFORMATION** section for locations where paper copies of the Final Supplemental EIS/EIR are available for public review.

FOR FURTHER INFORMATION CONTACT: Ms. Sammie Cervantes, Bureau of Reclamation, at 916–978–5189 (TDD 916–978–5608) or *scervantes@mp.usbr.gov*.

SUPPLEMENTARY INFORMATION: The CVP and SWP facilities that pump water from the Delta can entrain and kill fish, some of which are Federally and State protected species. Reductions in CVP and SWP pumping to protect these fish species can reduce water supply reliability. The EWA Program includes Federal and State agencies making environmentally beneficial changes in the operation of the CVP and SWP for Delta-dependent native fish species, and acquiring and managing water assets to pay back the water foregone by changes to the operation of the CVP and SWP. The Service, Reclamation, DWR, NMFS, and DFG collectively manage the EWA Program. The Service, NMFS, and DFG are responsible for recommending actions that protect and benefit Delta-dependent fish populations. Reclamation and DWR are responsible for acquiring water assets from willing sellers and storing, conveying, and delivering the assets to the CVP and SWP at appropriate times and locations.

The Draft Supplemental EIS/EIR documented the direct, indirect, and cumulative effects to the physical, natural, and socioeconomic environment that may result from the purchase, storage, and conveyance of EWA assets, and the actions taken to benefit Delta-dependent fish populations. The Draft Supplemental EIS/EIR focused on an analysis of impacts to fisheries in the Delta because there have been multiple changes in the regulatory and physical environment since the ROD was signed in September 2004.

Copies of the Final Supplemental EIS/EIR are available for public review at the following locations:

- Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, California 95825.
- California Bay-Delta Authority, 650 Capitol Mall, 5th Floor, Sacramento, California 95812.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, Colorado 80225, 303–445–2072.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001.

The Notice of Availability of the Draft Supplemental EIS/EIR was published in the **Federal Register** on Monday, October 22, 2007 (72 FR 59551). The written comment period on the Draft Supplemental EIS/EIR ended Monday, December 10, 2007. The Final Supplemental EIS/EIR contains responses to all comments received and changes made to the text of the Draft Supplemental EIS/EIR as a result of those comments and any additional information received during the review period.

Before including your name, address, phone number, e-mail address, or other personal identifying information in any correspondence, you should be aware that your entire correspondence—including your personal identifying information—may be made publicly available at any time. While you can ask us in your correspondence to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 17, 2008.

Michael R. Finnegan,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. E8–9202 Filed 4–25–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research, center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Dates and Addresses: The AMWG will conduct the following meeting:.

Date: Thursday, May 22, 2008. The meeting will begin at 9:15 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at 2 p.m. on the second day. The meeting will be held at the Bureau of Indian Affairs, 2 Arizona Center, 400 N. 5th Street, 12th Floor, Conference Rooms A&B, in Phoenix, Arizona.

Agenda: The purpose of the meeting will be for the AMWG to receive updates and discuss the following items: (1) Preliminary results from the March 2008 high flow experiment, (2) humpback chub comprehensive plan and recovery plan updates, (3) science symposium planning, (4) 2008 fiscal year expenditures, (5) draft 2009 fiscal year budget, (6) AMP strategic plan revision, (7) next steps for AMP experiments, and (8) other subjects of AMP administration. To view a copy of the draft agenda, please visit Reclamation's Web site at: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/08may22/index.html.*

Time will be allowed for any individual or organization wishing to make formal oral comments at the meeting. To allow for full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone 801–524–3715; facsimile 801–524–3858; e-mail at *dkubly@uc.usbr.gov* at least five (5) days prior to the call. Any written comments received will be provided to the AMWG members.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, Bureau of Reclamation,

telephone (801) 524–3715; facsimile (801) 524–3858; e-mail at *dkubly@uc.usbr.gov.*

Dated: April 14, 2008.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. E8–9192 Filed 4–25–08; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–008]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 2, 2008 at 10 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1146 and 1147 (Preliminary) (HEDP from China and India)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before May 5, 2008; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before May 12, 2008.)
5. Inv. No. 731–TA–1118 (Preliminary) (Frontseating Service Valves from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before May 5, 2008; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before May 12, 2008.)
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 23, 2008.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–9205 Filed 4–25–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Consent Decree Pursuant to the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Emergency Planning and Community Right-To-Know Act

In accordance with 28 CFR 50.7, notice is hereby given that on April 21, 2008, a proposed consent decree in *United States* v. *Holly Refining & Marketing Company,* Case No. 1:08cv00041, was lodged with the United States District Court for the District of Utah. The proposed consent decree would resolve the United States' and State of Utah's claims against Holly Refining related to its refinery in Woods Cross, Utah, brought pursuant to section 113(b) of the CAA, 42 U.S.C. 7413(b); section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9603(a); and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11004 and under Utah State law. Under the terms of the consent decree, Holly will pay a civil penalty of $120,000 to the United States and the State of Utah, undertake a supplemental environmental project for the State of Utah valued at $130,000, and complete extensive injunctive relief.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Holly Refining & Marketing Company,* Case No. 1:08cv00041, and Department of Justice Reference No. 90–5–2–1–2194/1.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number: (202) 514–0097, phone confirmation number: (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $35.25 (25 cents per page reproduction cost) payable to the "U.S. Treasury" or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address. A copy of the Consent Decree may be reviewed at the Office of the United States Attorney for the District of Utah, 185 South State Street, Suite 400, Salt Lake City, Utah 84111; telephone confirmation number: (801) 524–5682.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–9127 Filed 4–25–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Alliance for Sustainable Air Transportation, Inc.

Notice is hereby given that, on March 14, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Alliance for Sustainable Air Transportation, Inc. ("the Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: DayJet Corporation, Boca Raton, FL; Era Beyond Radar, Reston, VA; State of California Department of Transportation, Division of Aeronautics, Sacramento, CA; and General Dynamics Information Technology, Fairfax, VA. The Joint Venture was formed as a Delaware non-stock member corporation. The general area of the Joint Venture's planned activity is (a) To enable and promote a rapid transition in the United States to the "Next Generation Air Transportation System" (as envisioned by the Federal Aviation Administration's "NextGen" initiative); and (b) to support and facilitate the development and implementation of initial NextGen prototype systems ("Prototypes"), to foster, collaborate with and leverage the efforts of other NextGen initiatives; and (c) to support and facilitate the development of NextGen open, accessible standards,

specifications, analytical tools, metrics, guidelines and solutions (collectively "Specifications"); and (d) to promote the adoption and use of said Prototypes and Specifications; and (e) to support and facilitate the creation of testing and conformity assessment of implementations to ensure and facilitate compliance with Specifications; and (f) to operate a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in products, services, programs and other deliverables of the Joint Venture; and (g) to undertake such other activities as may from time-to-time be appropriate to further the purposes discussed above. The Joint Venture is not engaged in and does not intend to engage in production activities.

Membership in this group research project remains open and the Joint Venture intends to file additional written notifications disclosing all changes in membership.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–8623 Filed 4–25–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 17, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension without change of a previously approved collection.

Title: Producer Price Index Survey.

OMB Control Number: 1220–0008.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 1,266,400.

Total Estimated Annual Burden Hours: 390,800.

Total Estimated Annual Costs Burden: $0.

Description: The Producer Price Index (PPI), one of the Nation's leading economic indicators, is used as a measure of price movements, as an indicator of inflationary trends, for inventory valuation, and as a measure of purchasing power of the dollar at the primary market level. It also is used for market and economic research and as a basis for escalation in long-term contracts and purchase agreements. The purpose of the PPI collection is to accumulate data for the ongoing monthly publication of the PPI family of indexes. For addition information, see related notice published at 73 FR 15 on January 23, 2008.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8–9191 Filed 4–25–08; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

[SGA/DFA–PY–07–08]

Solicitation for Grant Applications (SGA); Office of Apprenticeship and the Women's Bureau SGA

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Amendment to SGA/DFA–PY–07–08.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on April 22, 2008, announcing the availability of funds and solicitation for grant applications (SGA) for the Women in Apprenticeship and Nontraditional Occupations. This notice is an amendment to the SGA and it amends the "Additional Award Administration Information" and "Other information" sections.

FOR FURTHER INFORMATION CONTACT: James Stockton, Grant Officer, Division of Federal Assistance, at (202) 693–3335.

SUPPLEMENTARY INFORMATION CORRECTION: in the **Federal Register** of April 22, in FR Doc. E8–8651. On page 21655 under the heading, "Reporting," "Quarterly Financial Status Report (ETA 9130)" is amended to read "Quarterly Financial Status Report (ETA 9130)/ OMB Approval No. 1205–0461." The third paragraph of the same section entitled "Quarterly Progress Reports" is amended to read "Quarterly Performance Progress Report, SF–PPR/ OMB Approval Number: 0970–0443."

DATES: *Effective Date:* This notice is effective April 28, 2008.

Signed at Washington, DC, this 22nd of April, 2008.

James W. Stockton,

Grant Officer.

[FR Doc. E8–9190 Filed 4–25–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Homeless Veterans' Reintegration into Employment

AGENCY: Veterans' Employment and Training Service, Department of Labor.

Announcement Type: New Notice of Availability of Funds and Solicitation for Grant Applications. The full announcement is posted on *http://www.grants.gov.*

Funding Opportunity Number: SGA 08–06.

Key Dates: The closing date for receipt of applications is May 14, 2008.

Funding Opportunity Description

The U.S. Department of Labor (USDOL), Veterans' Employment and Training Service (VETS) announces a grant competition under 38 U.S.C. section 2021, as added by section 5 of Public Law 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001 (HVCAA), and authorization was extended through Fiscal Year (FY) 2009 by section 301, Public Law 109–233, the Veterans Housing and Employment Improvement Act of 2005. Section 2021 indicates: "the Secretary of Labor shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force."

HVRP grants are intended to address two objectives: (1) To provide services to assist in reintegrating homeless veterans into meaningful employment within the labor force, and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans.

The full Solicitation for Grant Application is posted on *http://www.grants.gov* under U.S. Department of Labor/VETS. Only Applications submitted through *http://www.grants.gov* will be accepted. If you need to speak to a person concerning these grants, or if you have issues regarding access to the *http://www.grants.gov* Web site, you may telephone Cassandra Mitchell at 202–693–4570 (not a toll-free number).

Signed at Washington, DC this 22nd day of April, 2007.

Cassandra R. Mitchell,

Grant Officer.

[FR Doc. E8–9065 Filed 4–25–08; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 28, 2008. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *requestschedule@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Defense Commissary Agency (N1–506–07–4, 17 items, 16 temporary items). Records

relating to management of financial resources for commissary operations. Included are such records as internal control documents, annual reports, financial correspondence, travel documentation, charge card applications, purchase card correspondence, support agreements, budget review and apportionment, interdepartmental purchase requests and reimbursements, improvement studies and surveys, commercial activity documentation, case files and related records. Proposed for permanent retention are records relating to organization, missions, functions and responsibilities.

2. Department of Homeland Security, United States Citizenship and Immigration Services (N1–566–08–1, 2 items, 2 temporary items). Political appointee clearance and vetting files, including correspondence, applications for employment, resumes, letters of reference, White House clearance checklist, financial disclosure reports, security clearances, and other documentation relating to the selection, clearance, and appointment of political appointees.

3. Department of Homeland Security, United States Citizenship and Immigration Services (N1–566–08–6, 1 item, 1 temporary item). Master file associated with an electronic information system that tracks and supports the adjudication of parole requests for individuals outside of the United States.

4. Department of Homeland Security, United States Citizenship and Immigration Services (N1–566–08–7, 1 item, 1 temporary item). Master file associated with an electronic information system that verifies the employment eligibility of newly-hired employees and the immigration status of individuals seeking government benefits.

5. Department of Homeland Security, United States Citizenship and Immigration Services (N1–566–08–8, 1 item, 1 temporary item). Master file associated with an electronic information system that tracks and manages customer service information.

6. Department of Homeland Security, United States Citizenship and Immigration Services (N1–566–08–9, 2 items, 2 temporary items). Master files associated with an electronic information system that allows customers and agency personnel to review the status of a case.

7. Department of Homeland Security, United States Coast Guard (N1–26–08–2, 1 item, 1 temporary item). Master file for an electronic message archiving system containing copies of messages and reports used by law enforcement and intelligence officers to maintain maritime safety and security.

8. Department of the Interior, Bureau of Reclamation (N1–115–08–3, 4 items, 4 temporary items). Master files for electronic systems that provide specialized engineering and scientific support to the Bureau's Technical Service Center. The proposed disposition instructions are limited to electronic records.

9. Department of the Interior, Bureau of Reclamation (N1–115–08–5, 1 item, 1 temporary item). Master file of an electronic system that provides a single source of financial, budgetary, and human resource data for other management information system applications for the Bureau. The proposed disposition instructions are limited to electronic records.

10. Department of the Interior, Bureau of Reclamation (N1–115–08–6, 2 items, 2 temporary items). Inputs and master file of an electronic system that automates the business practices and workflow processes of the Research and Development Office. The proposed disposition instructions are limited to electronic records.

11. Department of the Interior, Bureau of Reclamation (N1–115–08–7, 2 items, 2 temporary items). Master file and outputs of an electronic system that supports the Bureau's dam safety program. The proposed disposition instructions are limited to electronic records.

12. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–08–2, 2 items, 2 temporary items). Paper and scanned versions of National Instant Criminal Background Check System referrals from the Federal Bureau of Investigation which require investigation.

13. Department of Justice, Bureau of Prisons (N1–129–08–1, 2 items, 2 temporary items). Data and outputs for the Federal Prison Industries MS Visual System Safe, which provides an electronic information storage library.

14. Department of Justice, Bureau of Prisons (N1–129–08–2, 2 items, 2 temporary items). Data and outputs for the Federal Prison Industries public Web site which provides access to general and operational information.

15. Department of Justice, Federal Bureau of Investigation (N1–65–08–4, 7 items, 7 temporary items). Wiki and other online collaborative tools used for developing training curriculum and other administrative functions of the Office of Technology, Research and Curriculum Development.

16. Department of Justice, Federal Bureau of Investigation (N1–65–08–8, 1 item, 1 temporary item). This schedule requests authority to destroy cases 29J–SF–118302 and 164B–TP–63625, which pertain exclusively to the investigation of the captioned individual. This request responds to a Federal Pre-Trial Diversion Program court order to delete the records of the captioned individual.

17. Department of State, Bureaus of Near East Affairs and South and Central Asian Affairs (N1–59–08–11, 8 items, 7 temporary items). Copies of directives; post information on budget, travel, and operating expenses; general subject files; and records relating to administrative support for closings and openings of posts. Proposed for permanent retention are annual post submissions of goals and objectives. The proposed disposition instructions are limited to paper records for annual post submissions.

18. National Archives and Records Administration (N1–64–08–7, 9 items, 9 temporary items). Records consisting of the Archival Research Catalog (ARC) application database, which is a data entry system including Archival Information Locator descriptions, archival descriptions, domains of the data entry system, ARC target reports and authority files and lists.

Dated: April 22, 2008.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E8–9306 Filed 4–25–08; 8:45 am]

BILLING CODE 7515–01–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Paperwork Reduction Act; 30-Day Notice

AGENCY: Office of National Drug Control Policy.

The Office of National Drug Control Policy (ONDCP) proposes the collection of information concerning the adoption of two new Healthcare Common Procedure Coding System (HCPCS) codes for alcohol and drug screening and brief intervention. ONDCP received no comments, suggestions, or questions during the 60-day notice period. ONDCP hereby invites interested persons to submit comments to the Office of Management and Budget (OMB) regarding any aspect of this proposed effort.

Type of Collection: Survey of State Medicaid Directors.

Title of Information Collection: States' adoption of Healthcare Common Procedure Coding System codes (H0049) and (H0050) and assessment of support

provided by the Centers for Medicare & Medicaid Services.

Frequency: One time.

Affected Public: Instrumentalities of state healthcare entities.

Estimated Burden: Minimal. State Medicaid Agencies already maintain records concerning the HCPC codes they have adopted, and can easily inform ONDCP of the level of support provided by the Centers for Medicare & Medicaid Services concerning the same.

Send comments to John Kraemer, OMB Desk Officer for ONDCP, New Executive Office Building, Room 10235, Washington, DC 20503. Comments must be received within 30 days. Request additional information by e-mail to *Meredith_L._DeFraites@ondcp.eop.gov* or facsimile transmission to (202) 395–5571, attention: Meredith DeFraites, ONDCP, Office of Performance and Budget.

Signed in Washington, DC, on April 22, 2008.

Daniel R. Petersen,

Assistant General Counsel.

[FR Doc. E8–9166 Filed 4–25–08; 8:45 am]

BILLING CODE 3180–02–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for GPRA Performance Assessment (13853); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

Name: Advisory Committee for GPRA Performance Assessment, #13853.

Date and Time: June 19, 2008, 8 a.m.–5 p.m.; June 20, 2008, 8:30 a.m.–4 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 555II.

If you are attending the meeting and need access to the NSF building, please contact Joyce Grainger (*jgrainge@nsf.gov*) for a visitor's badge.

Contact: Ms. Joyce Grainger, BFA/BD, National Science Foundation, *jgrainge@nsf.gov*, Telephone: 703–292–4481.

Type of Meeting: Open.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF) Director regarding the Foundation's performance as it relates to the Government Performance and Results Act of 1993 (GPRA).

Agenda: Presentations and discussion of topics regarding the assessment of accomplishments of NSF awards as they relate to three strategic outcome goals stated in the National Science Foundation's 2006–2011 *Strategic Plan:* Discovery, Learning, and Research Infrastructure.

Thursday, June 19, 2008

Welcome and Introductions; Charge to the Committee; and overview presentations on Foundation-wide issues in the context of performance assessment. The Committee, in subgroups, will analyze and assess accomplishments under the Discovery, Learning, and Research Infrastructure strategic outcome goals.

Friday, June 20, 2008

The NSF Deputy Director will meet with the Committee. The Committee reconvenes as a Committee of the Whole to hear progress reports from the strategic goals' subgroups, discuss findings and conclusions, make recommendations, and complete preparation of the final report to NSF.

Dated: April 22, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–9032 Filed 4–25–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Interagency Arctic Research Policy Committee; Notice of Meeting

In accordance with the Arctic Research and Policy Act, 15 U.S.C. 4107, the National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee.

Date: May 12, 2008, 11 a.m. to 12 noon.

Type of Meeting: Open.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230. The public may obtain further information about the meeting by contacting the NSF official below.

Contact Person: Fae Korsmo, Executive Director, Interagency Arctic Research Policy Committee, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, via telephone at: (703) 292–8002 or e-mail to *fkorsmo@nsf.gov*.

Purpose of Meeting: Annual Meeting.

Dated: April 22, 2008.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E8–9128 Filed 4–25–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–018 and 52–019]

Duke Energy; Notice of Hearing and Opportunity To Petition for Leave To Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for the William States Lee III Units 1 and 2

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR part 52, "Early Site Permits, Standard Design Certification and Combined Licenses for Nuclear Power Plants," notice is hereby given that a hearing will be held, at a time and place to be set in the future by the U.S. Nuclear Regulatory Commission (NRC, the Commission) or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the application dated December 12, 2007, filed by Duke Energy, pursuant to Subpart C of 10 CFR part 52, for a combined license (COL). The application, which was supplemented by a letter dated January 28, 2008, two letters dated February 6, 2008, and a letter dated February 8, 2008, requests approval of a COL for William States Lee III Units 1 and 2, to be located in Cherokee County, South Carolina. The application was accepted for docketing on February 25, 2008 (February 29, 2008; 73 FR 11156). The docket numbers established for this COL application are 52–018 and 52–019. The William States Lee III COL application incorporates by reference Appendix D to 10 CFR 52 (which includes the AP1000 design through Revision 15), as amended by the AP1000 Design Control Document (DCD) submitted by Westinghouse as Revision 16. AP1000 DCD Revision 16 is the subject of an ongoing rulemaking under the docket number 52–006. By letter to Westinghouse dated January 18, 2008, the staff has accepted DCD Revision 16 for docketing.

The hearing on the COL application will be conducted by a Board that will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or will be conducted by the Commission. Notice as to the membership of the Board will be published in the **Federal Register** at a

later date. The NRC staff will complete a detailed technical review of the COL application and will document its findings in a safety evaluation report. The Commission will refer a copy of the COL application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.87, "Referral to the ACRS," and the ACRS will report on those portions of the application that concern safety.

Any person whose interest may be affected by this proceeding and who desires to participate as a party to this proceeding must file a written petition for leave to intervene in accordance with 10 CFR 2.309. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A petition for leave to intervene must be filed no later than 60 days from the date of publication of this notice in the **Federal Register**. Non-timely filings will not be entertained absent a determination by the Commission or presiding officer designated to rule on the petition, pursuant to the requirements of 10 CFR 2.309(c)(1)(i)–(viii).

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which was promulgated by the NRC on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 5 days prior to the filing deadline, the petitioner must contact the Office of the Secretary by e-mail at *HearingDocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each participant will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a participant has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Standard Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Standard Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Standard Time on the due date.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Any person who files a motion pursuant to 10 CFR 2.323 must consult with counsel for the applicant and counsel for the NRC staff who are listed below. Counsel for the applicant are Donald Silverman, (202) 739–5502, *dsilverman@morganlewis.com* and Kathryn M. Sutton, (202) 739–5738, *ksutton@morganlewis.com*. Counsel for the NRC staff in this proceeding are Sara E. Brock, (301) 415–8393, *Sara.Brock@nrc.gov*, and Michael A. Spencer, (301) 415–4073, *Michael.Spencer@nrc.gov*.

A person who is not a party may be permitted to make a limited appearance by making an oral or written statement of his or her position on the issues at any session of the hearing or any pre-hearing conference within the limits and conditions fixed by the presiding

officer, but may not otherwise participate in the proceeding.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–4209, 301–415–4737, or by e-mail to *pdr.resources@nrc.gov*. The application is available at *http://www.nrc.gov/reactors/new-licensing/col/lee.html*. The ADAMS accession number for the COL application cover letter is ML073510494. The ADAMS accession numbers for the supplements to the application are ML080350313, ML080390506, ML080390507, ML080450637, and ML080460359. To search for documents in ADAMS using the William States Lee III COL application docket numbers, 52–018 and 52–019, enter the terms "05200018" and "05200019" in the "Docket Number" field when using either the Web-based search (advanced search) engine or the ADAMS find tool in Citrix.

The AP1000 DCD through Revision 15, which is incorporated by reference into Appendix D of part 52, can be found using ADAMS accession number ML053460400 or by going to *http://www.nrc.gov/reactors/new-licensing/design-cert/ap1000.html*. The AP1000 DCD Revision 16 can be found using ADAMS accession number ML071580939 or by going to *http://www.nrc.gov/reactors/new-licensing/col/lee.html*. To search for documents in ADAMS using the AP1000 DCD Revision 16 docket number, 52–006, enter the term "05200006" in the ADAMS "Docket Number" field.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)).

2. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A "potential party" is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than 10 days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *HearingDocket@nrc.gov* and *OGCmail@nrc.gov*, respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of hearing and opportunity to petition for leave to intervene;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows: [1]

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF–85, "Questionnaire for Non-Sensitive Positions," Form FD–248 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–415–0320.[2] The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of $191.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the U.S. Nuclear Regulatory Commission, Office of Administration, Security Processing Unit, Mail Stop T–6E46, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. Note: Copies of these forms do not need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within 10 days of receipt of the written access request

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding [3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4]

Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding, [5] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within 5 days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within 15 days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland this 22nd day of April 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in This Proceeding

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

[6] As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; August 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," "need to know," or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). **Note:** Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28 ..	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53 ..	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60 ..	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E8–9217 Filed 4–25–08; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–353]

Exelon Generation Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License No. NPF–85; Limerick Generating Station Unit No. 2

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Exelon Generation Company, LLC (the licensee) to withdraw its November 16, 2007, application for proposed amendment to Facility Operating License No. NPF–85 for Limerick Generating Station, Unit No. 2, located in Montgomery County, Pennsylvania.

The proposed amendment would have revised the technical specifications pertaining to reactor coolant system leakage detection systems due to the inoperability of the drywell unit cooler condensate flow rate monitoring system. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 31, 2007 (72 FR 74359). However, by letter dated March 28, 2008, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 16, 2007, and the licensee's letter dated March 28, 2008, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 17th day of April, 2008.

For the Nuclear Regulatory Commission

Peter J. Bamford,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–9220 Filed 4–25–08; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that The Gambia has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from The Gambia qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective April 28, 2008.

FOR FURTHER INFORMATION CONTACT: Laurie-Ann Agama, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. No. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist U.S. Customs and Border Protection in verifying the origin of the products.

On April 2, 2003, the President designated The Gambia a "beneficiary sub-Saharan African country." Proclamation 7350 (October 2, 2000) delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that the Government of The Gambia has taken, I have determined that The Gambia has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS, U.S. note 1 to subchapter XIX of chapter 98 of the HTS, and U.S. note 2(a) to subchapter XIX of chapter 98 of the HTS, are each modified by inserting "The Gambia" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

Susan C. Schwab,

United States Trade Representative.

[FR Doc. E8–9150 Filed 4–25–08; 8:45 am]

BILLING CODE 3190–W8–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect To List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of countries denying fair market opportunities for products, suppliers or bidders of the United States in airport construction projects.

EFFECTIVE DATE: April 28, 2008.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476, or Maria Pagan, Associate General Counsel, Office of the United States Trade Representative, (202) 395–7305.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. 50104), the United States Trade Representative (USTR) has determined not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

SUPPLEMENTARY INFORMATION: Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (codified at 49 U.S.C. 50104) ("the Act"), requires USTR to decide whether any foreign countries have denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the governments of such countries. The list of such countries must be published in the **Federal Register**. For the purposes of the Act, USTR has decided not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

Susan C. Schwab,

United States Trade Representative.

[FR Doc. E8–9222 Filed 4–25–08; 8:45 am]

BILLING CODE 3190–W8–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57693; File No. SR–Amex–2008–07]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Currency Forward Pricing for Currency-Linked Securities

April 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2008, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On April 17, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 107F of the Amex Company Guide (the "Company Guide") to permit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the listing of currency-linked securities ("Currency-Linked Securities") based on a Currency Reference Asset consisting of pricing information for one or more currencies that is the generally accepted forward price [3] for the currency exchange rate(s) in question. The text of the proposed rule change is available at *http://www.amex.com*, Amex, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 107F(g)(ii) of the Company Guide to permit the listing of Currency-Linked Securities where the pricing information for some or all of the components of the Currency Reference Asset is the generally accepted forward price for the currency exchange rate(s) in question.

The foreign exchange market is predominantly an over-the-counter ("OTC") market operating 24 hours a day, five days a week.[4] London, New York and Tokyo are the principal geographic centers of the worldwide foreign exchange market with approximately 58% of all foreign exchange business executed in the U.K., U.S., and Japan. Other smaller markets include Singapore, Zurich, and Frankfurt. The foreign currency market is the largest and most liquid financial market in the world. In 2007, the average daily spot turnover accounted for over $1 trillion USD and the average daily forward turnover accounted for $362 billion USD.[5] Over 85% of currency derivative products (swaps, options and futures) are traded OTC.[6]

Foreign exchange rates are influenced by national debt levels and trade deficits, domestic and foreign inflation rates and investors' expectations concerning inflation rates, domestic and foreign interest rates and investors' expectations concerning interest rates, currency exchange rates, investment and trading activities of mutual funds, hedge funds and currency funds, and global or regional political, economic or financial events and situations. Additionally, expectations among market participants that a currency's value soon will change may also affect exchange rates.

There are three major kinds of transactions in the traditional foreign currency markets: Spot transactions, outright forwards and foreign exchange swaps. "Spot" trades are foreign currency transactions that settle typically within two business days with the counterparty to the trade. Spot transactions account for approximately 35% of reported daily volume in the traditional foreign currency markets. "Forward" trades, which are transactions that settle on a date beyond spot, account for 12% of the reported daily volume, and "swap" transactions, in which two parties exchange two currencies on one or more specified dates over an agreed period and exchange them again when the period ends, account for the remaining 53% of volume.

Forward rates are quoted among dealers in premiums or discounts from the spot rate. The premium or discount is measured in "points" that represent the interest rate differential between two currencies for the period of the forward, converted into foreign exchange. In addition to the liquidity in the forward foreign exchange market, the forward market is also transparent. Bloomberg, Reuters and other major market data providers disseminate quotes for the forward market provided by OTC dealers.

Most trading in the global OTC foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the United States, the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central bank sponsored committees in Japan and Singapore have published similar best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the Model Code.[7] Participants in the U.S. OTC market for foreign currencies are generally regulated by their oversight regulators. For example, participating banks are regulated by the banking authorities.

As set forth above, this proposal would amend Section 107F(g)(ii) of the Company Guide to permit the listing of Currency-Linked Securities where the pricing information for some or all of the components of the Currency Reference Asset is the generally accepted forward price for the currency exchange rate in question. The generally accepted forward price is typically calculated as follows:[8]

$$\text{Forward Rate} = \text{Spot Rate} \times \left(\frac{1 + \text{Terms Currency Interest Rate} \times \text{Forward Days/Interest Rate Year}}{1 + \text{Base Currency Interest Rate} \times \text{Forward Days/Interest Rate Year}} \right)$$

$$\text{Points} = \text{Forward Rate} - \text{Spot Rate}$$

The Exchange believes that the liquidity and transparency [9] of the OTC foreign currency market provides an adequate basis for using forward pricing information in connection with Currency-Linked Securities.

[3] This proposal would permit the use of a generally accepted forward price based on forward contracts that are either "deliverable" or "non-deliverable."

[4] For information relating to the foreign exchange market generally, *see* Securities Exchange Act Release No. 54351 (August 23, 2006), 71 FR 51245 (August 29, 2006) (SR–Amex–2006–44).

[5] *See* Bank for International Settlements, Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in 2007 (December 2007) (Table E1) (the "2007 BIS Report").

[6] *Id.* at Table E38.

[7] *See supra* note 4.

[8] *See* Federal Reserve Bank of New York, All About * * * The Foreign Exchange Market in the United States, p. 38. (*http://www.newyorkfed.org/education/addpub/usfxm/*).

[9] For example, Bloomberg, Reuters, and other major market data providers disseminate pricing information for the forward market provided by OTC market makers.

Based upon the trading volumes of forward contracts, the ability for an issuer to use forward pricing information under Section 107F(g)(ii) of the Company Guide for any component of a Currency Reference Asset will be restricted to the following currencies (collectively, "High Volume Currencies"): U.S. Dollar, Euro, Japanese Yen, British Pound Sterling, Swiss Franc, Canadian Dollar, Australian Dollar, Brazilian Real, Chinese Renminbi, Czech Koruna, Danish Krone, Hong Kong Dollar, Hungarian Forint, Indian Rupee, Indonesian Rupiah, Korean Won, Mexican Peso, Norwegian Krone, New Zealand Dollar, Philippine Peso, Polish Zloty, Russian Ruble, Swedish Krona, South African Rand, Singapore Dollar, Taiwan Dollar, Thai Baht or New Turkish Lira. The trading volume in these currencies is as follows:[10]

FX Forward Average Daily Volume in Millions

Currency	2001	2004	2007	Average
U.S. Dollar	110,795	170,357	289,435	190,196
Euro	54,327	88,243	137,391	93,320
Japanese Yen	33,257	47,135	61,453	47,282
British Pound Sterling	16,826	31,338	46,274	31,479
Swiss Franc	6,637	11,307	21,186	13,043
Canadian Dollar	4,335	8,947	15,280	9,521
Australian Dollar	5,416	9,788	20,463	11,889
Brazilian Real	1,259	1,072	5,259	2,530
Chinese Renminbi	55	811	4,572	1,813
Czech Koruna	96	253	1,432	594
Danish Krone	888	1,347	2,841	1,692
Hong Kong Dollar	3,055	2,221	6,022	3,766
Hungarian Forint	28	308	1,357	564
Indian Rupee	428	1,531	5,815	2,591
Indonesian Rupiah	103	267	1,292	554
Korean Won	1,671	6,048	10,013	5,911
Mexican Peso	673	1,716	4,594	2,328
Norwegian Krone	1,187	2,543	6,498	3,409
New Zealand Dollar	579	1,462	6,639	2,893
Philippine Peso	73	232	1,123	476
Polish Zloty	439	483	2,644	1,189
Russian Ruble	52	253	1,253	519
Swedish Krona	3,207	4,158	8,543	5,303
South African Rand	825	1,122	3,458	1,802
Singapore Dollar	825	1,242	2,962	1,676
Taiwan Dollar	603	2,798	4,724	2,708
Thai Baht New	231	490	847	523
New Turkish Lira	164	239	535	313
Total (divided by 2)	125,018	199,858	337,956	220,944

The total amount of contracts reflected in the chart above is divided by two because each contract is denominated in two currencies. For example, one contract will reflect cross rates in two currencies: U.S. Dollars against the Euro, the Singapore dollar against the Turkish Lira, etc. The daily notional turnover for the currency forward contracts reflected in the chart above ranged from 535 million USD to 289 billion USD in April 2007.

In connection with this proposal, the generally accepted forward price will be used for pricing purposes only to the extent that the Currency Reference Asset (as defined in Section 107F of the Company Guide) is based on the generally accepted forward price. In the event a Currency Reference Asset is based upon the generally accepted forward price and such forward price becomes unavailable due to a holiday, the generally accepted spot price may be used for calculating the pricing information of the Currency Reference Asset. The pricing information of the Currency Reference Asset on the following business day must be based upon the generally accepted forward price. This exception will permit certain hedged products that use forward pricing information to use the spot price, which is quoted in the United States, when the generally accepted forward price, which is derived from the generally accepted spot price, is unavailable due to a foreign holiday.

2. Statutory Basis

The Exchange 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)(5) of the Act,[12] 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. Specifically, the Exchange believes that the proposal to permit the use of generally accepted foreign currency forward pricing in connection with Currency-Linked Securities may better reflect the large, growing market in foreign exchange worldwide.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that

[10] *See* 2007 BIS Report, *supra* note 5, Statistical Annex Table—Foreign Exchange Markets; BIS, Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2004, Statistical Annex Tables—Foreign Exchange Markets (2004); and BIS, Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2001, Statistical Annex Tables—Foreign Exchange Markets (2001).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2008–07 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–Amex–2008–07. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–Amex–2008–07 and should be submitted on or before May 19, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that opportunities to invest in derivative securities products based not only on the spot value, but also on the forward price, of a foreign currency provide additional choices to accommodate particular investment needs and objectives, should benefit investors. The Commission notes that the foreign exchange market as a whole, which is predominantly OTC, is a highly liquid market.[15] The Commission also notes that outright forward transactions account for a material percentage of reported daily volume on the foreign exchange markets.

In the interest of assuring sufficient liquidity of the underlying components and thereby protecting investors of Currency-Linked Securities that are based on the generally accepted forward price for the currency exchange rate in question, the use of forward pricing information for any such component of a Currency Reference Asset would be limited to the High Volume Currencies. The Commission notes that Currency-Linked Securities that satisfy the applicable requirements under Section 107F of the Company Guide would be able to be listed and traded pursuant to Rule 19b–4(e) under the Act.[16] The Commission believes that, to list and trade Currency-Linked Security products based on forward prices of foreign currencies pursuant to Rule 19b–4(e) under the Act, limiting such foreign currencies to the High Volume Global Currencies is an appropriate measure to assure sufficient liquidity in the underlying components.[17] In addition, the forward price should be used for pricing purposes only to the extent that the Currency Reference Asset is based on the forward price.[18] The Commission believes that the proposed rule change, which seeks to expand the types of components on which Currency-Linked Securities are based, should promote the listing and trading of additional Currency-Linked Securities and thereby support greater options and competition in such products, to the benefit of investors and the public interest.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The Commission has approved substantively identical proposed rule change by another national securities exchange[19] and does not believe that this proposal raises any novel regulatory issues. Accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Currency-Linked Securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Amex–2008–07), as modified by Amendment No. 1

---

[13] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra* note 5 and accompanying text.

[16] *See* 17 CFR 240.19b-4(e). Rule 19b–4(e)(1) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4 under the Act (17 CFR 240.19b–4(c)(1)), if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.

[17] The Commission further notes that the Exchange may seek to list and trade a Currency-Linked Security product based on forward prices of non-High Volume Global Currencies by filing a proposed rule change pursuant to Section 19(b)(1) of the Act.

[18] The proposal also states that, with respect to a Currency-Linked Security that is based on the forward price of a foreign currency, if the forward price is not available due to a holiday, the spot price may be used for calculating the pricing information of the Currency Reference Asset. The pricing information on the following business day must be based on the forward price. *See* proposed Commentary .01 to Section 107F of the Company Guide.

[19] *See* Securities Exchange Act Release No. 54760 (March 10, 2008), 73 FR 13942 (March 14, 2008) (SR–NYSEArca–2008–12).

[20] 15 U.S.C. 78s(b)(2).

thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–9187 Filed 4–25–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57696; File No. SR–NASDAQ–2008–034]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading Two-Characters Ticker Symbols

April 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2008, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(5) 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

Nasdaq proposes to trade the common stock of CA, Inc. on Nasdaq using the two-character symbol "CA."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Historically, securities listed on Nasdaq have traded using four or five character symbols.[5] In 2005, however, Nasdaq announced its intent to allow companies listed on Nasdaq to also use one, two or three character symbols beginning on January 31, 2007.[6] This announcement was designed to provide market participants and vendors the time needed to make required changes to their own systems that may be affected by the change. Since February 20, 2007, Nasdaq has had the ability to accept and distribute Nasdaq-listed securities with one, two or three character symbols. Nasdaq reminded market participants about this change again on March 1, 2007, stressing that "[a]ll customers should have completed their coding and testing efforts to ensure their readiness to support 1-, 2- and 3-character NASDAQ-listed issues" [7] and on March 22, 2007, Delta Financial Corporation transferred to Nasdaq from the American Stock Exchange and maintained its three-character symbol, DFC.[8] Subsequently, the Commission approved a rule change to permit any company to transfer from another exchange to Nasdaq and maintain its three-character symbols.[9] In total, 25 companies have done so and there have been no trading problems reported to Nasdaq as a result of trading securities on Nasdaq with three-character symbols.

Nasdaq now proposes to allow CA, Inc., which currently trades with the two-character symbol "CA" to transfer its common stock to Nasdaq from another domestic market and continue using that two-character symbol. Nasdaq believes that allowing this company to maintain its symbol will reduce investor confusion and promote competition among exchanges. Specifically, allowing CA to maintain its trading symbol will reduce investor confusion associated with its transfer to Nasdaq because investors will continue to be able to obtain quotations and execute trades using the same familiar symbol and will allow the issuer to maintain a symbol that has become a part of its identity to investors.[10] Nasdaq also notes that the potential for confusion from a symbol change could be magnified in this case, given that the company's name and current trading symbol are identical. Further, Nasdaq believes that permitting CA to maintain its symbol will enhance competition among exchanges by removing concerns about investor confusion surrounding its symbol from the factors a company must consider when choosing where to list its equities. This proposal is also consistent with the historical practice of allowing companies to maintain their symbols when they switch among national securities exchanges.[11]

Given the foregoing, Nasdaq believes that market participants were provided adequate notice of this change and are prepared to accommodate the trading of this company on Nasdaq using the symbol CA. Further, Nasdaq believes that any change to the symbol will cause confusion among investors and market participants. As such, Nasdaq proposes to begin trading the common stock of CA, Inc. on Nasdaq using the symbol CA on April 28, 2008. While this filing relates to the transfer of this issuer, Nasdaq remains committed to working with the Commission and other markets to establish an equitable and transparent symbol assignment plan.[12]

---

[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).

[4] 17 CFR 240.19b–4(f)(5).

[5] This includes securities listed on Nasdaq's predecessor market, operated as a facility of the NASD.

[6] *See* Head Trader Alert 2005-133 (November 14, 2005), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2005-133* and Vendor Alert 2005-070 (November 14, 2005), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2005-070*. *See also* Head Trader Alert 2006-144 (September 29, 2006), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2006–144*, Head Trader Alert 2006-193 (November 16, 2006), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2006-193* and Vendor Alert 2006-065 (October 4, 2006), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2006–065*.

[7] Head Trader Alert 2007-050 (March 1, 2007), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2007–050*.

[8] *See* Securities Exchange Act Release No. 55519 (March 26, 2007) 72 FR 15737 (April 2, 2007) (SR–NASDAQ–2007–025).

[9] *See* Securities Exchange Act Release No. 56028 (July 9, 2007), 72 FR 38639 (July 13, 2007) (approving SR–NASDAQ–2007–031).

[10] A market transfer will still be transparent to investors because, under the Commission's rules, a company must announce the transfer of its listing on a Form 8–K. *See* Form 8–K, item 3.01(d). In addition, the issuer must publish notice of its intent to withdraw a class of securities from listing and/or registration, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, on that Web site. *See* Rule 12d2–2(c)(2)(iii), 17 CFR 240.12d2–2(c)(2)(iii).

[11] *See, e.g.*, Darwin Professional Underwriters, Inc. (from NYSE Arca to NYSE keeping the symbol DR), Chile Fund, Inc. (from NYSE to Amex keeping the symbol CH), and iShares NYSE 100 (from NYSE to NYSE Arca keeping the symbol NY).

[12] *See* Securities Exchange Act Release No. 56037 (July 10, 2007) 72 FR 39096 (July 17, 2007).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, in general and with Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. As described above, the proposed rule change will reduce investor confusion and encourage competition between national securities exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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) of the Act [13] and Rule 19b–4(f)(5) thereunder [14] in that it effects a change to an order-entry or trading system that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. As such, this proposed rule change is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(5).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–034 and should be submitted on or before May 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–9188 Filed 4–25–08; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11219 and #11220]

Texas Disaster #TX–00280

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of TEXAS dated 04/18/2008.

Incident: Severe Storms and Flooding.

Incident Period: 03/30/2008.

Effective Date: 04/18/2008.

Physical Loan Application Deadline Date: 06/17/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 01/20/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: San Augustine.

Contiguous Counties:

Texas: Angelina, Jasper, Nacogdoches, Sabine, Shelby.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11219 6 and for economic injury is 11220 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 18, 2008.
Steven C. Preston,
Administrator.
[FR Doc. E8–9144 Filed 4–25–08; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the next meeting of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meeting will be held on Tuesday, May 20, 2008 at 1 p.m. EST.

ADDRESSES: This meeting will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meeting of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of this meeting is to discuss following issues pertaining to the SBDC Advisory Board:

—Discuss location of site-visit in June.
—Follow-up discussion on Board Expectations.
—SBA Update from AA/OSBDCs.
—White paper discussion.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Board must contact Alanna Falcone by Friday, April 11, 2008, by fax or e-mail in order to be placed on the agenda. Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone, 202–619–1612, Fax 202–481–0134, e-mail, *alanna.falcone@sba.gov*.

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

Cherylyn H. Lebon,
Committee Management Officer.
[FR Doc. E8–9145 Filed 4–25–08; 8:45 am]
BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the Agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and how to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB): Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*.

(SSA): Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov*.

The information collections listed below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. Therefore, submit your comments to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Statement Regarding Marriage—0960–0017. Some State laws recognize marriages entered into without a ceremony (common-law marriages). SSA uses Form SSA–753 to obtain third party statements about intent and cohabitation, which are the basic tenets of a common-law marriage. SSA uses the information to determine if a valid marital relationship exists for entitlement to spouse/widow(er) benefits. The respondents are third party individuals/households.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden per Response: 9 minutes.

Estimated Average Burden: 6,000 hours.

2. Statement Regarding Contributions—0960–0020. SSA uses the Form SSA–783 to obtain information about the source of support for a child applicant who must meet a dependency requirement for benefits. SSA must determine if one-half support or regular and substantial contributions entitle certain child applicants to Social Security benefits. The respondents are persons with information on sources of a child applicant's support.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 17 minutes.

Estimated Annual Burden: 8,500 hours.

3. Questionnaire for Children Claiming Supplemental Security Income (SSI) Benefits—0960–0499. SSA uses Form SSA–3881 to obtain the names and addresses of non-medical sources such as schools, counselors, agencies, organizations, or therapists who would have information about how well the child functions. SSA uses this information to help determine a child's claim for benefits or continuing benefits. The respondents are applicants who appeal SSI childhood disability decisions or recipients undergoing a continuing disability review.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 253,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 126,500 hours.

4. Statement of Death by Funeral Director—0960–0142. SSA uses the information collected on Form SSA–721 to: (1) Prove the death of an insured individual; (2) learn of the death of a beneficiary whose benefits should terminate; and (3) determine who is eligible for the lump-sum death payment or may be eligible for benefits. The respondents are funeral directors who report the death of a beneficiary.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 319,811.

Frequency of Response: 1.

Average Burden per Response: 3.5 minutes.

Estimated Annual Burden: 18,656 hours.

5. Representative Payee Report-Adult, Representative Payee Report-Child,

Representative Payee Report-Organizational Representative Payees—0960–0068. When SSA determines it is not in a beneficiary's best interest to receive Social Security benefit payments directly, the Agency will designate a family member, unrelated person, or organization to act as the representative payee for the beneficiary. Representative payees must account to SSA on how they use these payments on their beneficiaries' behalf. SSA collects this information on Forms SSA–623 (for adult beneficiaries), SSA–6230 (for child beneficiaries), and SSA–6234 (organizational repayees). This information collection request contains two changes to the collection: (1) we are clearing an Internet version of the Representative Payee Report (iRPA), an Internet platform customized for users of all three paper forms; and (2) we are clearing all three paper forms under one OMB Number, 0960–0068.

Type of Request: Revision to an OMB-approved information collection.

Collection instruments	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–623 (paper)	2,093,125	1	15	523,281
SSA–6230 (paper)	2,592,500	1	15	648,125
SSA–6234 (paper)	626,875	1	15	156,719
iRPA	937,500	1	15	234,374
Totals	6,250,000			1,562,499

Dated: April 21, 2008.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E8–9175 Filed 4–25–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 6200]

30-Day Notice of Proposed Information Collection: U.S. Department of State Driver License and Tax Exemption Card Application; OMB Collection Number 1405–0105; Forms DS–1972, DS–1972D & DS–1972T

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:* U.S. Department of State Driver License and Tax Exemption Card Application.
- *OMB Control Number:* 1405–0105.
- *Type of Request:* Extension of a currently approved collection.
- *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).
- *Form Number:* DS–1972, DS–1972D, DS–1972T.
- *Respondents:* Foreign government representatives assigned to the United States.
- *Estimated Number of Respondents:* 350 foreign missions.
- *Estimated Number of Responses:* 21,284 responses (DS–1972: 6,385), (DS–1972T: 10,249), (DS–1972D: 4,470).
- *Average Hours per Response:* DS–1972—30 minutes, DS–1972D—20 minutes, DS–1972T—15 minutes.
- *Total Estimated Burden:* 7,275 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain benefits.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from April 28, 2008.

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: You may obtain copies of the proposed information collection and supporting documents from: Jacqueline Robinson, Diplomatic Security, Office of Foreign Missions, 2201 C Street, NW., Room 2238, Washington, DC 20520, who may be reached on (202) 647–3416 or *OFMInfo@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform 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.

Abstract of Proposed Collection

The forms associated with OMB Collection Number 1405–0105 is the means by which foreign missions in the United States request the issuance of a driver license and/or a sales tax exemption card for foreign mission personnel and their dependents. The exemption from sales taxes and the operation of a motor vehicle in the United States by foreign mission personnel are benefits under the Foreign Missions Act, 22 U.S.C. 4301 *et seq.*, which must be obtained by foreign missions through the U.S. Department of State, Office of Foreign Missions (DS/OFM). The DS–1972, DS–1972D, and DS–1972T applications provide OFM with the necessary information required to administer the two benefits effectively and efficiently. Sales tax exemption is enjoyed under the provisions of international law but is granted on the bases of reciprocity. The administration of driver licenses at the national level helps the Federal Government identify operators who repeatedly receive citations. This also helps the Federal Government determine the necessary course of action that may be required against an individual's driving privilege. Accordingly, the Federal Government is able to provide consistency to the diplomatic community on a national level through a uniform program. The respondents are foreign government

representatives assigned to the United States.

Methodology

These applications/information collections are submitted by all foreign missions to the Office of Foreign Missions via the following methods: Electronically, mail, and/or personal delivery.

Dated: April 9, 2008.

Claude Nebel,

Deputy Assistant Secretary, Bureau of Diplomatic Security, Office of Foreign Missions, U.S. Department of State.

[FR Doc. E8–9239 Filed 4–25–08; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 6198]

Culturally Significant Objects Imported for Exhibition Determinations: "Pompeii and the Roman Villa: Art and Culture Around the Bay of Naples"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Pompeii and the Roman Villa: Art and Culture Around the Bay of Naples", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about October 19, 2008, until on or about March 22, 2009; at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about May 3, 2009, until on or about October 4, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 20, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–9240 Filed 4–25–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6199]

Notice of Intent To Conduct Supplemental Scoping Meeting; Enbridge Energy, Limited Partnership's Proposed Alberta Clipper Project

AGENCY: Department of State.

ACTION: Notice of Intent to Conduct Supplemental Scoping Meeting; Enbridge Energy, Limited Partnership's Proposed Alberta Clipper Project.

This Notice provides information concerning an additional public scoping meeting to be held in connection with Enbridge Energy, Limited Partnership's ("EELP") application to the Department of State for a Presidential permit for facilities at the U.S.-Canada border related to its proposed Alberta Clipper pipeline project. The Department published a "Notice of Intent to Prepare an Environmental Impact Statement" (EIS) for this project on March 31, 2008, (73 FR 16920–02). The Department has determined that an additional scoping meeting, open to the public, would be beneficial to ensure that all stakeholders have a full opportunity to provide comment on the content and scope of the EIS.

This meeting has been scheduled for May 8, 2008 from 6 p.m. to 10 p.m. The meeting will be held at: Clearbrook City Hall Band Room, 200 Elm St. SE., Clearbrook, MN.

The Department of State is preparing an (EIS) under the National Environmental Policy Act (NEPA) to address reasonably foreseeable impacts from the proposed action and alternatives to the proposed action. In preparing the EIS, the Department will comply with the Council of Environmental Quality's recommended EIS format as identified in its "Regulations for Implementing NEPA"—regulations 1502.10–1502.18. In connection with its preparation of the EIS, the Department will also comply with Section 106 of the Historic Preservation Act and Section 7 of the Endangered Species Act.

On July 27, 2007, the Department of State provided public notice of its intent to conduct scoping meetings on the Alberta Clipper Project (72 FR 41381). The Department held twelve public scoping meetings along the proposed pipeline route in August 2007, received comments during the 45-day public comment period, and consulted with federal and state agencies and Native American tribes.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the Draft Alberta Clipper EIS when it is issued, contact Elizabeth Orlando at OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520, or by telephone (202) 647–4284, or by fax at (202) 647–5947, or by e-mail at *albertaclipper@state.gov.*

All public documents related to EELP's permit application, including EELP's permit application and the draft EIS when produced, can be viewed and downloaded at *http://albertaclipper.state.gov.* This site will accept public comments for the record.

SUPPLEMENTARY INFORMATION: Enbridge Energy, Limited Partnership ("EELP") has applied to the Department of State for a Presidential Permit, pursuant to Executive Order 13337 of April 30, 2004, to construct, connect, operate, and maintain facilities at the U.S.-Canadian border near Neche, Pembina County, North Dakota, related to a 36-inch diameter crude oil and liquid hydrocarbon pipeline for the purpose of transporting liquid hydrocarbons and other petroleum products between the United States and Canada.

In the U.S., the Alberta Clipper Project would consist of approximately 326 miles of new 36-inch-diameter pipeline from the United States-Canada border near Neche, North Dakota to the existing EELP tank farm in Superior, Wisconsin. EELP proposes to construct the pipeline generally along its existing pipeline right-of-ways.

U.S. counties that could possibly be affected by construction of the proposed pipeline are:

North Dakota: Pembina.

Minnesota: Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis, Carlton.

Wisconsin: Douglas.

Issued in Washington, DC, on April 22, 2008.

Stephen J. Gallogly,

Director, International Energy and Commodity Policy, Department of State.

[FR Doc. E8–9243 Filed 4–25–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Advisory Circulars, Other Policy Documents and Proposed Technical Standard Orders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: This is a recurring Notice of Availability, and request for comments, on draft Advisory Circulars (ACs), other policy documents, and proposed Technical Standard Orders (TSOs) currently offered by Aviation Safety.

SUMMARY: The FAA's Aviation Safety, an organization responsible for the certification, production approval, and continued airworthiness of aircraft, and certification of pilots, mechanics, and others in safety related positions, publishes proposed non-regulatory documents that are available for public comment on the Internet at *http://www.faa.gov/aircraft/draft_docs/.*

DATES: We must receive comments on or before the due date for each document as specified on the Web site.

ADDRESSES: Send comments on proposed documents to the FAA at the address specified on the Web site for the document you comment on, to the attention of the individual and office identified as point of contact for the document.

FOR FURTHER INFORMATION CONTACT: The individual or FAA office identified on the Web site for the specified document.

SUPPLEMENTARY INFORMATION: Final Advisory Circulars, other policy documents, and Technical Standard Orders (TSOs), including final documents published by the Aircraft Certification Service, are available on FAA's Regulatory and Guidance Library (RGL) at *http://rgl.faa.gov/.*

Comments Invited

You will find draft ACs, other policy documents and proposed TSOs on FAA "Aviation Safety Draft Documents Open for Comment" Web site at *http://www.faa.gov/aircraft/draft_docs/.* The FAA invites comments on these draft documents. When commenting on draft ACs, other policy documents or proposed TSOs, you should identify the document by its number. The Aviation Safety organization will consider all comments received on or before the closing date before issuing a final Document. For Internet retrieval assistance, contact the AIR Web Content Program Manager at (817) 222–5379.

To obtain a paper copy of the draft document or proposed TSO, contact the individual or FAA office responsible for the document as identified on the Web site.

Background

We do not publish an individual **Federal Register** Notice for each document we make available for public comment on the Web site. On the Web site, you may subscribe to receive e-mail notification when new draft documents are made available. This notice of availability and request for comments on FAA Aviation Safety draft documents will appear again in 180 days.

Issued in Washington, DC on April 14, 2008.

Jennifer Arquilla,

Acting Manager, Planning and Program Management Division, Aircraft Certification Service.

[FR Doc. E8–8583 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Town of Ipswich, Massachusetts

(Waiver Petition Docket Number FRA–2008–0046)

The Town of Ipswich, Massachusetts (Town), seeks a permanent waiver of compliance from a certain provision of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR Part 222. The Town intends to establish a Pre-Rule Quiet Zone that it had previously continued under the provisions of 49 CFR Part 222.41(c)(1). The Town is seeking a waiver to extend the mailing date for a Notice of Intent as provided in 49 CFR Part 222.41(c)(2)(i)(A) that states that the Notice of Intent must be mailed by February 24, 2008. The waiver petition requests that the Notice of Intent that the Town mailed on February 26, 2008, be accepted as a valid Notice of Intent even though it was mailed after February 24, 2008.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0046) and may be submitted by any of the following methods:

Web site: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 202–493–2251.

Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC, on April 22, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–9207 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

City of Seattle, Washington

(Waiver Petition Docket Number FRA–2008–0047)

The City of Seattle, Washington (City), and the BNSF Railway Company (BNSF) seek a permanent waiver of compliance from a certain provision of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR Part 222. The City intends to establish a Pre-Rule Quiet Zone that it had previously continued under the provisions of 49 CFR Part 222.41(c)(1). The City and BNSF are seeking a waiver to extend the mailing date for a Notice of Intent as provided in 49 CFR Part 222.41(c)(2)(i)(A) that states that the Notice of Intent must be mailed by February 24, 2008. The waiver petition requests that the Notice of Intent that the City mailed on February 27, 2008, be accepted as a valid Notice of Intent even though it was mailed after February 24, 2008.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0047) and may be submitted by any of the following methods:

Web site: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 202–493–2251.

Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC, on April 22, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–9204 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0036]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DOLCE VITA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0036 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 28, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0036. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DOLCE VITA is:

Intended Use: "Passenger Charters Only".

Geographic Region: "Florida".

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).

Dated: April 16, 2008.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–9255 Filed 4–25–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 260X)]

Union Pacific Railroad Company—Abandonment Exemption—In Douglas and Sarpy Counties, NE

On April 8, 2008, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 3.45-mile portion of its Millard Industrial Lead, extending between milepost 22.85 in Omaha, NE, and milepost 19.4 in La Vista, NE, in Douglas and Sarpy Counties, NE. The line traverses U.S. Postal Service Zip Codes 68128 and 68137 and includes no stations.

The line does not contain any federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 25, 2008.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 19, 2008. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 260X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Gabriel S. Meyer, Assistant General Attorney, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179. Replies to the UP petition are due on or before May 19, 2008.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339.]

An environmental assessment (EA) (or an environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 17, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–8931 Filed 4–25–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35087]

Canadian National Railway Company and Grand Trunk Corporation Control—EJ&E West Company

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Notice of Availability of the Final Scope of Study for the Environmental Impact Statement (EIS).

SUMMARY: On October 30, 2007, the Canadian National Railway Company (CN) and Grand Trunk Corporation (collectively CN or the Applicants) filed an application with the Surface Transportation Board (Board or STB) seeking the Board's approval to acquire control of EJ&E West (EJ&EW) Company, a wholly owned noncarrier subsidiary of the Elgin, Joliet and Eastern Railway Company[1] (EJ&E). In their application, Applicants state that they plan to construct six new rail connections and approximately 19 miles of siding extensions and second mainline track (double track). EJ&E is a Class II railroad that currently operates approximately 200 miles of track in northeastern Illinois and northwestern Indiana.

On November 26, 2007, the Board issued Decision No. 2 announcing that its Section of Environmental Analysis (SEA) will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts that may result from the proposed acquisition. On December 21, 2007, SEA published a Notice of Intent (NOI) in the **Federal Register** announcing the start of the scoping process and the dates and times of public scoping meetings. This document, as well as a Draft Scope of Study, was served and distributed to approximately 350 stakeholders and 41 federal, state, and local agencies on an environmental distribution list. A press release was issued to 21 Chicago-area newspapers to announce the NOI to the public.

Information about the STB's environmental review of the proposed acquisition was also made available through the Board's Web site, *http://www.stb.dot.gov*. The Board's Web site provides an overview of the proposed acquisition; public comment guidance; links to documents (including the NOI and Draft Scope of Study); links to CN's, and EJ&E's Web sites; and SEA contact information. Additionally, SEA established a toll-free information line (1–800–347–0689) for public comments with a Spanish-language option available. An electronic filing system is also available on the Board's Web site, *http://www.stb.dot.gov*, to receive comments.

To promote participation in a series of 14 public scoping meetings scheduled for January 2008, SEA placed quarter-

[1] Applicants state in their application that EJ&E plans to transfer all of its land, rail, and related assets located west of the centerline of Buchanan Street in Gary (together with the real property and related fixtures associated with the hump and Dixie leads located east of Buchanan Street) to EJ&EW, which at that time would become a rail common carrier. EJ&E would retain its land, rail, and related assets east of the centerline (other than the real property and related fixtures associated with the hump and Dixie leads). It is expected that, if the proposed transaction is approved and Applicants acquire control of EJ&EW, EJ&E would change its name to Gary Railway Company, and EJ&EW would assume the Elgin, Joliet & Eastern Railway Company name. To eliminate confusion, and because EJ&EW would be a temporary entity, the remainder of this document will refer only to "EJ&E."

page advertisements and published public notices in 21 Chicago-area newspapers announcing the meetings. SEA issued a follow-up press release to the same newspapers. Announcement posters were placed in 42 public libraries in communities along the EJ&E rail line, and SEA emailed notices to 285 local elected officials.

Approximately 2,600 individuals participated in the open-house scoping meetings held at seven locations throughout the Chicago region. Two meetings per location were held: One from 1 p.m. to 4 p.m. and one from 6 p.m. to 8 p.m. The dates and locations of the 14 open house meetings were:

- January 8, 2008: Mundelein, Illinois
- January 9, 2008: Barrington, Illinois
- January 10, 2008: Joliet, Illinois
- January 15, 2008: Matteson, Illinois
- January 16, 2008: Gary, Indiana
- January 17, 2008: West Chicago, Illinois
- January 22, 2008: Chicago, Illinois

On January 30, 2008, SEA extended the deadline for Draft Scope of Study comments from February 1, 2008 to February 15, 2008. To publicize the extension, postcards were mailed to 3,038 persons on an updated environmental distribution list, and 43 letters were sent to agencies during the week of January 28, 2008. SEA issued a press release to the 21 Chicago-area newspapers and emailed 310 elected officials to alert them to the comment period extension.

In total, SEA received:

- 1,347 comments from individuals attending the open house meetings;
- 1,268 comment letters;
- 219 oral comments on SEA's information line; and
- 858 individual comments filed electronically on the Board's Web site.

At the conclusion of the comment period, SEA mailed follow-up postcards acknowledging the receipt of comments and participation in the scoping process. SEA placed the names of all commenters on the environmental distribution list, thereby ensuring that they will receive notice of availability of the Draft and Final EIS, as well as the Final Scope of Study.

Based on the comments received and further analysis, SEA has prepared the Final Scope of Study for the EIS, which is included in this Notice of Availability as Appendix A.

Addresses for Further Information

Written requests for further information on the proposed acquisition should be directed to: Phillis Johnson-Ball, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

Telephone requests may be made by calling 1–800–347–0689 (SEA's information line), and emails may be sent via the Board's website at *http://www.stb.dot.gov* by clicking on the "E_FILING" link.

SUPPLEMENTARY INFORMATION: On October 30, 2007, Canadian National Railway Company (CN) and Grand Trunk Corporation (GTC), a noncarrier holding company through which CN controls its U.S. rail subsidiaries, filed an application with the Board under 49 U.S.C. 11323–25. The application seeks the Board's authorization for CN to acquire control of the EJ&E rail line, land, and related assets west of Buchanan Street in Gary, Indiana, along with the hump and Dixie lead tracks located east of Buchanan Street leading into Kirk Yard. Trackage east of Buchanan Street would be handled by the Gary Railway Company.

Acquisition of the EJ&E rail line would provide CN with a continuous route around Chicago. The Applicants intend to connect the existing five CN rail lines that run into central Chicago and re-route CN trains now going through Chicago on their way to other destinations, to the EJ&E rail line. The proposed acquisition includes changes in rail line operations and changes in yard operations.

The Applicants plan to make approximately $100 million in capital improvements, including constructing six new connections at Munger, Joliet, and Matteson (all in Illinois) and Griffith, Ivanhoe, and Kirk Yard located in Gary (all in Indiana). In addition, the proposed acquisition includes plans to install double track and extend sidings within the existing EJ&E railroad right-of-way (ROW) along 19 miles of the EJ&E arc at several locations:

- Leithton and Mundelein, Illinois
- East Siding to 95th Street (between Eola and Naperville, Illinois)
- Normantown to Walker, Illinois
- East Joliet to Frankfort, Illinois.

CN has stated that it intends to shift its trains to the EJ&E rail line from the existing CN routes as the proposed new rail line connections are completed and mainline capacity is added to the EJ&E rail line.

The Applicants propose to upgrade and expand Kirk Yard, and to assess the capabilities of the East Joliet Yard and upgrade it to accommodate increased yard activity. The Applicants propose to relocate rail car sorting and train development activities to both Kirk Yard and East Joliet Yard to allow CN to reduce switching activity that now occurs at CN's Glenn, Hawthorne, Schiller Park, and Markham yards, and at the BRC Clearing Yard. The rail cars of local shippers would continue to be handled at all of those locations and intermodal rail cars would still be served at Markham Yard.

Although the Applicants intend eventually to re-route all their trains currently operating over the St. Charles Air Line, a rail line in downtown Chicago owned jointly by CN, Union Pacific Railroad Company (UP), and BNSF Railway Company (BNSF), no abandonments are anticipated as a direct result of the proposed acquisition. Any abandonment of the St. Charles Air Line would require a separate request for authority to the Board under 49 U.S.C. 10903 or 10502, as well as coordination with BNSF and UP, and with other existing users such as Amtrak.

Environmental Review Process: In reviewing the proposed acquisition, the Board will consider both the transportation merits of the proposed acquisition, and the potential environmental impacts. Based on the information provided in the application, concerns raised regarding possible impacts of the proposed acquisition on communities, and consultations with SEA (the office within the Board responsible for preparing the Board's environmental documentation under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4335, and related environmental statutes) the Board decided in its decision accepting the application to prepare a full EIS. The EIS will include all of the environmental information necessary for the Board to take the hard look at environmental consequences required by NEPA.

The NEPA environmental review process is intended to assist the Board and the public to identify and assess potential environmental consequences of the proposed acquisition before a decision is made whether to approve the proposed transaction, deny it, or approve it with mitigating conditions, including environmental conditions. On December 21, 2007, SEA issued a Notice of Intent (NOI) to individuals and agencies potentially interested in or affected by the proposed acquisition informing them of the Board's decision to prepare an EIS and to initiate the formal scoping process.

SEA also developed and made available a Draft Scope of Study and requested comments. Public meetings were held and comments were received between December 21, 2007 and February 15, 2008. After carefully reviewing the public comments, SEA is issuing this Final Scope of Study for the Draft EIS.

SEA is currently preparing a Draft EIS for the proposed acquisition. The Draft EIS will address those environmental issues and concerns identified during the scoping process and detailed in this Final Scope of Study. It will also include an appropriate discussion of alternatives and potential environmental mitigation.

Upon its completion, the Draft EIS will be made available for public and agency review and comment. A Final EIS will then be issued reflecting the SEA's further analysis, the comments on the Draft EIS, and SEA's recommendations (if any) for environmental mitigation. In reaching its decision on this case, the Board will take into account the full environmental record, including the Draft and Final EIS, and all public and agency comments received.

Discussion

Many issues that emerged through the scoping process are linked to concerns about potential impacts from increased freight rail traffic as a result of this proposed transaction. The issues raised by commenters are briefly outlined below, followed by a discussion of how the issue will be addressed in the Draft EIS. This preamble to the actual Final Scope of Study, included in Appendix A, provides SEA's rationale.

Proposed Acquisition and Definition of Alternatives

Reasonable and feasible alternatives for the proposed acquisition that will be evaluated in the EIS include approval of the transaction as proposed, disapproval of the proposed transaction in whole (No-Action alternative), or approval of the proposed transaction with conditions, including environmental mitigation conditions.[2]

Many commenters recommended that the EIS include consideration of the Chicago Region Environmental and Transportation Efficiency Program (CREATE Program) as an alternative to the proposed acquisition, or that it at least consider the effects on CREATE, and the use of non-EJ&E rail corridors and connections for CN to move its trains through the Chicago area.

[2] The Board has broad authority to impose conditions in railroad control transactions under 49 U.S.C. 11324(c). However, the Board's power to impose conditions is not limitless: There must be a sufficient nexus between the condition imposed and the transaction before the agency, mitigation is not imposed to correct pre-existing conditions, and the condition imposed must be reasonable. See *United States* v. *Chesapeake & O. Ry.*, 426 U.S. 500, 514–15 (1976); *Consolidated Rail Corp.* v. *ICC*, 29 F.3d 706, 714 (D.C. Cir. 1994).

CREATE and Other Non-EJ&E Rail Corridors as Alternatives

NEPA and the Board's environmental rules require the EIS to include reasonable and feasible alternatives to the proposed acquisition (49 CFR 1105.7(e)(1)). The EIS will evaluate proposed alternatives to determine which would meet "the purpose and need" of the proposed transaction, and warrant actual study or analysis, for the reasons that will be explained in the EIS. The purposes of the proposed transaction are described in a section of the CN application entitled "Purpose of the Transaction" (p. 22). These purposes are (1) connecting the five CN rail lines in the Chicago area to create operational improvements throughout the CN system, (2) obtaining access to the East Joliet and Kirk Yards, and (3) facilitating expanded business opportunities with EJ&E's shippers. Any reasonable and feasible alternative must meet the stated purpose and need for the proposed acquisition.

Neither CREATE nor any other non-EJ&E rail corridors will be treated as alternatives for the proposed action because they plainly would not meet the three-fold purpose and need articulated in the application. Nevertheless, the transportation systems section of the EIS will address these issues as appropriate.

Alternative Connections

Commenters also suggested that the EIS should examine alternative locations or configurations for the proposed new connections to reduce potential impacts related to this proposed transaction because there may be a variety of reasonable ways in which Applicants could accomplish construction of the proposed connections. The EIS will contain an appropriate examination of alternative configurations for the proposed connections to determine whether there is a way to meet the purpose and need of the proposed acquisition with less potential environmental impact.

Environmental Impact Categories

Safety

Commenters raised concerns about rail safety and security, the Applicants' emergency management capability and planning, and the proximity of sensitive populations and land uses to the EJ&E rail line. The largest number of commenters on safety issues expressed concern about the potential impacts to local communities from accidents. As indicated in the Draft Scope of Study, the EIS will evaluate the effects of the proposed acquisition on the safety of the public at large (including such issues as increased probability of train accidents and derailments due to increased proposed acquisition-related train traffic on a system-wide basis), potential effects at grade crossings, and potential effects of increased proposed transaction-related freight traffic on commuter and intercity passenger service operations. The EIS also will include an appropriate discussion of Applicants' Safety Integration Plan.

Hazardous Materials Transportation

A number of commenters requested that the EIS address potential environmental impacts of the proposed acquisition on public health and safety with respect to the transportation of hazardous materials, including a discussion of possible accidental release, spill management capability, and the presence of contaminated sites. Many commenters suggested that this analysis should include CN's safety record in Canada, as well as the United States. Other commenters suggested that the EIS should assess accidents involving hazardous materials and alternative routes for hazardous material shipments.

The EIS will assess CN's safety record in the United States. The rail safety statistics in Canada are collected and analyzed in a different manner than that used in the United States. The EIS will provide information on CN's U.S. safety record and that of the other U.S. Class I railroads, as compiled by the Association of American Railroads (AAR), to provide a valid basis for comparison. The EIS will use Federal Railroad Administration (FRA) standards as the basis for compliance for all hazardous material accidents and spills. The EIS also will address quantities and types of hazardous materials transported, response plans for potential spills or accidents, and locations of contaminated sites in the vicinity of planned construction activities.

Transportation Systems

There are approximately 140 highway/rail at-grade crossings on the EJ&E line that may experience longer traffic delays due to increased freight rail traffic resulting from the proposed acquisition. Although existing CN crossings on lines into downtown Chicago would experience less train traffic and fewer delays as a result of the proposed acquisition, a number of commenters expressed concern about the potential impact of increased freight rail traffic on local transportation systems, including congestion and delays at highway/rail at-grade crossings, and potential impacts to

community emergency response capability.

Consistent with the Draft Scope of Study, the EIS will evaluate the impact of the proposed transaction on local transportation systems and intercity Amtrak services, vehicular delays due to increases in rail-related operation, and increased train traffic on movable railroad bridges as a result of the proposed transaction. Since no changes in intermodal activity or truck traffic have been identified, analysis of truck traffic as identified in the Draft Scope of Study does not appear warranted. Other issues of concern to be included in the transportation systems impact evaluation are described below.

Planning Horizon: CN has used 2012, three years from the date of the Board's anticipated issuance of a final decision, as the year it expects to achieve the rail traffic projected in the application. Many commenters objected that this three-year forecasting period is too short. Commenters are concerned that using 2012 as the planning horizon would underestimate the potential effects of the proposed acquisition, and could result in less mitigation than the mitigation the Board would impose if the planning horizon were lengthened.

Planning horizon threshold suggestions for both freight rail and highway traffic ranged from 2020 to as long as 2030 or 2035. The commenters believe that potential increases in freight rail traffic can be projected that far into the future, even though the forecasts are not as reliable as shorter projections. The commenters also allege that CN would not have decided to proceed with this proposed acquisition transaction based only on a short range forecast of potential freight rail traffic. On the other hand, CN contends that forecasts longer than three to five years are necessarily speculative due to uncertainties in the global economy and the effects of competition. CN also states that the proposed transaction would not lead to additional freight rail traffic beyond the projections in the application.

After carefully considering the comments, SEA has determined that the time horizons suggested by the commenters are too long to produce reliable information. Those time horizons also exceed by far the time horizons that have been used in prior Board proceedings. At the same time, the three-year time horizon proposed in the Draft Scope of Study is too short for the proposed transaction. Thus, the EIS will use a five-year threshold from the date of the anticipated year of the issuance of a final decision (2015) for analysis of effects of increased rail traffic, such as vehicle delay. This year was selected because five years is not too long to produce reasonable and reliable freight rail forecasts. SEA has requested the necessary information from CN to permit the use of a five-year forecast in the EIS.

Highway traffic will also be forecasted to 2020 for vehicle delay analysis. The year 2020 is reasonable based on available highway traffic data and will provide useful information for community planning purposes. Any year further in the future would diverge too much from the five-year freight rail forecast timeframe that will be used.

ADT Threshold: The Draft Scope of Study stated that the EIS would assess impacts to safety and vehicle delays at highway/rail at-grade crossings where the average daily highway traffic (ADT) exceeds 2,500 vehicles per day, but did not state which year should be used to measure the ADT. Some commenters suggested that the threshold for analysis should be lowered to 2,000 vehicles per day, to better help interested persons obtain information on all of the possible locations where drivers could be delayed or safety could be affected as a result of this proposed transaction.

In the EIS, vehicle delay will be estimated for all public highway/rail at-grade crossings and more detailed analysis will be done for crossings with an ADT of 2,500 vehicles per day. To clarify, SEA will apply the 2,500 vehicle per day threshold to traffic levels for the years 2015 and 2020. SEA also will conduct a more detailed analysis where the ADT at the crossing is less than 2,500 vehicles per day where appropriate as a result of specific circumstances. The ADT threshold of 2,500 vehicles per day will provide a sufficient level of analysis to determine the location of significant effects of the proposed acquisition on safety or vehicle traffic delays.

Gary Chicago International Airport (GCIA): Many commenters took the position that the EIS should analyze the effects of the proposed transaction on the Gary Chicago International Airport (GCIA). The GCIA has been engaged in an improvement program to increase the capacity of its existing principal east/west runway and to remedy a safety deficiency associated with this runway. Supporters of the airport expansion expect it to provide economic stimulus to the economy of Northwest Indiana. The Federal Aviation Administration (FAA) signed a Record of Decision (ROD) approving the extension in 2005.

According to the comments, GCIA plans to extend the primary runway (designated as Runway 12/30) 1,900 feet to the northwest to solve capacity and safety problems. Based on the available information, GCIA evidently has obtained commitments for funding to carry out airport improvements. Currently the northwest end of the runway is only 270 feet from the EJ&E tracks, which are on top of an embankment that places the tracks 22 feet above the end of the runway. Safety concerns have been raised because of the proximity of the EJ&E roadbed to the end of the runway, and the roadbed's elevation above the runway.

To extend the runway and reduce the potential safety issues, GCIA has proposed to relocate and lower to ground level the EJ&E tracks. According to the FAA ROD, the proposed relocation of the EJ&E would increase the rail route by 5,263 feet and add two highway/rail at-grade crossings at Chicago Avenue and Industrial Drive. These two crossings would be eliminated at a later date by closing Chicago Avenue and raising the grade of Industrial Highway over the EJ&E tracks.

Negotiations have been ongoing for many years between GCIA and EJ&E. CN has been sitting in on negotiations since the proposed acquisition was announced. To date, the parties have not reached an agreement on whether to relocate the EJ&E line or how the rail line relocation should be designed. During the parties' negotiations, concerns have been raised about increased fuel consumption and interference of the highway/rail at-grade crossings with train operations if the rail line is relocated. GCIA has contended that projected additional trains associated with the proposed transaction could make it more difficult to negotiate a solution to the runway problem. In response, CN asserts that the proposed transaction would have no effect on the relocation negotiations or GCIA because CN believes that the number of trains using the EJ&E rail line does not affect the issues that need to be addressed related to the relocation. CN has labeled the potential impacts of the proposed line relocation "a pre-existing condition," rather than one that would be a direct result of the proposed acquisition transaction.

The Draft Scope of Study did not mention any analysis of potential effects on existing or proposed airports. Based on the comments, SEA will include in the EIS an appropriate analysis of the impacts of increased train traffic on the existing line near GCIA, as well as the proposed runway expansion and rail line relocation at GCIA.

The Commuter Rail Division of the Regional Transportation Authority (Metra) and the Suburban Transit Access Route (STAR Line): Many

individuals and government agencies commented that the EIS should address the effects of the proposed transaction on future commuter rail service planned for a portion of the EJ&E ROW in Illinois. The Commuter Rail Division of the Regional Transportation Authority (a/k/a Metra) proposes to institute passenger service on certain segments of the EJ&E ROW and tracks. The service, to be known as the Suburban Transit Access Route, or the STAR Line, is part of the 2030 Regional Transportation Plan for Northeastern Illinois. The STAR Line plan calls for service over approximately 35 miles of EJ&E ROW from a point east of Interstate 55 in Joliet, to Interstate 90 in Hoffman Estates, from which the service would then travel eastward on new track within the I–90 ROW corridor to O'Hare Airport. Metra's STAR Line would include seven new passenger rail stations along the existing EJ&E rail line in Cook, DuPage, and Will counties.

Congress authorized funding for preliminary engineering of the STAR Line in Section 3043(c)(120) of SAFETEA–LU. Many of the municipalities along the STAR Line route have already obligated or spent funds to provide new passenger rail stations and are incorporating the STAR Line into their land use planning. Metra is also studying potential extensions to the STAR Line east of Joliet and north of Hoffman Estates on the EJ&E ROW, but that planning is preliminary and is not expected to be completed in the foreseeable future.

The Draft Scope of Study states that the transportation systems analysis in the EIS will address the potential effects on reasonably foreseeable future commuter rail operations. SEA now clarifies that the EIS will encompass an appropriate discussion of the STAR Line from Joliet to Hoffman Estates, as part of the analysis.

Metra and the EJ&E Interlockings: Many commenters urged that the EIS should include an analysis of the effects of the proposed acquisition on commuter rail operations where the Metra trains intersect with the EJ&E. Metra currently operates approximately 700 trains each day throughout the Chicago region. The Metra trains pass over "interlockings" (rail to rail at-grade crossings) where freight traffic on the EJ&E corridor is projected to increase as a result of the proposed transaction. The interlockings are controlled by EJ&E. Metra and many other commenters are concerned that the projected freight increases resulting from this proposed transaction could impair Metra's on-time performance by causing commuter trains to wait for passing or stopped freight trains. Metra further states that it is planning to extend its service on the UP West Line that passes over the EJ&E interlocking at West Chicago, and on the UP Northwest Line that passes over the EJ&E interlocking at Barrington. Metra is also planning to institute new Southeast Service over the UP ROW, which would pass over the EJ&E interlocking at Chicago Heights. The success of these projects allegedly would be adversely affected due to the projected freight rail increases described in the application.

The Metra extensions described above are part of the 2030 Regional Transportation Plan for Northeastern Illinois. Section 3043(a)(13) of SAFETEA–LU authorized over $26 million for final design and construction of Metra's UP West Extension. Section 3043(c)(119) of SAFETEA–LU authorized funding of preliminary engineering for Metra's Southeast Service.

As the Draft Scope of Study stated, the EIS will evaluate the effects of the proposed transaction on existing and reasonably foreseeable commuter rail operations. As part of that analysis, the EIS will contain an appropriate examination of the transportation system impacts of the proposed acquisition on existing Metra service, Metra's UP West Extension, the UP Northwest Extension, and the Southeast Service.

The National Railroad Passenger Corporation (AMTRAK): Many commenters noted that the EIS should consider the effects of the proposed transaction on AMTRAK service between downstate Illinois and Chicago. AMTRAK explained that it operates six trains each day over the CN Chicago Subdivision Line south from a point near 23rd Street on Chicago's Lakefront Line. These six trains connect from the Lakefront Line to Chicago's Union Station over the St. Charles Air Line, a rail line owned jointly by CN, UP, and BNSF. Under the proposed transaction, CN would no longer operate any freight trains over the St. Charles Air Line or along the Lakefront Line. AMTRAK is concerned that it could remain the only user of the St. Charles Air Line and CN's Lakefront Line and, as such, could be required to pay all maintenance expenses for the St. Charles Air Line. The Illinois Department of Transportation (IDOT) shares AMTRAK's concern, noting that it helps to finance AMTRAK's six daily trains. AMTRAK and IDOT say they would not be able to pay all of the maintenance expenses alone, which could jeopardize AMTRAK's current service. AMTRAK further indicates that, at present, it does not have an acceptable alternative access route into Chicago's Union Station.

The commenters also asked that the EIS assess the impacts that could occur from loss of AMTRAK service to Illinois communities that rely on AMTRAK service to and from Chicago and the effects on the highway system and related energy consumption that would result from loss of this service.

CN minimizes the potential impacts of this proposed transaction on AMTRAK, noting that AMTRAK has an existing agreement to use the St. Charles Air Line and the Lakefront Line tracks through 2010 and that AMTRAK can continue to use these lines indefinitely on the same terms with the same adjustments for inflation, as stated in the existing agreement. CN adds that there is no proposal pending before the Board to abandon the St. Charles Air Line or any of CN's tracks along the Chicago Lakefront Line.

The Draft Scope of Study stated that the EIS would describe the effects of the proposed acquisition on existing AMTRAK service. SEA now clarifies that the EIS will examine the transportation system impacts on existing AMTRAK service on the St. Charles Air Line and the other CN lines used by AMTRAK in the Chicago area. Because there is no proposal in front of the Board for authority to abandon the St. Charles Air Line, the possible future discontinuance of AMTRAK service over the St. Charles Air Line will not be analyzed in detail in the EIS. Any attempt to do so at this point would be speculative.

Northern Indiana Commuter Transportation District (NICTD): Many commenters urged that the EIS consider the effects of the proposed transaction on existing and proposed commuter rail service for Northwestern Indiana. The commenters explain that NICTD operates the South Shore commuter rail service between South Bend, Indiana and Chicago. The South Shore connects with the CN Illinois Central (Chicago Subdivision) tracks at 115th and Kensington in Chicago. Freight service on this CN line is expected to decrease as a result of the proposed transaction. NICTD is presently completing a switching improvement project where its tracks connect with CN at 115th and Kensington. NICTD evidently is considering two new West Lake Corridor commuter rail services between Chicago and communities in northwest Indiana. Both proposed services apparently would use existing Metra and NICTD trackage to Hammond, where the services would then use ROW controlled by NICTD south to Maynard, near Munster.

Service between Chicago and Valparaiso, Indiana would use the CN South Bend Subdivision between Munster and Valparaiso, Indiana; this service would cross the EJ&E at Griffith. Service between Chicago and Lowell, Indiana would use CSXT trackage between Munster and Lowell, Indiana. This service would cross the CN South Bend Subdivision at Maynard and the EJ&E at Dyer.

The available information indicates that NICTD has prepared two planning documents related to these proposed services, which identify the purpose and need for the proposed services and describe rail and bus alternatives. However, a Locally Preferred Alternative (LPA) has not been determined for these services. No funding sources have been secured to date for continued planning and implementation for the proposed services. NICTD also does not have an agreement with CN to use its South Bend Subdivision ROW for the proposed passenger service. NICTD and others have commented that the outstanding issues related to use of the CN South Bend Subdivision ROW should be resolved in the instant acquisition proceeding and that the EIS should assess the impacts related to loss of the opportunity to institute new commuter service on the CN South Bend Subdivision ROW.

An appropriate discussion of the NICTD operations will be included in the EIS.

Land Use

Some commenters expressed concerns regarding potential impacts to parks and other community facilities and amenities, as well as impacts to neighborhoods including visual impacts. Consistent with the Draft Scope of Study, the EIS will evaluate consistency of the proposed transaction with existing land use plans and zoning requirements, and potential impacts to prime farmland. Because trains already operate on the EJ&E rail line, and additional trains resulting from the proposed transaction are not expected to change the physical character of the line or adjoining lands, SEA does not believe that a detailed visual impact analysis is warranted.

Socioeconomics

A number of commenters expressed concern over the potential impacts that the proposed acquisition would have on community quality of life, on local property values and the local economy, and how the proposed transaction would affect community growth and social cohesion. Consistent with the Draft Scope of Study, the EIS will evaluate socioeconomic issues related to changes in the physical environment as a result of the proposed transaction.

Energy

Some commenters expressed concern about fuel consumption related to congestion and potential effects of the proposed transaction on climate change. As indicated in the Draft Scope of Study, the EIS will evaluate the potential environmental impact of the proposed transaction on the transportation of energy resources and recyclable commodities to the extent that such information is available, and evaluate potential changes in fuel use arising from the proposed transaction. The EIS will also include an appropriate discussion of fuel use changes related to this proposed transaction and climate change.

Air Quality

Commenters expressed concern regarding the potential impacts of the proposed transaction to public health and regional air quality resulting from proposed transaction-related changes in train emissions. The commenters noted that longer and more frequent trains and additional rail activity in the rail yards are expected to increase air emissions in the EJ&E corridor. In addition, commenters were concerned about an increase of emissions at highway/rail at-grade crossings from vehicles subject to delays as a result of the proposed acquisition. The Chicago Metropolitan Area has been designated as a nonattainment area under the Clean Air Act. Accordingly, the EIS will evaluate air emissions increases where the post-proposed acquisition activity would exceed the Board's thresholds for environmental review in nonattainment areas in 49 CFR 1105.7(e)(5)(i) (generally, an increase of three trains per day on any segment of rail line affected by the proposal).

The EIS will also evaluate the net increase in emissions from increased railroad operations, as well as potential air emissions increases from vehicle delays at rail crossings associated with the proposed transaction. Emissions changes arising from the proposed transaction will be estimated, including expected increases or decreases in diesel particulate emissions and related air toxics.

Noise and Vibration

Many commenters expressed concern about potential increases in horn and other noise, as well as train-induced vibration throughout the EJ&E corridor as a result of the proposed acquisition. As the commenters note, the proposed transaction would place more and longer trains on EJ&E tracks and increase activity at key points such as Kirk Yard in Gary, Indiana. Accordingly, consistent with the Draft Scope of Study, the EIS will evaluate potential proposed transaction-related increases in noise and associated impacts and will assess potential vibration effects based on Federal Transit Administration (FTA) vibration methodology in areas where it appears there may be vibration sensitive receptors within or adjacent to the EJ&E rail line ROW.

Biological Resources

Commenters expressed concern regarding potential impacts of the proposed transaction on wildlife, as well as nature preserves and designated natural areas. The Draft Scope of Study stated that the EIS would assess the effects of acquisition-related construction (double tracking, proposed new connections) on threatened and endangered species, wildlife sanctuaries or refuges, and national or state parks or forests. Many commenters suggested that the EIS should also assess the effects of increased rail operations, maintenance (herbicide spraying), and the risk of accidents on wildlife areas along the EJ&E ROW.

Based on the comments, the EIS will assess the operational impacts of additional freight rail traffic on areas where federal or state threatened or endangered species or designated critical habitats are located. The EIS will examine the effects of the proposed acquisition in areas along the EJ&E rail line ROW that have been designated as natural areas by federal, state, and local natural resource agencies. The EIS will also assess the potential effects on designated natural areas from construction of the alternative configurations for the proposed new connections and double tracking.

Water Resources

Some commenters expressed concern about the potential effects of the proposed transaction on surface and groundwater quality, as well as flood plains and local drainage systems. As indicated in the Draft Scope of Study, the EIS will evaluate consistency with applicable federal or state water quality standards; determine if permits may be required under Sections 404 or 402 of the Clean Water Act (33 U.S.C. 1344) for any proposed construction; and assess whether any planned construction has the potential to encroach upon any designated wetlands or 100-year floodplains.

Environmental Justice

Some commenters expressed concern about potential disproportionate adverse effects of the proposed acquisition on minority or low income populations. Consistent with the Draft Scope of Study, the localized adverse impacts of the proposed transaction (for example, noise, air quality, residential or business relocations, and community impacts) will be analyzed in relation to the presence of minority and low income populations. The EIS will assess demographics in the immediate vicinity of areas where major planned activities (such as construction of improved rail connections, siding extensions, and installation of double track) would take place, and where increases in train traffic would be above the Board's threshold for environmental review. The EIS will evaluate whether such activities potentially could have a disproportionately high and adverse effect on minority or low income groups.

Cultural and Historic Resources

The Draft Scope of Study stated that the EIS would address potential effects from construction of the proposed connections and double tracking on cultural and historic resources that are in or immediately adjacent to the railroad ROW. Commenters suggested that the EIS should assess impacts on cultural resources that are near but not necessarily adjacent to the EJ&E ROW or near the area where new connections are proposed. These cultural resources range from historic and prehistoric sites to historic districts.

The Final Scope of Study clarifies that the EIS will establish an area of potential effect (APE) in coordination with the State Historic Preservation offices (SHPO) in Illinois and Indiana. SEA will assess potential effects within the APE. The APE will most likely be inside the EJ&E ROW and the immediate area where construction activities (double tracking, new connections) may cause ground disturbance. In addition, the EIS will evaluate Native American sites to the extent they are suggested for evaluation by a SHPO or a Native American tribe.

Indirect and Cumulative Effects

Commenters expressed concern about the potential indirect and cumulative effects that could be caused by the proposed acquisition, including effects of other reasonably foreseeable activities on communities and natural resources. Consistent with the Draft Scope of Study, the EIS will address indirect and cumulative effects that may occur later in time, or at other locations, or which, in combination with other actions, could affect the same resources. This analysis will be done for reasonably foreseeable related actions that warrant such analysis, given the context and scope of the proposed acquisition.

In addition, some commenters suggested that the EIS should examine the effects of increased freight rail traffic on CN lines in Wisconsin. They suggested that the proposed acquisition of the EJ&E by CN would result in increased traffic on the CN lines in Wisconsin going to and from the Chicago area. This, the commenters state, would result in increased impacts to safety and air quality in Wisconsin.

In preparing the EIS, SEA will determine the geographic boundaries for the analysis of indirect and cumulative effects by examining an area within reasonable proximity to the area or areas where direct effects to environmental resources are observed. SEA will also take into account the nature of each affected resource that is analyzed. The Applicants have not identified proposed transaction-related train traffic changes on any of the CN rail line segments outside of the EJ&E's arc. Although SEA's own review analysis has not been completed yet, the available information does not suggest that an analysis of indirect and cumulative effects outside of the Chicago metropolitan area will be warranted.

As indicated in the Draft Scope of Study, the EIS will evaluate indirect and cumulative effects, as appropriate, for other projects or activities that relate to the proposed transaction where SEA determines that there is the likelihood of significant environmental impacts and where information is provided to the Board that describes (1) those other projects or activities, (2) their interrelationship with the proposed acquisition, and (3) the type and severity of the potential environmental impacts. This information must be provided to the Board within sufficient time to allow for review and analysis in the EIS.

Some commenters suggested that the EIS should examine the effects of the proposed acquisition of the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) and the Iowa, Chicago & Eastern Railroad Corporation (IC&E) by Canadian Pacific Railway Corporation (CP).[3] Prior to CP's application to acquire DM&E and IC&E, the Board approved an extension of the DM&E into the Powder River Basin in Northeastern Wyoming to permit rail access to coal resources.[4] The commenters believe that the likely route for any new coal shipments that could result from the CP's proposed acquisition of the DM&E would be over the CN rail lines in Wisconsin, including the EJ&E rail lines, if CN's proposed acquisition of EJ&E is authorized and implemented. They contend that this would result in more and longer freight trains than the numbers projected in the application, which, the commenters claim, would result in more severe impacts on their communities than would otherwise be the case.

As previously noted, the EIS will include an appropriate evaluation of indirect and cumulative effects of reasonably foreseeable projects that relate to the proposed acquisition. The commenters' suggestion that the impacts of the proposed acquisition of the DM&E and IC&E by CP need to be considered as part of the cumulative impact analyses, however, is premature. In a decision in Finance Docket No. 35081, issued on April 4, 2008, the Board determined that it would be appropriate to defer preparation of an EIS addressing the possible future movement of DM&E PRB coal traffic over the IC&E and/or CP lines because sufficient information is not available to conduct a meaningful review now. In that decision, the Board made clear that should it ultimately authorize the transaction proposed in Finance Docket No. 35081, it would impose conditions on the authorization precluding such movements pending completion of an EIS and the issuance of a final Board decision addressing the impact of such coal operations and allowing such operations to begin, if appropriate. In short, no movements of the sort commenters are concerned about are reasonably foreseeable at this time.

Mitigation

Many commenters suggested that the Board should require CN to install highway/rail grade separations or change rail operations wherever vehicle delays or safety risk would exceed the existing conditions. Other commenters stated that the Board should base its mitigation conditions on the accomplishment of regional goals and not on local problem sites. Some commenters believed that the Board should retain jurisdiction over the

[3] This acquisition is pending before the Board in STB Finance Docket No. 35081, *CP Railway Company et al.—Control—Dakota Minnesota & Eastern Railroad Corp., et. al.*

[4] See *Dakota, Minnesota & Eastern Railroad Corp., Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Feb. 15, 2006), affirmed *Mayo Foundation* v. *STB*, 472 F.3d 545 (8th Cir. 2006).

proposed transaction for an extensive period after the proposed transaction is implemented (assuming the Board authorizes it), to review additional increases in freight rail and vehicle traffic to determine appropriate mitigation. Other commenters suggested that the Board should not approve the proposed transaction unless CN agrees to make accommodations for improvements, such as the runway extension at GCIA and the NICTD West Lake Corridor service on the South Bend Subdivision ROW.

It would be inappropriate to present any specific mitigation in the Final Scope of Study for the Draft EIS. Mitigation depends on the results of the environmental analysis, and the environmental analysis related to the proposed transaction is not yet completed. The Draft EIS will contain recommendations for environmental mitigation based on the results of the analysis of potential effects. After the Draft EIS is issued, commenters will have the opportunity to comment on the mitigation recommendations in the Draft EIS. The comments will be reflected in the Final EIS. The Board then will consider SEA's final recommended mitigation in deciding whether to grant or deny the proposed acquisition or grant it with environmental conditions. Finally, it is worth noting here that the Board only has authority to require mitigation for effects arising from the proposed acquisition, not pre-existing conditions. At the same time, however, voluntary mitigation (i.e., mitigation proposed by the railroad often after consultations with potentially affected communities and others) can sometimes achieve more far reaching results than the Board could unilaterally impose. Voluntary mitigation and mutually acceptable negotiated agreements can result in cost sharing to allow completion of very costly measures, such as grade-separated crossings, which primarily benefit the community rather than the railroad, and thus are typically funded primarily by entities other than the railroad.

The Final Scope of Study for the Draft EIS of the proposed transaction is attached as Appendix A.

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Anne K. Quinlan,

Acting Secretary.

Appendix A: Final Scope of Study for the EIS

Proposed Action and Definition of Alternatives

Applicants' proposed acquisition of the EJ&E railroad would result in shifting of rail traffic from rail lines in Chicago to rail lines on the EJ&E line, which forms an arc around Chicago. Rail traffic on CN lines inside the EJ&E arc would generally decrease. These decreases in rail traffic would be offset by substantial increases in the number of trains operated on the EJ&E line outside Chicago. The increase in train traffic on the EJ&E line would vary from approximately 15 to 24 additional trains per day. Applicants state that the proposed transaction would not impair CN's ability to handle commuter trains, passenger trains, or trackage/haulage trains currently operating on the EJ&E line. Finally, on the integrated CN/EJ&E system, four train pairs would be added to EJ&E terminals: three inbound and three outbound switch trains at Kirk Yard, and one inbound and one outbound switch train at East Joliet Yard. Applicants' projections for the changes in rail operations as a result of the proposed acquisition are set forth in the application, available on the Board's Web site. The proposed transaction also includes construction of six rail connections, siding extensions, and installation of double track. The EIS will discuss the purpose and need for the proposed transaction.

Reasonable and feasible alternatives for the proposed acquisition that will be evaluated in the EIS are (1) approval of the proposed transaction, (2) disapproval of the proposed transaction in whole (No-Action alternative), or (3) approval of the proposed transaction with conditions, including environmental mitigation conditions.[5]

In addition, the EIS will consider as appropriate, reasonable and feasible alignment alternatives for the six proposed connections.

[5] The Board has broad authority to impose conditions in railroad acquisition transactions under 49 U.S.C. 11324 (c). However, the Board's power to impose conditions is not limitless: there must be a sufficient nexus between the condition imposed and the transaction before the agency, mitigation is not imposed to remedy pre-existing conditions, and the condition imposed must be reasonable. See *United States* v. *Chesapeake & O. Ry.*, 426 U.S. 500, 514–15 (1976); *Consolidated Rail Corp.* v. *ICC*, 29 F.3d 706, 714 (D.C. Cir. 1994).

Environmental Impact Analysis

Analysis in the EIS will address proposed activities and their potential environmental impacts, as appropriate. Existing rail operations are the baseline from which the potential environmental impacts of the proposed transaction will be evaluated. SEA will evaluate only the potential environmental impacts of operational and physical changes that are directly related to the proposed transaction. SEA will not consider environmental impacts solely arising from existing rail operations and existing railroad facilities.[6]

The scope of the analysis will include the following types of activities:

1. Anticipated changes in level of operations on rail lines (for instance, an increase in average length of trains, or a proposed change in average train speed) for those rail line segments that meet or exceed the Board's thresholds for environmental review in 49 CFR 1105.7.

2. Proposed changes in activity at rail yards to the extent such changes may exceed the Board's thresholds for environmental analysis in 49 CFR 1105.7

3. Proposed physical construction of improved rail connections, siding extensions, and installation of double track.

Environmental Impact Categories

The EIS will address potential impacts on the environment that will include the areas of safety, rail operations, transportation systems, hazardous waste sites, hazardous materials transportation, land use, energy, air quality, noise, natural resources, water resources, socioeconomic effects related to physical changes in the environment, environmental justice, cultural or historic resources, and indirect and cumulative effects, as described below.

1. Safety

The EIS will:

A. Consider at-grade rail crossing accident probability and safety factors related to increased freight traffic as a result of the proposed transaction. This will generally include all public highway/rail at-grade crossings.

[6] In proceedings similar to this proposed acquisition, the Board's practice consistently has been to mitigate only those environmental impacts that result directly from the proposed transaction. The Board, like its predecessor, the Interstate Commerce Commission, has not imposed mitigation to remedy pre-existing conditions such as those that might make the quality of life in a particular community better, but are not a direct result of the proposed acquisition (i.e., congestion associated with the existing rail line traffic, or the traffic of other railroads).

Accident probability analysis will address the potential for rail and vehicle accidents.

B. Consider increased probability of train accidents and derailments due to increased proposed transaction-related traffic on a system-wide basis.

C. Address potential effects of proposed transaction-related increased freight traffic on commuter and intercity passenger service operations.

D. Discuss CN's emergency management or emergency response plans.

E. Address safety issues associated with the integration of differing rail operating systems and procedures, including an appropriate discussion of Applicants' Safety Integration Plan.

2. Hazardous Materials Transportation

The EIS will discuss the potential environmental impacts of the proposed transaction on public health and safety with respect to the transportation of hazardous materials, including:

A. Changes in the types of hazardous materials and quantities transported or re-routed.

B. Nature of the hazardous materials that are currently being transported or are proposed to be transported.

C. Applicants' safety practices and protocols.

D. Applicants' U.S. safety data on derailments, accidents and hazardous materials spills.

E. Contingency plans to address accidental spills.

F. Probability of increased spills given railroad safety statistics and applicable Federal Railroad Administration requirements.

3. Transportation Systems

The EIS will:

A. Describe system-wide and localized effects of the proposed transaction-related operational changes, construction of proposed connections, siding extensions, and installation of double track.

B. Evaluate those commuter rail line segments or crossings that would experience increased freight traffic as a result of the proposed transaction.

C. Discuss proposed transaction-related effects on existing or proposed commuter or passenger rail service (Metra, NICTD, AMTRAK) as appropriate (i.e., where capital improvements have been approved). Evaluate the capability of the EJ&E rail line segments or crossings to accommodate the reasonably foreseeable addition of commuter trains.

D. Discuss proposed transaction-related potential diversions of freight traffic from trucks to rail and from rail to trucks, as appropriate.

E. Address vehicular delays at rail crossings and intermodal facilities due to increases in rail traffic operations as a result of the proposed transaction. Estimates of typical delays will be made for highway/rail at-grade crossings, more detailed analysis will be done at highway/rail at-grade crossings that have an ADT of 2,500 vehicles per day or are within 800 feet of another crossing. Vehicle delay analysis will be done for traffic levels in years 2015 and 2020. Detailed analysis also will be conducted at highway/rail at-grade crossings that have an ADT of less than 2,500 vehicles per day, but have unique circumstances that make such evaluations appropriate.

F. Evaluate potential effects of proposed transaction-related highway/rail at-grade crossing blockage due to stopped trains.

G. Discuss potential effects of proposed transaction-related increased train traffic on emergency response facilities in proximity to the EJ&E rail line.

H. Discuss potential effects of proposed transaction-related increased train traffic on railroad bridges that cross navigation channels to the extent that such bridges allow only one mode of transportation to pass at a time (movable-span railroad bridges).

I. Discuss potential effects of proposed transaction-related increased train traffic on the Gary Chicago International Airport and its planned expansion.

4. Land Use

The EIS will:

A. Describe whether the construction of the proposed rail connections, siding extensions, and installation of double track are consistent with existing land use plans.

B. Describe environmental impacts associated with the construction of the proposed rail connections, siding extensions, and installation of double track on existing land use plans and potential effects on prime farmland.

C. Discuss potential effects of proposed transaction-related changes in rail operations on parks, forest preserves, and schools in the vicinity of the EJ&E rail line.

D. Discuss consistency of the construction of the proposed rail connections, siding extensions, and installation of double track with applicable zoning requirements.

5. Socioeconomics

The EIS will:

A. Address socioeconomic issues related to changes in the physical environment as a result of the proposed transaction.

B. Describe demographic characteristics of the transaction area and potential effects of the proposed transaction.

C. Evaluate economic effects of proposed acquisition-related construction and improvements to the EJ&E.

D. Discuss potential effects of proposed transaction-related increased train traffic on the potentially affected communities.

6. Hazardous Materials—Contaminated Sites

The EIS will:

A. Describe any recorded sites of contamination within or adjacent to areas potentially disturbed by proposed transaction-related construction activities.

B. Discuss known areas where spills of hazardous materials have occurred in the past and which may be affected by proposed transaction-related activities.

C. Discuss emergency response and clean up plans.

7. Energy

The EIS will:

A. Describe the potential environmental impact of the proposed transaction on transportation of energy resources and recyclable commodities.

B. Evaluate potential changes in fuel use arising from the proposed transaction.

8. Air Quality

The EIS will:

A. Evaluate air emissions increases where the proposed post-acquisition activity would exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(i), for air quality nonattainment areas as designated under the Clean Air Act. The applicable thresholds are as follows for the Chicago Metropolitan area, which is a nonattainment area: [7]

1. A 50 percent increase in rail traffic (measured in gross-ton miles annually) or an increase of three trains a day on any segment of rail line affected by the proposal; or

[7] Nonattainment areas are areas that do not comply with one or more ambient air quality standards. Ozone non-attainment areas are further classified as Marginal, Moderate, Serious, Severe, or Extreme Areas. These classifications are based on the level, in parts per million (ppm), of ozone measured for each area. Moderate areas are defined as .092 to .107 ppm, Serious Areas are defined as containing 0.107 ppm to 0.120 ppm, and Severe Areas are defined as containing 0.120 to 0.187 ppm. The Chicago area is currently classified as moderate non-attainment for ozone and non-attainment for PM 2.5.

2. An increase in rail yard activity of at least 20 percent or more in carload activity (rail car switching and block swapping).

3. Increase in truck traffic greater than 10 percent of average daily traffic (ADT) or 50 trucks per day.

B. Discuss the net change in emissions from changes in railroad operations associated with the proposed transaction. Net emissions changes will be calculated for counties with projected proposed transaction-related changes in train traffic.

C. Discuss the following information regarding the anticipated transportation of ozone depleting materials (such as nitrogen oxide and Freon):

1. Materials and quantity;

2. Applicants' safety practices;

3. Applicants' safety record (within the United States) on derailments, accidents, and spills;

4. Contingency plans to address accidental spills; and

5. Likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

D. Discuss potential air emissions increases from vehicle delays at highway/rail at-grade crossings where the crossing is projected to experience a change in rail traffic arising from the proposed transaction over the thresholds described above. Such increases will be factored into the net emissions estimates for the affected area.

E. Estimate potential increases or decreases in diesel particulate emissions arising from the proposed transaction.

F. Discuss potential for changes in greenhouse gas emissions arising from the proposed transaction and how such changes may relate to climate change.

9. Noise and Vibration

The EIS will:

A. Describe potential noise and vibration impacts of the proposed transaction for those areas that exceed the Board's environmental thresholds identified in the Air Quality section.

B. Identify whether the proposed transaction-related increases in rail traffic will cause an increase to a noise level of 65 dBA L_{dn} and 3 dBA L_{dn} or greater. If so, an estimate of the number of sensitive receptors (*e.g.*, schools and residences) within such areas will be made.

C. Assess potential proposed transaction-related vibration effects based on Federal Transit Administration (FTA) vibration methodology in areas where it appears there may be vibration sensitive receptors within or immediately adjacent to the railroad right of way.

D. Discuss existing or planned Quiet Zones.

10. Biological Resources

The EIS will:

A. Discuss the potential environmental impacts of construction of proposed connections, siding extensions, and installation of double track on federal or state endangered or threatened species or designated critical habitats.

B. Discuss the effects of construction of proposed rail connections, siding extensions, and installation of double track on wildlife sanctuaries or refuges, and national or state parks or forests.

C. Discuss potential effects of proposed transaction-related increased train traffic on federal or state designated protected species or areas of special biological significance.

11. Water Resources

The EIS will:

A. Describe existing surface and groundwater resources in the vicinity of the EJ & E, particularly in areas of planned construction activity.

B. Discuss whether potential impacts from the construction of proposed rail connections, siding extensions, and installation of double track may be inconsistent with applicable federal or state water quality standards.

C. Discuss whether permits may be required under Sections 404 or 402 of the Clean Water Act (33 U.S.C. 1344) for any construction of proposed rail connections, siding extensions, and installation of double track, and whether any such projects have the potential to encroach upon any designated wetlands or 100-year floodplains.

D. Discuss hydrogeology in the study area and presence of any designated sensitive groundwater areas.

12. Environmental Justice

The EIS will:

A. Report on the demographics in the immediate vicinity of any area where major activity such as construction of rail connections, siding extensions, and/or installation double track is proposed.

B. Report on the demographics in the vicinity of rail lines with projected proposed transaction-related rail traffic increases above the Board's thresholds for environmental review.

C. Evaluate whether such activities potentially have a disproportionately high and adverse effect on any minority or low-income group.

13. Cultural and Historic Resources

The EIS will address potential impacts from the proposed construction of rail connections, siding extensions, and installation of double track on cultural and historic resources that are within areas potentially disturbed by construction activities.

14. Indirect and Cumulative Effects

The EIS will:

A. Address indirect and cumulative effects of environmental impacts that have regional or system-wide ramifications. This analysis will be done for environmental impacts that warrant such analysis given the context and scope of the proposed transaction.

B. Discuss as part of the indirect and cumulative impact analysis the potential environmental impacts of yard modification activities on railroad-owned property that would potentially be affected by the proposed transaction.

C. Evaluate indirect and cumulative effects, as appropriate, for other projects or activities that relate to the proposed transaction where SEA determines that there is the likelihood of significant environmental impacts and where information is provided to the Board that describes (1) those other projects or activities, (2) their interrelationship with the proposed acquisition, and (3) the type and severity of the potential environmental impacts. This information must be provided to the Board within sufficient time to allow for review and analysis in the EIS.

15. Mitigation

Where SEA determines there is potential for significant adverse impacts arising from the proposed transaction, SEA will consider reasonable mitigation measures that could reduce or eliminate such adverse impacts. SEA may consider a range of mitigation measures based on the nature and severity of the potential impact and consistent with the Board's jurisdiction and authority.

[FR Doc. E8–9214 Filed 4–25–08; 8:45 am]
BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from The Brookings Institution (WB971–1—4/7/08), for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data;

therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 245–0317.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–9071 Filed 4–25–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 5 additional entities and individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Secretary of the Treasury of the two entities and four individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on April 22, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act blocks the property and interests in property, subject to U.S. jurisdiction, of foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On April 22, 2008, OFAC designated two additional entities and four additional individuals whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

Entities

1. CAMBIOS NASDAQ LTDA, Avenida 15 No. 77–05 Local 2–106, Bogota, Colombia; NIT # 8301284123 (Colombia); (ENTITY) [SDNTK].

2. CAMBIOS EL TREBOL, Avenida Calle 26 No. 69C–03 Local 214, Bogota, Colombia; Commercial Registry Number 1404087 (Colombia); (ENTITY) [SDNTK].

Individuals

1. CALDERON VELANDIA, Nilson (a.k.a. "Villa"); Colombia; DOB 18 Jul 1974; POB Mogotes, Santander, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 91348897 (Colombia); Passport AK040618 (Colombia); (INDIVIDUAL) [SDNTK].

2. CAMACHO BERNAL, Jose Edilberto, Colombia; DOB 28 Feb 1954; POB Venecia, Cundinamarca, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 11374416 (Colombia); Passport AI222190 (Colombia); (INDIVIDUAL) [SDNTK].

3. DIAZ HERRERA, Carlos Olimpo, c/o CAMBIOS NASDAQ LTDA, Bogota, Colombia; DOB 07 Feb 1954; POB Pandi, Cundinamarca, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 11250581 (Colombia); Passport 11250581 (Colombia); (INDIVIDUAL) [SDNTK].

4. RINCON MOLINA, Myriam, c/o CAMBIOS EL TREBOL, Bogota, Colombia; DOB 29 Jan 1959; POB Girardot, Cundinamarca, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 20622294 (Colombia); Passport AK739055 (Colombia); (INDIVIDUAL) [SDNTK].

Dated: April 22, 2008.

Barbara Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E8–9218 Filed 4–25–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC); Nominations

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Request for Applications.

SUMMARY: The Internal Revenue Service (IRS) requests applications of individuals to be considered for selection as Internal Revenue Service Advisory Council (IRSAC) members. Applications will be accepted for current vacancies and should describe and document the applicant's qualifications for membership. IRSAC is comprised of up to thirty (30) appointed members; approximately three of these appointments will expire in December 2008. It is important that the IRSAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on the applicant's qualifications as well as areas of expertise.

The Internal Revenue Service Advisory Council (IRSAC) provides an organized public forum for IRS officials and representatives of the public to discuss relevant tax administration issues. The council advises the IRS on issues that have a substantive effect on federal tax administration. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or recommends policies with respect to emerging tax administration issues. The IRSAC

suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the IRS with respect to issues having substantive effect on federal tax administration.

DATES: Written applications must be postmarked or faxed on or before June 16, 2008.

ADDRESSES: Applications should be sent to Ms. Lorenza Wilds, National Public Liaison, CL:NPL:P, Room 7559 IR, 1111 Constitution Avenue, NW., Washington, DC 20224, Attn: IRSAC Applications; or by e-mail: **public_liaison@irs.gov.* Applications may be submitted by mail to the address above or faxed to 202–927–5253. Application packages are available on the Tax Professional's Page, which is located on the IRS Internet Web site at *http://www.irs.gov/taxpros/index.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds, 202–622–6440 (not a toll-free number).

SUPPLEMENTARY INFORMATION: IRSAC was authorized under the Federal Advisory Committee Act, Public Law No. 92–463., the first Advisory Group to the Commissioner of Internal Revenue—or the Commissioner's Advisory Group ("CAG")—was established in 1953 as a "national policy and/or issue advisory committee." Renamed in 1998, the Internal Revenue Service Advisory Council (IRSAC) reflects the agency-wide scope of its focus as an advisory body to the entire agency. The IRSAC's primary purpose is to provide an organized public forum for senior IRS executives and representatives of the public to discuss relevant tax administration issues.

Conveying the public's perception of IRS activities, the IRSAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds on the Council's activities. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, state tax administration, and the payroll community.

IRSAC members are appointed by the Commissioner of the Internal Revenue Service and serve a term of three years. There are four subcommittees of IRSAC, the (Small Business/Self Employed (SB/SE); Large Mid-Size Business (LMSB); Wage & Investment (W&I); and the Tax Gap Analysis (TGA) subcommittee, which was established last year.

Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation to and from airports, train stations, etc., are reimbursed within prescribed federal travel limitations.

Receipt of applications will be acknowledged, these individuals contacted, and immediately thereafter, biographical information must be completed and returned to Ms. Lorenza Wilds in National Public Liaison within fifteen (15) days.

In accordance with Department of Treasury Directive 21–03, a clearance process including, fingerprints, annual tax checks, a Federal Bureau of Investigation criminal and subversive name check, and a practitioner check with the Office of Professional Responsibility will be conducted.

Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of Treasury and IRS policies. To ensure that the recommendations of the IRSAC have taken into account the needs of the diverse groups served by the IRS, membership shall include individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

Dated: April 18, 2008.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. E8–9148 Filed 4–25–08; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—May 20, 2008, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Larry Wortzel, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on "the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China."

Pursuant to this mandate, the Commission will hold a public hearing in Washington. DC on May 20, 2008 to address "China's Proliferation Practices and the Development of its Cyber and Space Warfare Capabilities"

Background

This event is the fifth in a series of public hearings the Commission will hold during its 2008 report cycle to collect input from leading academic, industry, and government experts on the impact of the economic and national security implications of the U.S. bilateral trade and economic relationship with China. The May 20 hearing will examine three topics: China's proliferation activities, China's growing cyber space activities and capabilities, and China's growing presence and capabilities in outer space.

The May 20 hearing will address "China's Proliferation Practices and the Development of its Cyber and Space Warfare Capabilities" and will be Co-chaired by Commissioners Peter Brookes and William Reinsch.

Information on hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web Site *http://www.uscc.gov.*

Copies of the hearing agenda will be made available on the Commission's Web site *http://www.uscc.gov* as soon as available. Any interested party may file a written statement by May 20, 2008, by mailing to the contact below. On May 20, the hearing will be held in two sessions, one in the morning and one in the afternoon. There will be a question and answer period between the Commissioners and the witnesses.

DATE AND TIME: Tuesday, May 20, 2008, 10 a.m. to 4:15 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 Dirksen Senate Office Building located at First Street and Constitution Avenue, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: April 22, 2008.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E8–9163 Filed 4–25–08; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0009]

Agency Information Collection (Disabled Veterans Application for Vocational Rehabilitation) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 28, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0009" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0009."

SUPPLEMENTARY INFORMATION:

Title: Disabled Veterans Application for Vocational Rehabilitation (Chapter 31, Title 38 U.S.C.), VA Form 28–1900.

OMB Control Number: 2900–0009.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans with a combined service—connected disability rating of ten percent or more and are awaiting discharge for such disability use VA Form 28–1900 to apply for vocational rehabilitation benefits. VA provides service and assistance to veterans with disabilities, who have an entitlement determination, to gain and keep suitable employment. Vocational rehabilitation also provides service to support veterans with disabilities to achieve maximum independence in their daily living activities if employment is not reasonably feasible. VA use the information collected to determine the claimant's eligibility for vocational rehabilitation benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2008, at pages 8933–8934.

Affected Public: Individuals or households.

Estimated Annual Burden: 16,961 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 67,844.

Dated: April 17, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–9133 Filed 4–25–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (ROSI)]

Proposed Information Collection (Recovery Oriented System Indicator and Mental Health Recovery Measure); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to implement a mental health recovery assessment baseline.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 27, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *mary.stout@va.gov.* Please refer to "OMB Control No. 2900–New (ROSI)" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. Recovery Oriented System Indicator (ROSI), VA Form 10–21084a.

b. Mental Health Recovery Measure (MHRM), VA Form 10–2184b.

OMB Control Number: 2900–New (ROSI).

Type of Review: New collection.

Abstract: VA Form 10–21084a, Recovery Oriented System Indicator (ROSI), will be employed to assess consumer perceptions of the provision of recovery services at their facility, and the presence of recovery oriented attitudes among staff. It will be used to develop a Performance Measure that would require all sites to have a composite score on the ROSI that is in at least the 85th percentile of all Veterans Integrated Service Networks.

VA Form 10–21084b, Mental Health Recovery Measure (MHRM) is a brief self-report measure of a person's own progress toward recovery.

Affected Public: Individuals or households.

Estimated Annual Burden

a. Recovery Oriented System Indicator (ROSI), VA Form 10–21084a–8,600.

b. Mental Health Recovery Measure (MHRM), VA Form 10–2184b–5,733.

Estimated Average Burden Per Respondent:

a. Recovery Oriented System Indicator (ROSI), VA Form 10–21084a–12 minutes.

b. Mental Health Recovery Measure (MHRM), VA Form 10–2184b–8 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: a. Recovery Oriented System Indicator (ROSI), VA Form 10–21084a–43,000. b. Mental Health Recovery Measure (MHRM), VA Form 10–2184b–43,000.

Dated: April 17, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–9134 Filed 4–25–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

Agency Information Collection (Time Record Work-Study Program) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 28, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0379" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0379."

SUPPLEMENTARY INFORMATION:

Title: Time Record (Work-Study Program), VA Form 22–8690.

OMB Control Number: 2900–0379.

Type of Review: Extension of a currently approved collection.

Abstract: Training establishments complete VA Form 22–8690 to report the number of work-study hours a claimant has completed. When a claimant elects to receive an advance payment, VA will advance payment for 50 hours, but will withhold benefits (to recoup the advance payment) until the claimant completes 50 hours of service. If the claimant elects not to receive an advance payment, benefits are payable when the claimant completes 50 hours of service. VA uses the data collected to ensure that the amount of benefits payable to a claimant who is pursuing work-study is correct.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 5, 2008, at pages 6767–6768.

Affected Public: State, Local or Tribal Governments, Individuals or households, Business or other for-profit, Not-for-profit institutions, and Federal Government.

Estimated Annual Burden: 9,167 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Annual Responses: 110,010.

Estimated Number of Respondents: 31,612.

Dated: April 17, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–9135 Filed 4–25–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0601]

Agency Information Collection (Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 28, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0601" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0601."

SUPPLEMENTARY INFORMATION:

Title: Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans.

OMB Control Number: 2900–0601.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans may refinance an outstanding VA guaranteed, insured, or direct loan with a new loan at a lower interest rate provided that the veteran still owns the property used as security for the loan. The new loan will be guaranteed only if VA approves it in advance after determining that the borrower, through the lender, has provided reasons for the loan deficiency, and has provided information to establish that the cause of the delinquency has been corrected, and qualifies for the loan under the credit standard provisions.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 5, 2008, at page 6769.

Affected Public: Business or other for profit.

Estimated Annual Burden: 25 hours.

Estimated Annual Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50.

Dated: April 17, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–9137 Filed 4–25–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0458]

Agency Information Collection (Certification of School Attendance or Termination) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 28, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0458" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0458."

SUPPLEMENTARY INFORMATION:

Title: Certification of School Attendance or Termination, VA Forms 21–8960 and 21–8960–1.

OMB Control Number: 2900–0458.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–8960 and VA Form 21–8960–1 to certify that a child between the ages of 18 and 23 years old is attending school. VA uses the information collected to determine the child's continued entitlement to benefits. Benefits are discontinued if the child marries, or no longer attending school.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2008, at pages 8934–8935.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,667 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 70,000.

Dated: April 17, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–9138 Filed 4–25–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0001]

Proposed Information Collection (Veteran's Application for Compensation and/or Pension) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's eligibility, dependency, and income, as applicable, for compensation and/or pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 27, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0001" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Veteran's Application for Compensation and/or Pension, VA Form 21–526.

b. Authorization and Consent Release Information to the Department of Veterans Affairs (VA), VA Form 21–4142.

OMB Control Number: 2900–0001.
Type of Review: Extension of a currently approved collection.
Abstract: Veterans complete VA Form 21–526 to apply for compensation and/or pension benefits. Veterans who need VA's assistance in obtaining non-VA medical records must complete VA Form 21–4142.
Affected Public: Individuals or households.
Estimated Annual Burden:
a. VA Form 21–526—589,208.
b. VA Form 21–4142—3,292.
Estimated Average Burden per Respondent:
a. VA Form 21–526—1 hour and 30 minutes.
b. VA Form 21–4142—5 minutes.
Frequency of Response: On occasion.
Estimated Number of Respondents: 395,000.

Dated: April 21, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–9140 Filed 4–25–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (10–21085a–e)]

Proposed Information Collection (Prevalence and Clinical Course of Depression Among Patients With Heart Failure); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify the patterns of depression in heart failure patients.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 27, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *mary.stout@va.gov.* Please refer to "OMB Control No. 2900–New (10–21085a–e)" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Prevalence and Clinical Course of Depression Among Patients with Heart Failure, VA HSR&D, Nursing Research Initiative No. 05–209–3, VA Form 10–21085a–e(NR).
OMB Control Number: 2900–New (10–21085a–e).
Type of Review: New collection.
Abstract: The forms will be used to evaluate the prevalence of clinical depression and depressive symptoms among veterans with heart failure during periods of hospitalization and out patient care. The data will be used to identify the patterns of depression and to understand the temporal relationship between clinical depression, alterations in physical functions, and levels of circulating biochemical markers in heart failure patients.
Affected Public: Individuals or households.
Estimated Annual Burden: 1,362.
Estimated Average Burden Per Respondent: 22 minutes.
Frequency of Response: On occasion.
Estimated Number of Respondents: 3,706.

Dated: April 21, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–9167 Filed 4–25–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Agency Information Collection (Designation of Certifying Official(s)) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 28, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0262" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0262."

SUPPLEMENTARY INFORMATION:

Title: Designation of Certifying Official(s), VA Form 22–8794.
OMB Control Number: 2900–0262.
Type of Review: Extension of a currently approved collection.
Abstract: Educational institutions and job training establishments complete VA Form 22–8794 to provide the name of individuals authorized to certify reports

on student enrollment and hours worked on behalf of the school or training facility. VA will use the data collected to ensure that education benefits are not awarded based on reports from someone other than the designated certifying official.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 5, 2008, at pages 6768–6769.

Affected Public: State, Local or Tribal Government, Business or other for-profit, and Not for-profit institutions.

Estimated Annual Burden: 533 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,200.

Dated: April 17, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–9169 Filed 4–25–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
April 28, 2008

Part II

Office of Personnel Management

5 CFR Part 250
Human Resources Management in Agencies; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 250

RIN 3206–AJ92

Human Resources Management in Agencies

AGENCY: Office of Personnel Management.

ACTION: Final Rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement certain provisions of the Chief Human Capital Officers Act of 2002, which set forth new OPM and agency responsibilities and requirements to enhance and improve the strategic management of the Federal Government's civilian workforce, as well as the planning and evaluation of agency efforts in that regard. Further, we are including a plain language rewrite of the subpart titled "Authority for Personnel Actions in Agencies."

DATES: *Effective Date:* The regulations are effective on May 28, 2008.

FOR FURTHER INFORMATION CONTACT: Charles D. Grimes by phone at 202–418–3163, by FAX at 202–606–2838, or by e-mail at pay-performance-policy. You may contact Mr. Grimes by TTY on 202–418–3134.

SUPPLEMENTARY INFORMATION: On May, 23, 2006, the Office of Personnel Management (OPM) issued proposed regulations (71 FR 29593) to change 5 CFR part 250, to read "Human Resources Management in Agencies" to reflect current usage, to make a plain language revision in subpart A, and to add regulations on strategic human resources management as new subpart B.

Case for Action

Section 1304 of the Chief Human Capital Officers Act (CHCO Act), which was enacted within the framework of the Homeland Security Act (Pub. L. 107–296), and codified at 5 U.S.C. 1103(c), authorizes OPM to develop an assessment system, including metrics, for agency human capital management. Rather than establish a new reporting requirement, OPM elected to incorporate the CHCO Act requirements within the newly established Human Capital Accountability System and Human Capital Management Report (Accountability System).

To accommodate the accountability assessment, OPM has modified the existing 5 CFR part 250. Subpart A, which establishes requirements for delegations of personnel authority to agencies, has been rewritten in plain English. Agencies will continue to operate in an environment of delegated personnel authority and will be required to ensure merit system accountability.

The new subpart B details both agency and OPM responsibilities under the CHCO Act as well as the fundamental requirements of the Accountability System.

OPM is cognizant of the burden placed on agencies by reporting requirements, and the regulations mitigate against increasing that burden through the incorporation of existing reporting requirements (*e.g.*, PMA scoring) into the annual report to the maximum extent practicable. The CHCO Act metrics and the Accountability System will provide OPM with the data necessary to meet statutory requirements of 5 U.S.C. 1103(a) and (c) and 5 U.S.C. 2301.

Major Issues

As a general matter, multiple commenters suggested OPM collaborate directly with each affected agency or with a team of agency representatives to develop metrics tailored to each agency's requirements. We disagree. The CHCO Act gives OPM responsibility for assessing strategic management of human capital across Government. The Governmentwide focus requires standard metrics. OPM consults with agencies on a regular basis through a variety of mechanisms including the CHCO Council, the Human Resources Directors' Forum, and OPM's Human Capital Officers. HCAAF requirements are designed to enable OPM to fulfill this responsibility through a set of human capital management systems, standards and metrics.

There also was general concern expressed by commenters that the CHCO Act regulations add significantly to agency OPM reporting requirements. However, the intent of the CHCO regulations is to coordinate human capital management reporting requirements in a single reporting system.

A commenter noted that the Chief Human Capital Officer should approve workforce plans. A commenter also contended that it was the agency's responsibility to determine the timing and format of the human capital plan. We agree, but note that OPM has the responsibility to assess and approve agency human capital accountability systems. OPM's role is to assure that agencies engage in workforce planning that meets approved standards.

Commenters also raised concerns about the interplay between the CHCO Act reporting requirements and the Annual Employee Survey regulations. While data from the Annual Employee Survey could be used for HCAAF metrics, there is no substantive overlap in these two regulations.

HCAAF

The Human Capital Assessment and Accountability Framework (HCAAF), annexed hereto as an Appendix to the regulation, details the concepts and systems for planning, implementing, and evaluating the results of human capital management policies and practices. Commenters contended that the framework is too transactional, broad and theoretical. Commenters further contended that agencies cannot be held accountable for ambiguous human capital management practices. We disagree. HCAAF tools are not designed to ensure strict compliance, but to assist agencies to meet HCAAF requirements. Measuring effective and efficient HCM is best accomplished through representative, flexible indicators, which OPM has established in the HCAAF metrics.

Commenters also objected to sections of 5 CFR 250.203(a)(1)(ii) on workforce analysis. While we agree that other measurement methods could be effective, OPM has chosen the current Human Capital and Workforce Analysis Plan elements based on well-documented workforce plan models used in the public and private sectors.

A commenter proposed that performance measures should support agency goals instead of agency measures. We agree. The wording in 5 CFR 250.203(a)(1) (iii) has been changed accordingly.

Metrics

By this regulation, OPM defines the metrics to be used pursuant to 5 U.S.C. 1103(c) as the HCAAF and the *HCAAF Systems, Standards, and Metrics (HCAAF–SSM).* See 5 CFR 250.202(b). See the Appendix to this regulation. These metrics may be adapted, in the future, pursuant to notice and comment, to meet the future needs of both agencies and OPM. Commenters are providing feedback on the metrics to OPM through the public comment process and in other forums like the CHCO Council. OPM may incorporate this feedback, as appropriate, and pursuant to notice and comment, to further refine the measures in the future.

Commenters generally contended that the metrics were inflexible, overly detailed and potentially inaccurate. We disagree. The HCAAF–SSM is a systematic method to examine strategic human capital practices across all

Government agencies. Standardization is important because OPM cannot roll up metrics that are based on different calculations. Moreover, OPM, through the Accountability System, encourages all agencies to develop separate measures that address relevant agency issues. The HCAAF–SSM enables OPM to meet its statutory responsibility in the CHCO Act. That responsibility is to assess the strategic management of human capital across all of Government. OPM has determined that this can be accomplished only through using a common set of metrics.

Accountability

Commenters expressed confusion surrounding the reporting requirements under the Human Capital Accountability System and annual Report. Commenters were concerned by the interplay of new and existing reporting requirements and whether there would be redundancy. However, the intent of the annual Human Capital Management Report is to provide a mechanism to consolidate human capital reporting into one annual report, and to incorporate this into agency performance and budget reporting. Commenters also contended that the reporting requirements are of no value to the agencies. We disagree. The Human Capital Management Report serves a number of purposes, including providing agencies a mechanism to document human capital results and actions planned to address areas needing improvement. Agencies will benefit from having effective, comparable human capital data.

A commenter also proposed that the report be issued biennially to give agencies more time. We disagree. The annual report is appropriate as it provides timely feedback on agency human capital management systems. Moreover, the first complete accountability reporting with all required metrics is not required until 2008 to give agencies sufficient time to comply.

A commenter proposed that the agencies' Chief Human Capital Officers have the authority to approve the agency accountability systems. We disagree. OPM has the authority to require agencies to establish accountability systems consistent with OPM standards. We made a clarifying change to 5 CFR 250.203(a)(1)(iii)(2) to ensure that any independent audit process is conducted with OPM participation.

A commenter also suggested implementing a third-party appeals system prior to OPM withdrawing an agency's delegated examining unit or otherwise penalizing the agency. We disagree. OPM has longstanding authority under 5 U.S.C. 1104 to exercise oversight and control over agencies' use of delegated authorities without the intervention of a third party.

Commenters proposed that OPM's role be more as advisor than auditor. While we will continue to provide guidance, advice and leadership to agencies, OPM has a statutory role as auditor of agency human capital management that must be fulfilled. Some commenters expressed confusion over whether a third party auditor would be required, but the proposed regulations have no such requirement. A commenter also suggested OPM change the language in 5 CFR 250.103 regarding OPM discretion to require agency corrective action from *may to must*. We disagree. OPM retains discretion to determine the appropriate response to particular cases.

A commenter contended that it was unnecessary to review each HC policy, program and operation every year. However, the regulations do not require such a review. Another commenter proposed that the annual Human Capital Management Report measure the number of employee complaints and resolution of such complaints. While we encourage agencies to include such measures in their accountability plans, and many agencies do track complaints, this is not a required metric.

Commenters raised concerns about the sufficiency of pre-determined budgets when implementing the newly required Human Capital Management Report. Commenters contended that the timeline provided in the proposed regulation did not allow time to align the Accountability System and the budget development process. Concern was also raised about the availability of funding for accountability systems when agency human resources management does not control the budget. We disagree. The CHCO Act holds agencies responsible for maintaining accountability for results including merit system compliance. At the agency level, leadership is required to align budgets with strategic management of human capital. The first complete Human Capital Management Report with all required metrics is not required until 2008 to give agencies sufficient time to comply.

Commenters also requested that OPM differentiate the requirements for agencies that have already implemented conforming accountability systems from the requirements for agencies that have not implemented such systems. We disagree. The regulations detailing the Accountability System have been drafted to provide individual agencies maximum flexibility while providing OPM comparable information across agencies.

A commenter requested that OPM require agencies to post their Human Capital Management Reports on their Web sites. We disagree. While OPM believes that agencies should post their Human Capital Management Reports, an agency may have a number of valid reasons (e.g., national security) for not posting its report.

Executive Order 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Part 250

Authority delegations (Government agencies), Government employees.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending 5 CFR 250 to read as follows:

■ 1. Revise part 250 to read as follows:

PART 250—HUMAN RESOURCES MANAGEMENT IN AGENCIES

Subpart A—Authority for Personnel Actions in Agencies

Sec.

Subpart B—Strategic Human Capital Management

Authority: 5 U.S.C. 1101 note, 1103(a)(5), 1103(c), 1104, 1302, 3301, 3302; E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218; E.O. 13197, 66 FR 7853, 3 CFR 748 (2002).

Subpart B also issued under 5 U.S.C. 1401, 1401 note, 1402.

Subpart A—Authority for Personnel Actions in Agencies

§ 250.101 Standards and requirements for agency personnel actions.

When taking a personnel action authorized by this chapter, an agency must comply with qualification standards and regulations issued by the Office of Personnel Management (OPM), the instructions OPM has published in the Guide to Processing Personnel Actions, and the provisions of any delegation agreement OPM has made with the agency. When taking a personnel action that results from a decision or order of OPM, the Merit Systems Protection Board, Equal Employment Opportunity Commission, or Federal Labor Relations Authority, as authorized by the rules and regulations of those agencies, or as the result of a court order, a judicial or administrative settlement agreement, or an arbitral award under a negotiated agreement, the agency must follow the instructions in the Guide to Processing Personnel Actions and comply with all other relevant substantive and documentary requirements, including those applicable to retirement, life insurance, health benefits, and other benefits provided under this chapter.

§ 250.102 Delegated authorities.

OPM may delegate its authority, including authority for competitive examinations, to agencies, under 5 U.S.C. 1104(a)(2), through a delegation agreement. The delegation agreement developed with the agency must specify the conditions for applying the delegated authorities. The agreement must also set minimum standards of performance and describe the system of oversight by which the agency and OPM will monitor the use of each delegated authority.

§ 250.103 Consequences of improper agency actions.

If OPM finds that an agency has taken an action contrary to a law, rule, regulation, or standard that OPM administers, OPM may require the agency to take corrective action. OPM may suspend or revoke a delegation agreement established under § 250.102 at any time if it determines that the agency is not adhering to the provisions of the agreement. OPM may suspend or withdraw any authority granted under this chapter to an agency, including any authority granted by delegation agreement, when OPM finds that the agency has not complied with qualification standards OPM has issued, instructions OPM has published, or the regulations in this chapter. OPM also may suspend or withdraw these authorities when it determines that doing so is in the interest of the civil service for any other reason.

Subpart B—Strategic Human Capital Management

§ 250.201 Coverage and purpose.

The Chief Human Capital Officers (CHCO) Act of 2002 acknowledges the critical importance of Federal employees to the effective and efficient operation of Government. As a part of OPM's overall leadership responsibilities in the strategic management of the Federal civil service, and pursuant to 5 U.S.C. 1103, OPM is responsible for designing a set of systems, including standards and metrics, for assessing the management of human capital by Federal agencies. In this subpart, OPM establishes a framework of those systems, including system components, OPM's role, and agency responsibilities.

§ 250.202 Office of Personnel Management responsibilities.

(a) As the President's chief human capital officer, the Director of OPM provides Governmentwide leadership and direction in the strategic management of the Federal workforce.

(b) To execute this critical leadership responsibility, OPM adopts the *Human Capital Assessment and Accountability Framework (HCAAF)* to describe the concepts and systems for planning, implementing, and evaluating the results of human capital management policies and practices. See Appendix. In addition, OPM adopts the related set of assessment systems required by the CHCO Act as the HCAAF *Systems, Standards, and Metrics (HCAAF–SSM)*, also included in the Appendix. Each such assessment system associated with the HCAAF consists of:

(1) A standard against which agencies can assess the results of their management of human capital; and

(2) Prescribed metrics, as appropriate, for organizational outcomes, employee perspective, and compliance measures with respect to relevant laws, rules and regulations.

(c) Together, the HCAAF and the HCAAF–SSM guide agencies in planning, evaluating and improving the efficiency and effectiveness of agency human capital management with respect to:

(1) Alignment with executive branch policies and priorities, as well as with individual agency missions, goals, and program objectives, including the extent to which human capital management strategies are integrated into agency strategic plans and performance budgets prepared under OMB Circular A–11;

(2) Identifying and closing competency/skill gaps in the agency's mission-critical occupations; ensuring leadership continuity through the implementation of recruiting, development, and succession plans; sustaining an agency culture that values, elicits, identifies, and rewards high performance; and developing and implementing a knowledge management strategy, supported by appropriate investment in training and technology; and

(3) Holding the agency head, executives, managers and human resources officers accountable for efficient and effective human capital management, in accordance with merit system principles.

§ 250.203 Agency responsibilities.

(a) To assist in the assessment of the management of human capital in the Federal Government, and to help meet the statutory requirements to prepare that portion of the performance budget for which agency Chief Human Capital Officers are accountable as well as relevant portions of performance and accountability reports, heads of agencies or their designees must maintain a current human capital plan and provide OPM an annual Human Capital Management Report, as outlined below, based on an approved human capital accountability system. The HCAAF and the HCAAF–SSM provide more specific information on coverage and content for the plan and report.

(1) *Human Capital Plan.* Using a format established by agreement between the agency and OPM, at a minimum the plan must include:

(i) *Human Capital Goals and Objectives.* These are a comprehensive, integrated set of human capital goals and objectives, with detailed policy and program priorities and initiatives as appropriate, consistent with agency strategic plans and annual performance goals. These human capital goals and objectives must address each of the human capital management systems included in the HCAAF.

(ii) *Workforce Analysis.* This analysis of the agency's workforce describes its current state, projects the human resources needed to achieve the agency's program performance goals and objectives during the term of the agency's strategic plan, and identifies potential shortfalls or gaps. An ongoing analysis must, for relevant agency mission requirements, describe the occupation(s) most critical to agency performance (including associated managerial and executive positions) and

describe mission-critical competencies and key demographics (e.g., talent analyses, turnover, and retirement eligibility); and for each such occupation, describe its current and projected staffing levels, attrition and hiring estimates, and proposed training and development investments.

(iii) *Performance Measures and Milestones.* One or more human capital metrics, as well as appropriate program milestones, for each human capital goal or objective, provide a basis for assessing progress and results, including compliance measures with respect to relevant laws, rules and regulations. These metrics must include, but are not limited to, those described in the HCAAF–SSM issued under § 250.202(b). These metrics and milestones must be specifically linked to broader agency program performance goals, to evaluate the impact of the agency's human capital management on its overall mission performance.

(2) *Human Capital Accountability System.* This system provides for an annual assessment of agency human capital management progress and results including compliance with relevant laws, rules, and regulations. That assessment is conveyed in an annual Human Capital Management Report to OPM. The human capital accountability system must:

(i) Be formal and documented;

(ii) Be approved by OPM;

(iii) Be supported and resourced by agency leadership;

(iv) Measure and assess human capital management systems for mission alignment, effectiveness, efficiency, and compliance with merit system principles, laws, and regulations;

(v) Provide for an independent audit process, with OPM participation, for periodic review of human resources transactions to insure legal and regulatory compliance;

(vi) Ensure that action is taken to improve human capital management programs and processes and to correct deficiencies; and

(vii) Ensure results are analyzed and reported to agency management and OPM.

(3) *Human Capital Management Report.* At a minimum, the agency's annual Human Capital Management Report must:

(i) Provide an evaluation of and report on the agency's existing human capital management policies, programs, and operations, as they relate to the agency's overall mission/program performance. The report must address the performance measures and milestones contained in the agency human capital plan including compliance measures with respect to relevant laws, rules and regulations. The report must also document actions taken to correct any violations or deficiencies that are identified.

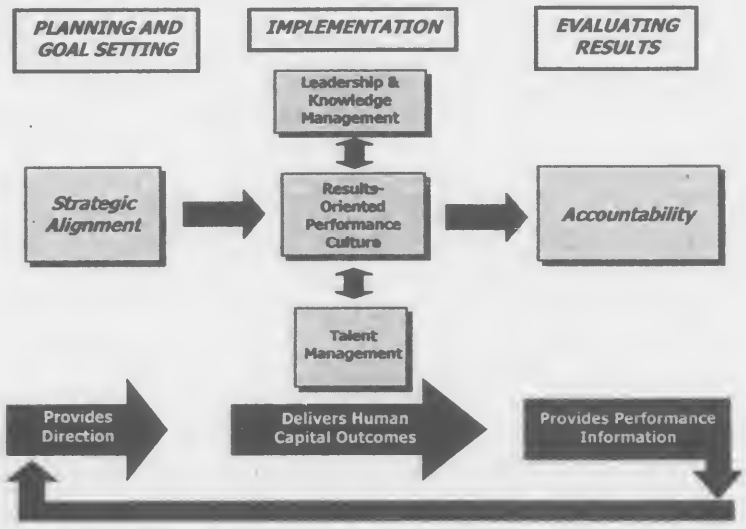
(ii) Inform the development of human capital goals and objectives during the agency's strategic planning and annual performance budget formulation process, as well as the treatment of human capital results during the annual performance and accountability reporting process.

(b) [Reserved]

Note: The following appendix will not appear in the Code of Federal Regulations.

SECTION I—Introduction to the HCAAF	Human Capital Assessment and Accountability Framework (HCAAF)
	Metrics
Human Capital Assessment and Accountability Framework (HCAAF).	The HCAAF establishes and defines five human capital systems that together provide a single, consistent definition of human capital management for the Federal Government. The HCAAF fuses human capital management to the merit system principles—a cornerstone of the American Civil Service—and other civil service laws, rules, and regulations. Establishment of the HCAAF fulfills OPM's mandate under the Chief Human Capital Officers Act of 2002 (CHCO Act) to design systems and set standards, including appropriate metrics, for assessing the management of human capital by Federal agencies. The regulation at 5 CFR 205.203 establishes requirements for an agency to submit to OPM annually a Strategic Human Capital Plan and an Agency Human Capital Accountability Report. The requirements in the regulation are by design congruent with the planning and reporting requirements contained in OMB Circular A–11 and title 31 U.S.C.
Five Systems of HCAAF	The HCAAF outlines an ongoing process of human capital management in every Federal agency—planning and goal setting, implementation, and evaluating results—in five systems: • **Strategic Alignment (Planning and Goal Setting).** A system led by senior management—typically the Chief Human Capital Officer (CHCO)—that promotes the alignment of human capital management strategies with agency mission, goals, and objectives through analysis, planning, investment, measurement, and management of human capital programs. • **Leadership and Knowledge Management (Implementation).** A system that ensures continuity of leadership by identifying and addressing potential gaps in effective leadership and implements and maintains programs that capture organizational knowledge and promote learning. • **Results-Oriented Performance Culture (Implementation).** A system that promotes a diverse, high-performing workforce by implementing and maintaining effective performance management systems and awards programs. • **Talent Management (Implementation).** A system that addresses competency gaps, particularly in mission-critical occupations, by implementing and maintaining programs to attract, acquire, promote, and retain quality talent. • **Accountability (Evaluating Results).** A system that contributes to agency performance by monitoring and evaluating the results of its human capital management policies, programs, and activities; by analyzing compliance with merit system principles; and by identifying and monitoring necessary improvements. Each system consists of components that allow human capital practitioners to assess how well the system is strategically managing its human cpaital in compliance with merit system principles.
Relationships Among the HCAAF Systems.	Figure 1 below shows the relationships among the human capital systems.

Figure 1. Relationships Among the Human Capital Systems



	Implementation of the HCAAF will enable agencies to transform the Federal workplace into high-performing arenas where every employee is enabled to understand and maximize his or her contribution to agency mission. Through implementation of the HCAAF, Federal agencies will be able to focus on: • Human capital management systems and practices that most impact attainment of their mission. • Measurable, observable agency and individual performance results. This will help to assure the American people's continuing trust in their Government's ability to serve them and protect our national security.
HCAAF Taxonomy	The following components reflect the overall taxonomy of the HCAAF.
Standard	A standard describes the critical human capital management outcomes for agencies to strive toward in each of the five HCAAF systems.
Metrics	These are measurements that provide a basis for comparison. Strategic human capital management requires a reliable and valid set of metrics that provides an accurate baseline against which individual agency progress can be assessed. Required outcome metrics are provided for the three systems that implement strategic human capital plans and programs: Leadership and Knowledge Management, Results-Oriented Performance Culture, and Talent Management. These required metrics are summarized on the following pages. Additional suggested metrics are also included.
Critical Success Factors.	Each system is based on critical success factors that make up the overall system. Critical success factors are the areas on which agencies and human capital practitioners should focus to achieve a system's standard and operate efficiently, effectively, and in compliance with merit system principles. For example, Change Management and Diversity Management are two critical success factors associated with the Leadership and Knowledge Management system.
Results	The results describe the desired effects when key elements of a critical success factor are effectively implemented. Results are presented in two categories: Effectiveness results and compliance results. Compliance results refer to specific statutory or regulatory requirements.
Key Elements	Each critical success factor contains several key elements that are similar to the Elements of Yes that were initially developed as part of the HCAAF. Key elements describe what you would expect to see in an effective critical success factor.
Suggested Performance Indicators.	The suggested indicators—both effectiveness indicators and compliance indicators—describe examples of visible evidence of the existence of key elements and compliance with merit system principles. Cumulatively, the indicators identify how well the agency is doing relative to key elements. The suggested performance indicators are linked to the key elements and are not meant to be an all-inclusive list. Human capital practitioners may need to search for other indicators if agency approaches differ from the list of suggested performance indicators provided. Agencies may decide which suggested performance indicators provide the best evidence that they have implemented practices that lead toward achieving the standard.

SECTION I—Introduction to the HCAAF	Human Capital Assessment and Accountability Framework (HCAAF)
	Metrics

Metrics

Metrics have been established to help agencies accomplish the standard for the three systems that implement strategic human capital plans and programs—i.e., Leadership and Knowledge Management, Results-Oriented Performance Culture, and Talent Management. These three systems have both required and suggested metrics.

- Required metrics focus on human capital management outcomes and are required for Governmentwide reporting. They focus on human capital management outcomes from three perspectives: organization, employee, and merit system compliance.
- Suggested metrics focus on human capital management activities that support outcome metrics and show the health of a specific HCAAF critical success factor.

The metrics were developed based on extensive research from a variety of expert sources. To be incorporated in the HCAAF, a metric needed to meet the following criteria:

- Align with the HCAAF.
- Drive organizational effectiveness directly or indirectly.
- Be applicable Governmentwide.
- Be actionable (under the control of the agency).
- Be practical (cost effective and acceptable).
- Be reliable (stable).
- Be valid (accurate and appropriate for its purpose).

The metrics described in this Guide were carefully chosen to maintain their usefulness over time. However, many additional human capital metrics exist that agencies may find they want to implement. Agencies are encouraged to augment these Governmentwide metrics with other activity and outcome metrics that are relevant to the agencies' human capital objectives.

The following pages provide the system standard and the required outcome metrics for the Leadership and Knowledge Management, Results-Oriented Performance Culture, and Talent Management systems. Refer to each specific system's section for the suggested metrics.

Leadership and Knowledge Management System Standard.

Agency leaders and managers effectively manage people, ensure continuity of leadership, and sustain a learning environment that drives continuous improvement in performance, and provide a means to share critical knowledge across the organization. Knowledge management must be supported by an appropriate investment in training and technology.

Required Outcome Metric	Description	Purpose
Organization Metric: Competency Gaps Closed for Management and Leadership.	Difference between competencies needed and competencies possessed by managers and leaders.	To determine how the agency should target its recruitment and retention, and development efforts to bring the competencies of its managers and leaders into alignment with the agency's current and future needs.
Employee Perspective Metric: Questions from Annual Employee Survey about Satisfaction with Leadership.	Items from Annual Employee Survey	To determine the extent to which employees hold their leadership in high regard, both overall and on specific facets of leadership.
Merit System Compliance Metric: Merit-Based Execution of the Leadership and Knowledge Management System.	An assessment of compliance with merit system principles and related laws, rules, and regulations governing the Leadership and Knowledge Management system.	To determine that decisions, policies, processes, and practices executed under the Leadership and Knowledge Management system comply with the merit system principles and related laws, rules, and regulations.

Results-Oriented Performance Culture System Standard.

The agency has a diverse, results-oriented, high-performing workforce and a performance management system that differentiates between high and low levels of performance and links individual/team/unit performance to organizational goals and desired results effectively.

Required Outcome Metric	Description	Purpose
Organization Metric: SES Performance/Organizational Performance Relationship as Linked to Mission.	Relationship between SES performance ratings and accomplishment of the agency's strategic goals.	To determine the extent to which SES appraisals and awards are appropriately based on achievement of organizational results.
Organization Metric: Workforce Performance Appraisals Aligned to Mission, Goals, and Outcomes.	Degree of linkage between employees' performance appraisal plans and agency mission, goals, and outcomes.	To determine whether all employees have performance appraisal plans that effectively link to the agency's mission, goals, and outcomes.
Employee Perspective Metric: Questions from Annual Employee Survey about Performance Culture.	Items from Annual Employee Survey	To determine the extent to which employees believe their organizational culture promotes an improvement in processes, products and services, and organizational outcomes.

Required Outcome Metric	Description	Purpose
Merit System Compliance Metric: Merit-Based Execution of the Performance Culture System.	An assessment of compliance with merit system principles and related laws, rules, and regulations governing the Performance Culture system.	To determine that decisions, policies, processes, and practices executed under the Performance Culture system comply with the merit system principles and related laws, rules, and regulations.

Talent Management System Standard.	The agency has closed skills, knowledge, and competency gaps/deficiencies in mission-critical occupations, and has made meaningful progress toward closing skills, knowledge, and competency gaps/deficiencies in all occupations used in the agency.

Required Outcome Metric	Description	Purpose
Organization Metric: Competency Gaps Closed for Mission-Critical Occupations.	Difference between competencies needed and competencies possessed by employees in mission-critical occupations.	To determine how the agency should target its recruitment, retention, and development efforts to bring the competencies of its workforce into alignment with the agency's current and future needs.
Employee Perspective Metric: Questions from Annual Employee Survey about Organizational Capacity.	Items from Annual Employee Survey	To determine the extent to which employees think the organization has talent necessary to achieve organizational goals.
Employee Perspective Metric: Questions from Annual Employee Survey about Employee Satisfaction.	Items from Annual Employee Survey	To determine the extent to which employees are satisfied with their jobs and various aspects thereof.
Merit System Compliance Metric: Merit-Based Execution of the Talent Management System.	An assessment of compliance with merit system principles and related laws, rules, and regulations governing the Talent Management system.	To determine that decisions, policies, processes, and practices executed under the Talent Management system comply with the merit system principles and related laws, rules, and regulations.

SECTION II—Strategic Alignment System	**The Strategic Alignment System**
	Human Capital Planning
	Workforce Planning
	Human Capital Best Practices and Knowledge Sharing
	Human Resources as Strategic Partner

The Strategic Alignment System.	This section contains information specific to the Strategic Alignment system, which focuses on having a human capital management strategy that is aligned with mission, goals, and organizational objectives.
Definition	A system led by senior management—typically the Chief Human Capital Officer (CHCO)—that promotes alignment of human capital management strategies with agency mission, goals, and objectives through analysis, planning, investment, measurement, and management of human capital programs.
Standard	Agency human capital management strategies are aligned with mission, goals, and organizational objectives and integrated into its strategic plans, performance plans, and budgets.
Critical Success Factors	The Strategic Alignment system is comprised of the following critical success factors: • *Human Capital Planning:* The agency designs a coherent framework of human capital policies, programs, and practices to achieve human capital requirements to directly support the agency's strategic plan. • *Workforce Planning:* The organization identifies the human capital required to meet organizational goals, conducts analyses to identify competency gaps, develops strategies to address human capital needs and close competency gaps, and ensures the organization is appropriately structured. • *Human Capital Best Practices and Knowledge Sharing:* To leverage its efforts, the agency works with others to share best practices and learn about new developments. • *Human Resources as Strategic Partner:* Human resources (HR) professionals act as consultants with managers to develop, implement, and assess human capital policies and practices to achieve the organization's shared vision. Senior leaders, managers, HR professionals, and key stakeholders contribute to the human capital vision and the agency's broader strategic planning process.
Applicable Merit System Principles.	The following merit system principle is especially relevant to the Strategic Alignment system: • The Federal work force should be used efficiently and effectively. (5 U.S.C. 2301(b)(5)).
Metrics	Activities and outcomes of this system are assessed through documented evidence of a Strategic Human Capital Plan that includes human capital goals, objectives, and strategies; a workforce plan; and performance measures and milestones.

Agencies are required under OPM regulations implementing the CHCO Act to submit the Strategic Human Capital Plan described by this system to OPM on an annual basis.

SECTION II—Strategic Alignment System	The Strategic Alignment System
	Human Capital Planning
	Workforce Planning
	Human Capital Best Practices and Knowledge Sharing
	Human Resources as Strategic Partner

Results: Human Capital Planning.	When the key elements of the critical success factor Human Capital Planning are effectively implemented, agencies will realize the following results: **Effectiveness Results** • The agency's strategic plan establishes an agency-wide vision that guides human capital planning and investment activities. • The agency has a system in place to continually assess and improve human capital planning and investment and their impact on mission accomplishments. • Managers are held accountable for effective implementation of human capital plans and overall human capital management. **Compliance Result** • In accordance with the Chief Human Capital Officers Act of 2002 (CHCO Act), the agency CHCO carries out the functions authorized in 5 U.S.C. 1402, including aligning the agency's human resources policies and programs with organizational mission, strategic goals, and performance outcomes. The following pages provide key elements and suggested performance indicators for this critical success factor.

HUMAN CAPITAL PLANNING

Key Elements	Suggested Performance Indicators
The agency has a human capital planning system that: • Promotes alignment of human capital strategies with agency mission, goals, and objectives through analysis, planning, investment, and management of human capital programs	**Effectiveness Indicators** • Key stakeholders, including HR, participate in the development and revision of the agency's strategic plan and facilitate workforce planning and analysis efforts. • Documents substantiate involvement of key human capital leaders and key stakeholders in the planning process (e.g., team members of review boards, working groups, or executive off-sites). • Human capital planning is managed by a human capital review team or similar collaborative body comprised of the CHCO and senior leaders and managers from human resources, information technology, finance, and mission-specific program areas. **Compliance Indicator** • As provided by 5 U.S.C. 1303(c), the agency holds managers and human resources officers accountable for efficient and effective human resources management in support of the agency's mission, in accordance with merit system principles.
• Establishes a process for including human capital activities and investments in the agency annual performance plan and budget	**Effectiveness Indicators** • The agency's annual performance plan and budget request include human capital activities and investments. • The annual plan identifies resources required to implement human capital strategies (e.g., retention bonuses, "buyouts," awards, training, student loan repayments, tuition assistance, Voluntary Early Retirement Authority (VERA)). Funding requirements are prioritized in case not all human capital strategies can be funded. **Compliance Indicators** • The agency has a standard for integrating its human resources strategies into the budget as stated in 5 U.S.C. 1303, as added by the CHCO Act of 2002. • As prescribed in the CHCO Act (31 U.S.C. 1115), the agency's performance plan provides a description of how the performance goals and objectives are to be achieved, including: —The operational processes, training, skills and technology, and the human capital information and other resources —The strategies required to meet the performance goals and objectives. [**Note:** In addition to amending and adding to title V, the CHCO Act amends provisions of the Government Performance and Results Act of 1993 (GPRA), which requires agencies to prepare annual performance plans.]

HUMAN CAPITAL PLANNING	
Key Elements	**Suggested Performance Indicators**
• Results in the development of an annual human capital plan establishing human capital goals, objectives, and investments that link to the agency strategic plan and support mission accomplishment	**Effectiveness Indicators** • The agency's planning process links the human capital framework to the mission, function, and strategic management of the agency, as well as to other management initiatives such as e-Government and competitive sourcing. • The agency has designed human capital performance improvement strategies that support mission accomplishment. • The agency has approved and communicated human capital planning documents that describe human capital goals, objectives, investments, and strategies that are linked to the agency strategic plan. **Compliance Indicators** • The agency includes human capital strategic planning in agency performance plans and performance reports as stated in 31 U.S.C. 1115, as amended by the CHCO Act. • As prescribed in the CHCO Act (31 U.S.C. 1115), the agency's program performance report includes a review of the performance goals and evaluation of the agency's performance plan relative to the agency's strategic human capital plan.
• Provides for a formal agency-wide evaluation of the strategies in the human capital plan and its implementation	**Effectiveness Indicators** • The strategic human capital plan sets human capital progress milestones and identifies those responsible for meeting them. • The agency's annual performance review tracks and measures human capital activities and investments. • The agency defines successful achievement of the mission in terms of quantified long- and short-term human capital performance goals. • The agency has a documented change management/implementation process that identifies necessary human capital practices that facilitate change.
The agency has a human capital planning system that:	• Where appropriate, individual performance plans and evaluations address accountability for successful implementation of human capital strategies. • Human capital partnering is considered in senior leaders' and managers' annual performance reviews. **Compliance Indicators** • In accordance with the Executive Performance and Accountability Interim Rule (5 CFR 430 and 1330), senior employee performance ratings appropriately and clearly link to organizational mission, GPRA strategic goals, or other program objectives. • Agency managers plan and communicate performance elements and standards that are linked with strategic planning initiatives in accordance with the Executive Performance and Accountability Interim Rule (5 CFR 430 and 1330).

SECTION II—Strategic Alignment System	The Strategic Alignment System
	Human Capital Planning
	Workforce Planning
	Human Capital Best Practices and Knowledge Sharing
	Human Resources as Strategic Partner

Results: Workforce Planning.	When the key elements of the critical success factor Workforce Planning are effectively implemented, agencies will realize the following results: **Effectiveness Results** • The agency approaches workforce planning strategically and in an explicit, documented manner. The workforce plan links directly to the agency's strategic and annual performance plans and is used to make decisions about structuring and deploying the workforce. • Mission-critical occupations and competencies are identified and documented, providing a baseline of information for the agency to develop strategies to recruit, develop, and retain talent needed for program performance. • The agency's documented workforce plan identifies current and future workforce competencies and the agency is closing identified competency gaps through implementation of gap reduction strategies such as: —Restructuring. —Recruitment. —Competitive sourcing. —Redeployment. —Retraining.

	—Retention (e.g., compensation, quality of work life). —Technology solutions. • A business forecasting process is implemented that identifies probable workforce changes, enabling agency leadership to anticipate changes to human capital that require action to ensure program performance. • Based on functional analyses, the agency is appropriately structured to allow the right mix and distribution of the workforce to best support the agency mission. • Based on analysis of customer needs and workload distribution, the agency has the right balance of supervisory and non-supervisory positions to support the agency mission. **Compliance Result** • The CHCO assesses workforce characteristics and future needs based on the agency's mission and strategic plan in accordance with the CHCO Act of 2002 (5 U.S.C. 1402). The following pages provide key elements and suggested performance indicators for this critical success factor.

WORKFORCE PLANNING

Key Elements	Suggested Performance Indicators
The agency's workforce planning system includes a workforce analysis process that: • Identifies mission-critical occupations and competencies that are essential to achieving strategic goals. • Analyzes current strengths and weaknesses regarding mission-critical occupations and competencies. • Identifies competency gaps and deficiencies, including current and future competency needs and losses due to voluntary attrition. • Systematically defines the size of the workforce needed to meet organizational goals. • Uses workforce planning reports and studies in conjunction with the best practice benchmarks to determine the most effective work levels, workloads, and resources for efficient functioning. • Bases decisions related to restructuring, redeployment, and reorganization on current empirical and workforce analysis. • Conducts risk assessments to minimize adverse impacts on workforce due to restructuring. • Documents and assesses key supporting functions of all business areas. • Regularly evaluates customer/citizen needs and incorporates these needs into workforce plans, organizational goals, and functions.	**Effectiveness Indicators** • Studies indicate which occupations and competencies are essential to achieving the agency's strategic goals. • Mission-critical occupations and competencies are identified in the agency's strategic plan and/or performance plan, and its strategic human capital plan. • A methodology exists for determining mission-critical occupations and competencies based in part on professional qualifications (e.g., certifications, licenses). • Trends in mission-critical occupations are analyzed in terms of the following suggested factors in order to continually adjust the agency's recruitment and retention strategy to its current state of need: —Number and distribution of positions by pay plan/grade or pay band/series and geographic location. —Average age. —Average length of service. —Diversity trends. —Average grade/band. —Retirement eligibility (current and expected). —Turnover (e.g., separations, resignations, transfers, retirements). —Surpluses in occupations and competencies. • Competency and/or staffing models have been developed and there is analysis of gaps between the current and desired competencies for mission-critical occupations. • Documentation indicates workforce analysis occurs on a periodic basis and is used to drive human capital policy and decisions. • The agency uses a documented, systematic strategic workforce planning process that addresses the following issues: —The link to the agency's strategic plan and the strategic human capital plan. —The link to the agency's annual performance/business plan. —Work activities required to carry out the goals and objectives of the strategic plan (long term) and performance plan (short term). —How to structure the organization (e.g., determine what must be done for continuance of Government operations, determine necessary layers, streamline functions, consolidate organizational elements) and its work processes/workflow to carry out work activities —How to continually update the process to reflect mission changes, technology advances (e.g., e-Government), funding levels, competitive sourcing, and other change drivers. —Analysis and assessment of the current workforce (e.g., skills, demographics, attrition) to meet long-term and short-term goals and objectives. —Workforce analysis including indicators such as size and distribution of workforce (including Senior Executive Service (SES)) by grade, series, geographic locations, types of positions occupied, pay plan, veteran representation, etc. —How to develop current employees, recruit to fill long-term and short-term goals, and provide for continuity of leadership through succession to key positions. —How to minimize the adverse impact on the workforce in restructuring the organization and its work processes. • The agency uses multi-faceted techniques to close competency gaps within the organization (e.g., strategic recruitment, mid-career hiring, training).

WORKFORCE PLANNING

Key Elements	Suggested Performance Indicators
• Forecasts future business changes in the work of the agency and how the changes will affect the workforce. • Regularly tracks established performance measures, workforce trends, and technological advances to ensure updated models for meeting citizen and organization needs.	• The agency conducts regular assessment of its need for, and deployment of, executive resources. **Effectiveness Indicators** • Line managers and key staff, including HR, consider and prepare for possible workforce changes in areas such as mission/goals, technology, program additions or deletions, functions, and outsourcing initiatives. • The agency's strategic plan and/or performance plan and its strategic human capital plan reflect forecasts of the human capital implications of future business plans, including expectations and trends concerning: —Future workload and staffing needs. —Workforce demographics in mission-critical occupations. —Changing competency requirements —Industry benchmarking for similar occupations. —Availability of competencies within applicable labor markets. • The forecast is shared widely and used within the agency by those who are responsible and accountable to meet human capital needs.
The agency's workforce analysis process is based on sources of information such as: • Current workforce demographic and competitive sourcing studies. • Descriptive and documented plans and processes for hiring, recruiting, employment, and retention efforts. • Past agency assessments and workforce data. • Information about anticipated changes related to e-Government and competitive sourcing, goals, and objectives.	**Effectiveness Indicators** • Information systems are in operation which provide human capital data to all appropriate management levels to guide planning, analysis, and decision making. Data integrity is maintained through quality control checks. • The agency conducts and uses management studies to: —Eliminate work and interfaces that add no value. —Assess the organization's deployment strategies, including identification of situations where competitive sourcing is the most appropriate means to meet their strategic objectives. • Staffing data showing trends in appointments, promotions, conversions, separations, and retirements are analyzed regularly, and management decisions regarding workforce deployment are based on documented data. • Turnover indicators (e.g., transfers, retirements, and separations in each of the last several years, overall, and by professional, administrative, technical, clerical, and other occupations) are monitored regularly.
The agency's workforce planning system includes an organizational structuring process that: • Utilizes functional analysis to determine appropriate organizational and physical structure. • Clearly organizes the agency staffing plan by workflow, organizational initiative, and functional area. • Anticipates change in citizen needs by continuously monitoring the evolution of needs, trends, and events affecting workforce planning. • Avoids excess organizational layers. • Reduces redundant operations. • Analyzes internal workforce statistics (e.g., ratio of managers to workforce, distribution of workforce), data, and trends to make the most efficient choices for workforce deployment.	**Effectiveness Indicators** • Documentation of analyses of organizational functions shows review, planning, design, and, if applicable, implementation and outcome of efforts to realign the workforce. • Functional analyses and data analyses result in specific targets for workforce redeployment, which are reflected in the strategic human capital plan and the workforce plan. • The benefits of proposed changes to the structure and/or the workforce mix are quantified and incorporated into the budget submissions. • Duplications in support areas such as communications, legislative affairs, budget, and personnel and/or duplications in program areas are reduced and programs are streamlined and consolidated wherever possible. • Analysis of data includes statistics such as ratio of administrative jobs (e.g., administrative officer, budget analyst, budget clerk, management analyst, personnel clerk, personnel professional, support services specialist) to the workforce, distribution of administrative jobs by organizational component and geographic location, and trends in numbers and proportions of administrative jobs. • A model organization has been developed that: —Reflects the numbers of employees needed and their appropriate skill and grade or pay band/level mix. —Identifies key leadership positions. —Includes specific recruiting and training/development activities. **Compliance Indicator** • The agency appropriately applies pertinent regulations and statutes to group or individual deployment-related actions as specified in the Talent Management system (Voluntary Early Retirement Authority (VERA), Voluntary Separation Incentive Payments (VSIP), Transfer of Function (TOF), etc.).
The agency's organizational structuring process demonstrates that it:	

WORKFORCE PLANNING

Key Elements	Suggested Performance Indicators
• Includes statistics regarding number of supervisors, their series and grade/pay band, geographic location, and ratio of supervisors to employees. • Obtains the mix of supervisory and non-supervisory positions to best meet customer needs. • Documents the need for redirecting supervisory positions and the planned program design and assessment for the implemented changes. • Addresses impediments to restructuring by analyzing solutions found within the current environment. • Uses a documented change management strategy.	**Effectiveness Indicators** • Analysis of data includes statistics related to the number of supervisors, their geographic and organizational location, their series and grades/pay bands, the ratio of supervisors to employees, percent of supervisors in grades GS–12–15 or equivalent, etc. • Supervisory needs are clearly tied to the workflow process and the organizational structure resulting in a staffing plan that indicates the necessary number of supervisors by functional area. • The agency has documented the need to redirect supervisory positions, designed and implemented a program to support their redeployment, and developed an evaluation process to determine if the anticipated outcomes are being achieved. • Impediments are identified and solutions to overcome impediments within the current environment (e.g., Title V and/or other appropriate systems) are identified and documented. • Through consultation with the Office of Personnel Management (OPM), the agency makes a sound business case for any waivers, exemptions, or regulatory or legislative relief needed to overcome barriers. • The agency has a documented change management strategy, where appropriate, to overcome barriers and facilitate restructuring/culture change efforts. • The agency's restructuring, redeployment, and reorganization decisions are substantiated with empirical evidence. • Agency records indicate that, during restructuring, redeployment, and reorganizing, operational disruption is minimized through the use of: —Effective internal and external communication plans —Retraining —Reassignment —Placement assistance —Relocation allowances —VERA and VSIP where appropriate

SECTION II—Strategic Alignment System	The Strategic Alignment System
	Human Capital Planning
	Workforce Planning
	Human Capital Best Practices and Knowledge Sharing
	Human Resources as Strategic Partner

Results: Human Capital Best Practices and Knowledge Sharing	When the key elements of the critical success factor Human Capital Best Practices and Knowledge Sharing are Effectively implemented, agencies will realize the following results: **Effectiveness Result** • The agency looks beyond its own experience and resources when developing human capital strategies and works with others to share best practices. **Compliance Result** • As provided in 5 U.S.C. 1303(c), the agency holds managers and human resources officers accountable for efficient and effective human resources management in support of the agency's mission, in accordance with merit system principles. The following page provides key elements and suggested performance indicators for this critical success factor.

HUMAN CAPITAL BEST PRACTICES AND KNOWLEDGE SHARING

Key Elements	Suggested Performance Indicators
The agency has a human capital best practices and knowledge sharing system that: • Benchmarks best practices and lessons learned by other Government agencies and private sector organizations.	**Effectiveness Indicator** • The agency uses resources (e.g., Web sites, research findings, special studies, program guidance) from sources such as: —OPM. —Office of Management and Budget (OMB). —Government Accountability Office (GAO.) —Society for Human Resource Management (SHRM). —International Public Management Association for Human Resources (IPMA–HR).

HUMAN CAPITAL BEST PRACTICES AND KNOWLEDGE SHARING	
Key Elements	**Suggested Performance Indicators**
• Establishes a method or process for collaborating with other agencies regarding effective human capital strategies.	**Compliance Indicator** • The agency's CHCO identifies best practices and benchmarking studies in accordance with the CHCO Act (5 U.S.C. 1402). **Effectiveness Indicators** • The agency uses Governmentwide benchmarks (e.g., staffing timeliness, Central Personnel Data Files/FedScope, Federal Human Capital Survey (FHCS) responses) in setting human capital strategic goals. • The agency participates in human capital managerial/professional employee groups (e.g., the Chief Human Capital Officers Council, the Small Agency Council, Federal Executive Boards, and National Academy of Public Administration).
• Provides valuable information to human capital planners on effective human capital strategies that is used to improve human capital planning.	**Effectiveness Indicators** • Agency representatives participate in Governmentwide collaborative efforts and/or managerial/professional/employee organizations to share best practices and leverage lessons learned.

SECTION II—Strategic Alignment System	The Strategic Alignment System
	Human Capital Planning
	Workforce Planning
	Human Capital Best Practices and Knowledge Sharing
	Human Resources as Strategic Partner

Results: Human Resources as Strategic Partner.	When the key elements of the critical success factor Human Resources as Strategic Partner are effectively implemented, agencies will realize the following results: **Effectiveness Results** • HR professionals and key stakeholders are involved in the agency strategic and workforce planning efforts. • The HR function is adequately staffed and prepared, in competencies and resources, to proactively partner and consult with line managers. • The HR staff reaches out to other organizational functions and components through facilitation, coordination, and counseling to provide integrated mission support. **Compliance Result** • As provided by 5 U.S.C. 1303(c), the agency holds managers and human resources officers accountable for efficient and effective human resources management in support of the agency's mission, in accordance with merit system principles. The following pages provide key elements and suggested performance indicators for this critical success factor.

HUMAN RESOURCES AS STRATEGIC PARTNER	
Key Elements	**Suggested Performance Indicators**
The agency's human resources system: • Is proactively involved in the agency strategic and workforce planning efforts.	**Effectiveness Indicators** • The HR staff consults with managers and supervisors across the agency on various management issues. • The HR staff provides advice and guidance to managers on human capital strategies tailored to meet organizational needs. • The HR staff assesses and anticipates needs of customers (i.e., managers, supervisors, employees, and applicants), develops functions and services to support and fulfill those needs, ensures quality of services, and communicates program requirements to customers. • The HR staff involves line functions in program review and/or development and likewise is invited by line functions to organizational meetings and retreats to identify and advise on HR issues. • FHCS and/or other surveys or interviews indicate that HR staff members are viewed as internal consultants and that human capital strategies support the broader agency mission. • Policies describe the process and procedures for communicating customer issues, resolving customer dissatisfaction, and handling customer comments. • The HR staff measures and communicates the value of products and services it provides through feedback mechanisms.

HUMAN RESOURCES AS STRATEGIC PARTNER	
Key Elements	**Suggested Performance Indicators**
• Includes a staff that has the skills and competencies required for partnering with executives and managers in strategic planning. • Has a human resource information system with the capacity to provide relevant and reliable data necessary for making fact-based human capital decisions.	**Compliance Indicator** • As provided by 5 U.S.C. 1303(c), the agency holds managers and human resources officers accountable for efficient and effective human resources management in support of the agency's mission, in accordance with merit system principles. **Effectiveness Indicators** • The agency conducts HR staff development needs-assessment studies to identify competency gaps. • The agency has strategies (e.g., automation, competitive sourcing, recruitment, mentoring, training) in place to close competency gaps in HR staff and to provide managers the advice and tools they need to operate. • HR staff conducts program reviews, customer surveys, and regular assessments of information systems and other support functions to identify areas for continuing improvement. • Analysis of staffing levels includes considerations such as HR servicing ratio, HR staff distribution by series/grade/pay band, HR staff average grade/pay band, age, length of service, training completed, retirement eligibility, HR supervisory ratio, and ratio of personnel actions to personnel staff. **Effectiveness Indicator** • HR staff partners with managers to: —Conduct workforce studies and analyze results in collaboration with managers; the data is used for decision making —Use all available functions and features of the agency's current system to facilitate effective agency workforce management (e.g., process and report on personnel transactions, query data) and provide routine reports to managers. —Participate, as appropriate (*i.e.*, depending on level in organization), in agency and/or OPM initiatives to support the OPM. Enterprise Human Resources Integration initiative, which will support HR management across Government. —Participate, as appropriate, in other e-government initiatives such as e-payroll and RSM. —The agency uses an HR information system that promotes employee self-service and manager access to a broad range of human capital information and indicators.

SECTION III—Leadership and Knowledge Management System	**The Leadership and Knowledge Management System**
	Leadership Succession Management
	Change Management
	Integrity and Inspiring Employee Commitment
	Continuous Learning
	Knowledge Management

The Leadership and Knowledge Management System.	This section contains information specific to the Leadership and Knowledge Management system, which focuses on identifying and addressing agency leadership competencies so that continuity of leadership is ensured, knowledge is shared across the organization, and an environment of continuous learning is present.
Definition	A system that ensures continuity of leadership by identifying and addressing potential gaps in effective leadership and implements and maintains programs that capture organizational knowledge and promote learning.
Standard	Agency leaders and managers effectively manage people, ensure continuity of leadership, and sustain a learning environment that drives continuous improvement in performance, and provide a means to share critical knowledge across the organization. Knowledge management must be supported by an appropriate investment in training and technology.
Critical Success Factors	The Leadership and Knowledge Management system is comprised of five critical success factors: • *Leadership Succession Management.* The organization identifies leadership competencies and establishes objectives and strategies to ensure there is a continuous pipeline of available leadership within the organization. • *Change Management:* The agency has in place leaders who understand what it takes to effectively bring about changes that achieve significant and sustained improvements in performance. • *Integrity and Inspiring Employee Commitment:* Leaders maintain high standards of honesty and ethics that serve as a model for the whole workforce. Leaders promote teamwork and communicate the organization's shared vision to all levels of the organization and seek feedback from employees. Employees respond by maintaining high standards of honesty and ethics.

	• *Continuous Learning:* Leaders foster a learning culture that provides opportunities for continuous development and encourages employees to participate. Leaders invest in education, training, and other developmental opportunities to help themselves and their employees build mission-critical competencies. • *Knowledge Management:* The organization systematically provides resources, programs, and tools for knowledge sharing across the organization in support of its mission accomplishment. Together, these critical success factors ensure: • A constant flow of leaders who can properly direct an agency's efforts to achieve results. • A workforce with the competencies required to achieve the agency's mission. • That the workforce is motivated to use its competencies in service of the agency's mission.
Applicable Merit System Principles.	The following merit system principle is especially relevant to the Leadership and Knowledge Management system: • Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance. (5 U.S.C. 2301(b)(7)).
Required Outcome Metrics.	**The following are required outcome metrics for the Leadership and Knowledge Management system.**

Required Metric	Description	Purpose
Organization Metric: Competency Gaps Closed for Management and Leadership.	Difference between competencies needed and competencies possessed by managers and leaders.	To determine how the agency should target its recruitment, retention, and development efforts to bring the competencies of its managers and leaders into alignment with the agency's current and future needs.
Employee Perspective Metric: Questions from Annual Employee Survey about Satisfaction with Leadership.	Items from Annual Employee Survey	To determine the extent to which employees hold their leadership in high regard, both overall and on specific facets of leadership.
Merit System Compliance Metric: Merit-Based Execution of the Leadership and Knowledge Management System.	An assessment of compliance with merit system principles and related laws, rules, and regulations governing the Leadership and Knowledge Management system.	To determine that decisions, policies, processes, and practices executed under the Leadership and Knowledge Management system comply with the merit system principles and related laws, rules, and regulations.

Suggested Metrics	In addition to the required outcome metrics, the following metrics associated with the Leadership and Knowledge Management system are suggested.

Suggested Metric	Description	Purpose
Bench Strength	The relationship between the number of employees in the leadership pipeline who demonstrate the required level of performance on leadership competencies and the number of critical leadership positions.	To ensure that enough internal organizational capacity exists to mitigate leadership attrition and maintain progress toward mission attainment.
Time To Hire Critical Leadership Positions	Average time from date vacancy closes to date offer is extended (expressed in working days).	To determine the efficiency of a critical phase of the Federal hiring process.
Succession Sources	Percentage of critical leadership positions filled from internal sources, other Government sources (including military), and non-Government sources.	To determine the extent to which various succession planning efforts (including internal career development programs) result in the selection of critical leaders.
Culture of Workforce Improvement	Items from Annual Employee Survey	To determine the extent to which employees believe their leaders have developed a culture that values personal growth.

SECTION III—Leadership and Knowledge Management System	The Leadership and Knowledge Management System
	Leadership Succession Management
	Change Management
	Integrity and Inspiring Employee Commitment
	Continuous Learning
	Knowledge Management

Results: Leadership Succession Management.	When the key elements of the critical success factor Leadership Succession Management are effectively implemented, agencies will realize the following results: **Effectiveness Result** • The agency has taken action to ensure continuity of leadership through succession planning and executive development programs that results in a diverse pool of qualified internal, other Government, and non-Government sources for all mission-critical leadership positions. **Compliance Result** • The agency has established a comprehensive management succession program that provides training to employees to develop them as managers for the agency as prescribed by the Federal Workforce Flexibility Act of 2004. The following pages provide key elements and suggested performance indicators for this critical success factor.

LEADERSHIP SUCCESSION MANAGEMENT

Key Elements	Suggested Performance Indicators
The agency has a leadership succession management system that: • Is based on accurate data on the current workforce. • Is based on accurate projections of attrition at all leadership levels. • Identifies a diverse pool of high-potentialleaders through a fair and accurate process. • Includes a formal process to address management potential.	**Effectiveness Indicators** • The agency's leadership development strategy and policy, which reflect its mission and culture, are developed, documented, and implemented, based on the agency's workforce analysis and succession planning process. • The agency performs an ongoing workforce analysis to identify current and future workforce and related leadership needs. The analysis includes information concerning: —Workforce size —Workforce deployment by location, function, and occupation —Leadership competencies needed for mission accomplishment —Trends in hiring, promotion, reassignment, and attrition in leadership positions —Trends in competency needs (e.g., surpluses and gaps in specific skills). —A forecast of future leadership requirements and changes due to retirement and other losses —Inclusion of all demographic groups. • A succession planning process based on workforce analysis is in place that considers current and future leadership needs to meet strategic and performance plans. The plan includes: —Specific goals and identification of leadership positions needed —Target positions and key leadership competencies (i.e., a leadership competency model based on the Office of Personnel Management (OPM) executive core qualifications (ECQs) plus appropriate agency-specific competencies) —Potential sources of talent (e.g., internal, other Government, non-Government) that best support the agency's mission and culture —Recruitment or development strategies needed to ensure availability of well qualified staff to fill leadership positions at all levels including identification of high-potential employees and establishment of a formal Senior Executive Service (SES) candidate development program, other merit-based methods of developing future executives, and/or other appropriate development programs. • The agency conducts regular assessments of leadership policies and performance of its leaders to ensure that succession planning goals (e.g., recruitment and retention of high-performing leaders) are being met.
• Invests in an SES candidate development program linked to the ECQs. • Provides mentoring to new and prospective leaders. • Invests in first-line supervisors to ensure they have the competencies to direct the day-to-day work of the agency. • Includes an "employee development" performance indicator for managers and senior leaders.	**Effectiveness Indicators** • The agency leadership has demonstrated its commitment to leadership development through dedication of resources (e.g., appropriate percentage of salaries set aside specifically for leadership development) to develop current and future leaders. • Trained mentors are available to employees participating in development programs. **Compliance Indicator** • As prescribed by 5 CFR 412, the agency has established a system to provide: —The competencies needed by supervisors, managers, and executives to perform their current functions at the mastery level of proficiency —Learning through development and training in the context of succession planning and corporate perspective to prepare individuals for advancement.

LEADERSHIP SUCCESSION MANAGEMENT	
Key Elements	**Suggested Performance Indicators**
• Invests in the continuous development of senior leadership	**Effectiveness Indicators** • Leadership skill training and development programs address the needs of each level of management (e.g., supervisors, managers, executives, and potential leaders). These programs have been communicated to all levels of management and potential leaders and are reflected in Individual Development Plans (IDPs) for this group. • Training and development needs are identified in IDPs by obtaining input from multiple sources (e.g., customers, peers, subordinates, supervisors). IDPs are monitored and include training and experiential development. Identified needs are generally being met. • The agency's annual training needs assessment reflects needs identified in IDPs. Training is targeted to meet the most commonly identified needs. • Employee survey results, including the Federal Human Capital Survey, indicate that employees believe that leadership development receives appropriate emphasis and dedicated resources and results in effective leaders who are a source of motivation. • Agency leadership development programs are analyzed against agency measures of success to determine usage and impact including statistical data on average grade or pay band/age/length of service, diversity, attrition, and retirement eligibility. The analysis is documented and used by senior management to make decisions about leadership development issues and resource allocation. **Compliance Indicator** • The agency has a program to provide training to managers on actions, options, and strategies to use in (1) communicating with employees whose performance is unacceptable, and (2) mentoring employees and improving employee performance and productivity as prescribed by the Federal Workforce Flexibility Act.

SECTION III—Leadership and Knowledge Management System	The Leadership and Knowledge Management System
	Leadership Succession Management
	Change Management
	Integrity and Inspiring Employee Commitment
	Continuous Learning
	Knowledge Management

Results: Change Management.	**When the key elements of the critical success factor Change Management are effectively implemented, agencies will realize the following result:** **Effectiveness Result** • The agency has in place leaders who understand what it takes to effectively bring about changes that achieve significant and sustained improvements in performance. The following page provides key elements and suggested performance indicators for this critical success factor.

CHANGE MANAGEMENT	
Key Elements	**Suggested Performance Indicators**
The agency has a change management system in which leaders: • Provide adequate resources to support the change. • Take visible actions to support new ways of working. • Understand there is a need for a change process and facilitate the change management process by monitoring and addressing problems in the transition process. • Hold people accountable for performance results and meeting their commitments to the change process. • Focus on performance and progress against change milestones.	**Effectiveness Indicators** • Annual performance plans, budgets, and performance reports document plans for and progress toward change goals. • Individual performance plans rate leaders and managers on their implementation of change initiatives. • Newsletters, intranet, and other agency media show efforts to share a vision for change. • The agency has a strategy and plan for communication of change. • The Federal Human Capital Survey (FHCS) and/or other climate surveys are conducted and analyzed and relevant results lead to change in strategy.

SECTION III—Leadership and Knowledge Management System	The Leadership and Knowledge Management System
	Leadership Succession Management
	Change Management
	Integrity and Inspiring Employee Commitment
	Continuous Learning
	Knowledge Management

Results: Integrity and Inspiring Employee Commitment.	When the key elements of the critical success factor Integrity and Inspiring Employee Commitment are effectively implemented, agencies will realize the following results: **Effectiveness Results** • Leaders maintain high standards of honesty and ethics that serve as a model for the whole workforce; employees respond by maintaining high standards of honesty and ethics. • Leaders promote teamwork and communicate the organization's shared vision to all levels of the organization, and seek feedback from employees. **Compliance Result** • The agency complies with the Ethics in Government Act of 1978 and other statutory and governing guidance compiled by the Office of Government Ethics to cover conflict of interest and ethics. The agency also complies with its own supplemental standards of conduct. The following pages provide key elements and suggested performance indicators for this critical success factor.

INTEGRITY AND INSPIRING EMPLOYEE COMMITMENT

Key Elements	Suggested Performance Indicators
Employee integrity and commitment is in evidence when: • Senior leaders foster an environment of open communication (top-down and bottom-up communication) throughout the agency. • Employees view the agency as a desirable place to work. • Teamwork is valued and rewarded in the agency. • Agency policies reinforce the Office of Government Ethics Standards of Ethical Conduct for Executive Branch Employees and, at a minimum, meet the Office's requirements for ethics training. Ethical behavior and standards are included in competencies for all employees. Programs for identifying violations exist and leaders take appropriate disciplinary actions.	**Effectiveness Indicators** • The FHCS and/or other employee climate sureys reflect a positive, committed work environment. • Human resources staff, in partnership with management, seeks anhd considers continuous feedback from employees (e.g., focus groups) regarding workplace environment and responds to feedback with appropriate action. • Agency has been cited in applicant feedback and media stories as an employer of choice. • Agency awards policy promotes teamwork through the use of group awards and communication of group successes. • Agency analyzes trends across management indicators such as per capita overtime, worker's compensation charges, sick leave usage, forfeiture of annual leave, turnover, removal of probationers, disciplinary actions, adverse actions (5 CFR part 752), and exit interviews. • Senior leaders sign statements of conduct or agency-wide declarations. • The FHCS and/or other employee surveys report that an ethical climate exists, that employees are aware of their whistleblower rights and other personnel protections, and they are likely to report wrongdoing. • Agency has a whistleblower support and Inspector General hotline program; activities are recorded and analyzed. • Communication strategies include a variety of media to convey senior leadership's message to the workforce. • Agency has a positive record in program reviews and congressional reviews.
Employee integrity and commitment is in evidence when:	**Compliance Indicators** • Agency is certified by the Office of Special Counsel to be in compliance with the 5 U.S.C 2302(c) requirement that the workforce be informed of whistleblower rights and other personnel protections. • Provides current and future leaders with an annual course on Government ethics.

SECTION III—Leadership and Knowledge Management System	The Leadership and Knowledge Management System
	Leadership Succession Management
	Change Management

	Integrity and Inspiring Employee Commitment
	Continuous Learning
	Knowledge Management

Results: Continuous Learning.	When the key elements of the critical success factor Continuous Learning are effectively implemented, agencies will realize the following results: **Effectiveness Results** • The agency has achieved a culture of continuous learning through investments in education, training, and other developmental opportunities that help employees build mission-critical competencies. • Training and development initiatives and strategies support mission-critical competencies, are linked to the agency mission, and have demonstrated a positive impact on agency mission performance. • The agency uses appropriate learning technology and innovative learning strategies to meet the training and development needs of the workforce. • The agency has developed and implemented a process to evaluate its training and development program impact in terms of learning, performance, work environment, and contribution to mission accomplishment. The results of the evaluation reflect a positive contribution to mission accomplishment. **Compliance Results** • As prescribed by the CHCO Act of 2002 (5 U.S.C. 1402), the agency CHCO has developed and advocates a culture of continuous learning to attract and retain employees with superior abilities and sets the workforce development strategy. • The agency's training programs comply with the provisions of 5 U.S.C. 4101 and 5 CFR 410 and 412. • As provided in the CHCO Act of 2002 (5 U.S.C. 1304), the agency: —Sustains a culture that cultivates and develops a high-performing workforce. —Develops and implements a knowledge management strategy supported by appropriate investment in training and technology. The following pages provide key elements and suggested performance indicators for this critical success factor.

CONTINUOUS LEARNING

Key Elements	Suggested Performance Indicators
The agency has a continuous learning system that: • Is based on accurate information from IDPs and an annual organizational needs analysis. • Focuses on mission-critical occupations.	**Effectiveness Indicators** • A training needs assessment is conducted that is linked to strategic and mission-critical competencies. Based on assessment results, employees are trained in specific, job-related skills and knowledge. • Training programs are designed and implemented which build competencies that are important to strategic goals and objectives and the agency's performance plan execution. —Competency-based career development programs, including various development activities and learning opportunities, have been implemented and documented and are being used by employees. —Competency models have been established which document standards for competency levels (e.g., entry, journey, expert). • IDPs, or a similar process, are established for employees in mission-critical occupations. IDP completion is tracked and review indicates that IDPs are being completed in most cases. • Performance evaluations reflect consideration of employee developmental training and developmental needs. Review indicates that action is usually taken to follow through on meeting these needs. • Agency policy and practice reflect that responsibility for employee development is shared between employees and managers. **Compliance Indicators** • In accordance with 5 CFR 410, the agency assesses training needs annually. • The agency closes skill gaps in mission-critical occupations in accordance with the CHCO Act (5 U.S.C. 1304).
• Uses a wide variety of methods including classroom training, distance learning, mentoring, and experiential learning. • Encourages attendance at conferences, workshops, and seminars.	**Effectiveness Indicators** • The agency conducts an analysis to select and implement the best array of learning strategies (e.g., rotational assignment, shadowing, mentoring) for the targeted audience(s) to provide them with mission-critical competencies. • Learning technology and other alternative learning strategies are reflected in the agency's strategic human capital planning documents and training plans. • Where appropriate, the agency has implemented e-learning activities such as eGov Online Learning Center. • The agency has invested in the infrastructure necessary to leverage learning opportunities that include the application of reasonable accommodation, where justified by return-on-investment analysis.

CONTINUOUS LEARNING	
Key Elements	**Suggested Performance Indicators**
• Is properly funded, monitored, and evaluated. • Is administered fairly.	• Leaders are responsible for leadership development and emphasize the value of learning, foster learning opportunities for employees, and demonstrate their support through personal involvement and resource allocation decisions. For example, they: —Set aside a percentage of salary dollars for employee training and development. —Provide tuition assistance for formal education. —Establish long-term technical development programs. —Fund employee certification requirements as authorized. • Policies, practices, and resource allocation decisions demonstrate agency support for continuous learning. **Effectiveness Indicators** • Employee survey results, including the Federal Human Capital Survey, indicate that employees believe they have appropriate opportunities to develop skills through training and experience. • Analysis of education, training, and development opportunities shows no disparate treatment of segments of the workforce (i.e., training is appropriately aligned with workforce planning goals, priorities are based on available funding, and opportunities are provided equitably across the employee population). • A training evaluation system has been implemented which measures the impact of training at the following levels: —Did learning occur? —Was learning applicable to job performance or other behavior that is important to the organization and to results? —Did the employee apply the learning or behavior to his/her job or work environment? —If the employee applied the learning, did it have the expected impact on performance or other job-related behavior? • An analysis has been conducted of the evaluation results and this information is used to make decisions about investments in employee training and development. Generally, the evaluation indicates that training and development investments are making a positive impact on the organization's performance and/or work environment and meet the training goals and expectations established between supervisors and employees prior to participation in training. **Compliance indicators** • As prescribed by the Federal Workforce Flexibility Act, the agency has evaluated each training program or plan established, operated, or maintained with respect to accomplishing specific performance plans and strategic goals in performing the agency mission; and the agency has modified such programs or plans to accomplish goals. • As established by 5 CFR 410.601, the agency evaluates training to determine how well it meets short- and long-range program needs by occupations, organizations, or other appropriate groups.

SECTION III—Leadership and Knowledge Management System	The Leadership and Knowledge Management System
	Leadership Succession Management
	Change Management
	Integrity and Inspiring Employee Commitment
	Continuous Learning
	Knowledge Management

Results: Knowledge Management.	When the key elements of the critical success factor Knowledge Management are effectively implemented, agencies will realize the following results: **Effectiveness Results** • The agency has developed and implemented a knowledge management process that provides a means to share critical knowledge across the organization. Leadership also encourages and rewards knowledge sharing. • Information technology tools that facilitate gathering and sharing knowledge within and outside the agency are available to employees to improve individual and organizational performance. **Compliance Result**

	• As prescribed in the Chief Human Capital Officers (CHCO) Act of 2002 (5 U.S.C. 1304), the agency has developed and implemented a knowledge management strategy supported by appropriate investments in training and technology. The following page provides key elements and suggested performance indicators for this critical success factor.

KNOWLEDGE MANAGEMENT

Key Elements	Suggested Performance Indicators
The agency has a knowledge management system that: • Captures, indexes, processes, and easily retrieves data that may be composed of text, audio, video, and Web-based elements • Facilitates the sharing of knowledge and best practices throughout the agency • Maintains active participation in communities of practice outside the agency • Establishes communities of practice for sharing key knowledge at all managerial and leadership levels.	**Effectiveness Indicators** • A knowledge management process has been developed, documented, and systematically shared with employees. Training and/or orientation is provided to the workforce. An infrastructure which facilitates knowledge capture, indexing, processing, and retrieval is established to support knowledge sharing through the use of the intranet, shared networks, and communities of practice and/or best practices. • The agency has analyzed the use of the knowledge-sharing process and established the utility and usage of the process and tools. —Knowledge sharing has been established as an organizational value through management communications and recognition of employees who exemplify the practice of knowledge sharing. —Requirements and specifications for tools support work performed by employees. • The agency has begun codifying knowledge through the use of the intranet, shared networks, and communities of practice and/or best practices. **Compliance Indicator** • As prescribed in the CHCO Act (5 U.S.C. 1304), the agency has developed and implemented a knowledge management strategy supported by appropriate investments in training and technology.

SECTION IV—Results-Oriented Performance Culture System	The Results-Oriented Performance Culture System
	Communication
	Performance Appraisal
	Awards
	Pay for Performance
	Diversity Management
	Labor/Management Relations

The Results-Oriented Performance Culture System.	This section contains information specific to the Results-Oriented Performance Culture system, which focuses on having a diverse, results-oriented, high-performing workforce, as well as a performance management system that effectively plans, monitors, develops, rates, and rewards employee performance.
Definition	A system that promotes a diverse, high-performing workforce by implementing and maintaining effective performance management systems and awards programs.
Standard	The agency has a diverse, results-oriented, high-performing workforce and a performance management system that differentiates between high and low levels of performance and links individual/team/unit performance to organizational goals and desired results effectively.
Critical Success Factors	The Results-Oriented Performance Culture system is comprised of the following critical success factors that work together to create a diverse, results-oriented, high performance workforce: • *Communication:* The agency has a process for sharing information and ideas about the organization with all employees. This vital process includes eliciting employee feedback and involvement so that all employees play an appropriate role in planning and executing the mission. • *Performance Appraisal:* The agency has a process under which performance is reviewed and evaluated. • *Awards:* The organization takes actions to recognize and reward individual or team achievement that contributes to meeting organizational goals or improving the efficiency, effectiveness, and economy of the Government. Such awards include, but are not limited to: employee incentives which are based on predetermined criteria, rating-based awards, or awards based on a special act or service. • *Pay for Performance:* The agency uses pay-for-performance systems, where authorized by law and regulation, to link salary levels and adjustments to an individual's overall performance and contribution to the agency's mission. Employees receive base salary adjustments within their assigned bands. • *Diversity Management:* The agency maintains an environment characterized by inclusiveness of individual differences and responsiveness to the needs of diverse groups of employees. • *Labor/Management Relations:* The organization promotes cooperation among employees, unions, and managers. This cooperation enhances effectiveness and efficiency, cuts down the number of employee-related disputes, and improves working conditions, all of which contribute to improved performance and results.

Applicable Merit System Principles.	The following merit system principles are especially relevant to the Results-Oriented Performance Culture system (5 U.S.C. 2301): • All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights. (5 U.S.C. 2301(b)(2)) • Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance. (5 U.S.C. 2301(b)(3)) • Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards. (5 U.S.C. 2301(b)(6))
Required Outcome Metrics.	The following are required outcome metrics for the Results-Oriented Performance Culture system.

Required Metric	Description	Purpose
Organization Metric: SES Performance/Organizational Performance Relationship as Linked to Mission.	Relationship between SES performance ratings and accomplishment of the agency's strategic goals.	To determine the extent to which SES appraisals and awards are appropriately based on achievement of organizational results.
Organization Metric: Workforce Performance Appraisals Aligned to Mission, Goals, and Outcomes.	Degree of linkage between employees' performance appraisal plans and agency mission, goals, and outcomes.	To determine whether all employees have performance appraisal plans that effectively link to the agency's mission, goals, and outcomes.
Employee Perspective Metric: Questions from Annual Employee Survey about Performance Culture.	*Items from the Annual Employee Survey*	To determine the extent to which employees believe their organizational culture promotes improvement in processes, products and services, and organizational outcomes.
Merit System Compliance Metric: Merit-Based Execution of the Performance Culture System.	An assessment of compliance with merit system principles and related laws, rules, and regulations governing the Performance Culture system.	To determine that decisions, policies, processes, and practices executed under the Performance Culture system comply with the merit system principles and related laws, rules, and regulations.

Suggested Metrics	In addition to the required outcome metrics, the following metrics associated with the Results-Oriented Performance Culture system are suggested.

Suggested Metric	Description	Purpose
Performance Ratings	Percent of employees achieving each rating level used in an agency's performance appraisal system in relation to organizational and individual performance.	To track the extent to which agencies make meaningful distinctions among employees' performance.
Awards	*Relationship of the distribution of performance ratings to awards.*	To track the extent to which agency monetary awards reflect employee performance.
Respect for Diversity	Items from Annual Employee Survey	To determine the extent to which employees believe that their organization is respectful of and welcoming to the great diversity that makes up the Federal workforce.
Employee Grievances and Complaints	*Review of formal grievances and complaints* ..	To determine whether the underlying facts of complaints and grievances indicate agency mistake or wrong doing.

SECTION IV—Results-Oriented Performance Culture System	The Results-Oriented Performance Culture System
	Communication
	Performance Appraisal
	Awards
	Pay for Performance
	Diversity Management
	Labor/Management Relations

Results: Communication	When the key elements of the critical success factor Communication are effectively implemented, agencies will realize the following results:

	Effectiveness Results • The agency's strategic plan has been shared with and/or is accessible to all agency employees. Employees are knowledgeable about the agency's strategic plan and their role in supporting the agency's mission. • Employees have a direct line of sight between performance elements (performance expectations) and award systems and the agency mission. These links have been communicated to and are understood by employees, enabling them to focus their work effort on those activities that are most important to mission accomplishment. All employees are held accountable for achieving results that support the agency's strategic plan goals and objectives. The following page provides key elements and suggested performance indicators for this critical success factor.

COMMUNICATION

Key Elements	Suggested Performance Indicators
The agency has a continuous learning system that: • Ensures that employees understand the agency's mission, goals, and objectives and what employees' roles are in achieving the mission, goals, and objectives.	**Effectiveness Indicators** • The agency has developed and implemented a communication strategy to share the vision, strategic plan, and related documents (e.g., Strategic Human Capital Plan) with all employees. • A variety of media are used to communicate the strategic plan and related documents to all levels of the workforce. • Surveys and/or interview data/summaries indicate that employees are aware of the strategic plan goals and understand how they relate to the agency's mission and their duties.
• Elicits employee feedback and involvement in decision-making and planning processes.	**Effectiveness Indicators** • Communication up and down the organization is effective. Documentation shows innovation and problem solving between employees and management. • Employees are involved in the decision-making process, fostering their support for organizational decisions. Surveys and/or interviews indicate that employees are satisfied with their level of participation in the organizational decision-making process and feel empowered to share their ideas and/or concerns with supervisors and other management officials.

SECTION IV—Results-Oriented Performance Culture System	The Results-Oriented Performance Culture System
	Communication
	Performance Appraisal
	Awards
	Pay for Performance
	Diversity Management
	Labor/Management Relations

Results: Performance Appraisal.	When the key elements of the critical success factor Performance Appraisal are effectively implemented, agencies will realize the following results: **Effectiveness Results** • Employees have a direct line of sight between performance elements (performance expectations) and recognition systems and the agency mission. These links have been communicated to and are understood by employees, enabling them to focus their work effort on those activities that are most important to mission accomplishment. All employees are held accountable for achieving results that support the agency's strategic plan goals and objectives. • The agency's performance management system differentiates between high and low levels of performance. Agencies with a high percentage of outstanding ratings also demonstrate a high level of achievement of their strategic goals and objectives and/or program accomplishments as reflected in the agency annual performance plan. • Supervisors and managers use performance results to offer feedback, identify developmental needs to help improve employee performance and address instances of poor performance. **Compliance Results** • The agency has an OPM-approved performance appraisal system(s) in place and administers the system(s) in accordance with 5 U.S.C. 43; or other congressionally-mandated enabling legislation. • The agency CHCO carries out workforce development provisions of the CHCO Act of 2002 (5 U.S.C. 1402). The following pages provide key elements and suggested performance indicators for this critical success factor.

PERFORMANCE APPRAISAL	
Key Elements	**Suggested Performance Indicators**
The agency has a continuous learning system that: • Aligns employee performance plans with organizational goals. • Focuses employees on achieving results. • Requires employee performance plans to include clear performance elements (expectations) with measurable standards of performance.	**Effectiveness Indicators** • Work units have documented performance goals and objectives that are linked to the agency strategic plan and performance plan. • Performance elements (expectations) for employees are: —Aligned with organizational goals. —Clear, specific, and understandable. —Reasonable and attainable. —Measurable, observable, or verifiable, and results oriented. —Communicated in a timely fashion. —Key in fostering continual improvement in productivity. **Compliance Indicators** • Agency managers plan and communicate performance elements (expectations) and standards that are linked with strategic planning initiatives in accordance with the Executive Performance and Accountability Interim Rule (5 CFR 430 and 1330) or applicable agency directives. • In accordance with 5 CFR 430 subparts b and c, performance plans must: —Be issued at the beginning of the appraisal period. —Include at least one critical element. —For SES, must include balanced measures of business results, employee, and customer perspectives.
The agency has a performance appraisal system that:	• Senior employee ratings (as well as subordinate employees' expectations and ratings for those with supervisory responsibilities) appropriately reflect the employee's performance elements (performance expectations), relevant program performance measures, and any other relevant factors in accordance with the Executive Performance and Accountability Interim Rule (5 CFR 430 or applicable agency directives and 1330). • As stated in 5 CFR 430 or applicable agency directives.204, the agency has established employee performance plans, including, but not limited to, critical elements and performance standards.
• Makes meaningful distinctions in levels of performance.	**Effectiveness Indicators** • The agency performance appraisal systems for other than senior executive and senior professional employees provides for meaningful distinctions based on relative performance. These systems include multiple levels against which to appraise employees. The rating levels identified are appropriate to the employees covered by the system (e.g., four or five levels for systems certified by the Office of Personnel Management (OPM) covering Senior Executive Service (SES) employees). • Agency performance appraisal systems **for other than** senior executive and senior professional employees provide for adequately distinguishing between levels of performance (i.e., include multiple performance levels against which to appraise employees, with at least one summary rating level above "Fully Successful"). A review of performance plans indicates that performance standards are clear and understandable and are an effective tool for distinguishing between levels of performance. • A high number of outstanding performance ratings or large cash awards is supported by achievement of strategic goals and objectives and/or program goals as reflected in the agency's annual performance report. **Compliance Indicators** • Performance information is used to adjust pay or reward, reassign, develop, and remove senior executives or make other personnel decisions in accordance with 5 CFR 430.304; and for all other employees in accordance with 5 CFR 430 or applicable agency directives. • To satisfy the requirements of the Executive Performance and Accountability Interim Rule (5 CFR 430 and 1330 or applicable agency directives), the agency's certified performance appraisal system for senior employees provides for performance differentiation so that its annual ratings, pay adjustments, and awards result in meaningful distinctions based on relative performance.

PERFORMANCE APPRAISAL

Key Elements	Suggested Performance Indicators
• Provides a process for dealing with poor performance.	**Effectiveness Indicators** • Policies and procedures, including delegation of authority, for addressing poor performance have been developed and communicated to supervisors. • Analysis is performed to identify the cause of any organizational or individual performance shortfalls, and appropriate performance improvement strategies are identified and implemented. **Compliance Indicators**
• Involves employees in the development of their performance plans. • Requires that employees receive feedback on their performance.	**Effectiveness Indicator** • The agency performance appraisal system encourages employee participation in establishing performance plans. **Compliance Indicators** • Employees are covered by recorded performance plans, which are communicated to employees at the beginning of each appraisal period. Plans include critical elements and performance standards, in accordance with 5 CFR 430 or applicable agency directives. • Employee performance is monitored by the supervisor and discussed with the employee on an ongoing basis during the designated appraisal period, with one or more progress reviews conducted and documented, in accordance with 5 CFR 430 or applicable agency directives. • Employees are given ratings of record at the end of each appraisal period and/or at other appropriate times during the appraisal period in accordance with 5 CFR 430 or applicable agency directives. • The agency encourages employee participation in establishing performance plans as stated in 5 CFR 430.206 or applicable agency directives.
• Provides for training to executives, managers, and supervisors to ensure they have the knowledge, skills, and abilities to effectively manage performance. • Holds executives, managers, and supervisors accountable in their performance plans for the rigorous appraisal of their subordinates.	**Effectiveness Indicators** • Performance elements (performance expectations) for senior executives, managers, and supervisors are: —Aligned with organizational goals. —Clear, specific, and understandable. —Reasonable and attainable. —Measurable, observable, or verifiable, and results oriented. —Balanced between expected results and other indicators such as leadership behaviors and employee and stakeholder feedback. —Communicated in a timely fashion. —Key in fostering continual improvement in productivity. • All supervisors, managers, and executives receive training on performance management and coaching/feedback techniques. • Sources of data (e.g., Federal Human Capital Survey, upward feedback, multi-rater assessment) indicate that supervisors, managers, and executives demonstrate effective performance management and coaching/feedback skills. • Reviews of performance plans for all levels of the agency indicate that supervisors, managers, and executives are held accountable for the performance management of their subordinates. **Compliance Indicators** • The agency has established and implemented a specific training program for managers in accordance with the Federal Workforce Flexibility Act that provides training on actions, options, and strategies a manager may use in: —Communicating with employees whose performance is unacceptable. —Mentoring employees and improving employee performance and productivity.

PERFORMANCE APPRAISAL	
Key Elements	**Suggested Performance Indicators**
• Establishes a process for periodically evaluating the effectiveness of the appraisal system so that the agency can use the evaluation data to improve the system.	**Effectiveness Indicator** • The agency regularly tracks performance and reports results. • Survey results and/or interviews indicate that employees understand their performance elements (performance expectations), consider them to be fair, and understand how their efforts contribute to mission accomplishment. • Workforce survey results indicate that employees perceive a linkage between high performance and recognition and awards. Employees also believe that creativity and innovation are rewarded and that their own performance evaluations properly reflect their level of performance. • Statistical data for performance ratings and awards, in the context of an empirical review of the performance decision-making process, show appropriate distribution and meaningful distinctions. • Statistical data for performance ratings and awards show appropriate distribution and meaningful distinctions (e.g., top performers are rewarded). **Compliance Indicator** • The agency's performance appraisal system(s) and program(s) are evaluated in accordance with 5 CFR 430 or applicable agency directives.

SECTION IV—Results-Oriented Performance Culture System	The Results-Oriented Performance Culture System
	Communication
	Performance Appraisal
	Awards
	Pay for Performance
	Diversity Management
	Labor/Management Relations

Results: Awards	When the key elements of the critical success factor Awards are effectively implemented, agencies will realize the following results: **Effectiveness Results** • Employees have a direct line of sight between performance elements (performance expectations) and recognition systems and the agency mission. These links have been communicated to and are understood by employees, enabling them to focus their work effort on those activities that are most important to mission accomplishment. All employees are held accountable for achieving results that support the agency's strategic plan goals and objectives. • The agency has created a "reward environment," beyond compensation and benefits, that contributes to attracting, retaining, and motivating employees. **Compliance Result** • The agency has developed one or more awards programs for its employees that obligates funds, and documents awards justifications in accordance with 5 CFR 451. The following page provides key elements and suggested performance indicators for this critical success factor.

AWARDS	
Key Elements	**Suggested Performance Indicators**
The agency has an awards system that:	

AWARDS

Key Elements	Suggested Performance Indicators
• Is aligned with organizational goals and values. • Has clear criteria for awards that are communicated effectively so that employees understand the purpose of the awards. • Includes a variety of types of awards (e.g., formal, monetary, nonmonetary, time-off) so that supervisors have a wide range of tools available to recognize performance. • Provides incentives for performing at an exemplary level. • Recognizes top performers appropriately. • Establishes a process for periodically evaluating the effectiveness of the awards system so that the agency can use the evaluation data to improve the system.	**Effectiveness Indicators** • The agency has designed, communicated, and implemented an awards program that is aligned with organizational goals, based on clear criteria, and tailored to the interests and priorities of the agency's workforce. • The agency uses a variety of monetary and nonmonetary awards (e.g., certificates, recognition in agency publications, award ceremonies). • Executives, managers, and supervisors receive training on awards that are available and how to use them to attract, retain, and motivate employees. • Surveys and/or interviews indicate that employees feel valued and appropriately recognized for performance. **Compliance Indicator** • The agency communicates with employees and supervisors about awards programs, evaluates its programs, documents awards appropriately, and gives due weight to awards in qualifying and selecting employees for promotion promoting employees in accordance with 5 U.S.C. 3362.

SECTION IV—Results-Oriented Performance Culture System	The Results-Oriented Performance Culture System
	Communication
	Performance Appraisal
	Awards
	Pay for Performance
	Diversity Management
	Labor/Management Relations

Results: Pay-for-Performance.	When the key elements of the critical success factor Pay-for-Performance are effectively implemented, agencies will realize the following results: **Effectiveness Results** • The pay-for-performance system, where authorized by law and regulation, is results-driven, producing a distribution of pay adjustments and bonuses based on individual contribution, organizational performance, and/or team performance. • The pay-for-performance system, where authorized by law and regulation, ensures employee and supervisory accountability with respect to individual performance and organizational results. • Employees' pay is linked to their performance ratings. • Supervisors and managers make meaningful distinctions in performance ratings. **Compliance Result** • Pay adjustments, cash awards, and levels of pay based on the results of the appraisal process accurately reflect and recognize individual performance and/or contribution to the agency's performance in accordance with applicable agency directives. The following pages provide key elements and suggested performance indicators for this critical success factor.

PAY FOR PERFORMANCE

Key Elements	Suggested Performance Indicators
When authorized, the agency has a pay-for-performance system that:	

PAY FOR PERFORMANCE

Key Elements	Suggested Performance Indicators
• Makes pay distinctions based on performance. • Includes a transparent process for making pay adjustments. • Requires clear and frequent communications about the pay system and how it operates. *When authorized, the agency has a pay-for-performance system that:*	**Effectiveness Indicators** • An understandable pay pool structure (e.g., roles and responsibilities) and process for making timely pay determinations have been communicated across the agency using a variety of methods (e.g., Web sites, handbooks, policies, announcements). • Managers, supervisors, and employees are oriented and/or trained at the beginning of the performance cycle on the relationship between their performance and salary adjustments and awards at the end of the cycle. • Data on pay pool determinations/discussions indicate: —The budget is effectively managed. —Top performers are getting the highest pay increases and/or awards. —Employees perceive the process to be fair and credible. —Pay adjustments correlate with performance ratings. **Compliance Indicators** • For senior employees, individual pay rates and pay adjustments reflect meaningful distinctions based on relative contribution to agency performance in accordance with the Executive Performance and Accountability Interim Rule (5 CFR 430 or applicable agency directives and 1330). • Pay-for-performance systems, authorized by OPM as part of Demonstration Projects, are evaluated periodically to determine compliance with the Project Plan in accordance with 5 CFR 470.317. • Pay-for-performance systems authorized by Congress are in compliance with their enabling legislation, regulations, and operating guidance (e.g., DHS HRM system in chapter 97 of title 5, U.S. Code, part 9701 of 5 CFR and the provisions of the National Security Personnel System, chapter 99 of title 5, U.S. Code and part 9901 of 5 CFR).

SECTION IV—Results-Oriented Performance Culture System	The Results-Oriented Performance Culture System
	Communication
	Performance Appraisal
	Awards
	Pay for Performance
	Diversity Management
	Labor/Management Relations

Results: Diversity Management.	When the key elements of the critical success factor Diversity Management are effectively implemented, agencies will realize the following results: **Effectiveness Results** • The agency has implemented a diversity management program and has shown positive results in creating a diverse workforce. • The agency is responsive to the needs of diverse groups, resulting in a positive work environment that is conducive to all employees achieving their potential without fear or abuse. **Compliance Result** • The agency ensures equal opportunities for employees without discrimination as prescribed in 5 U.S.C. 7201. The following pages provide key elements and suggested performance indicators for this critical success factor.

DIVERSITY MANAGEMENT

Key Elements	Suggested Performance Indicators
The agency has a diversity management system that: • Tracks and analyzes workforce diversity trends • Develops and implements diversity outreach plans as part of the agency's overall outreach efforts	**Effectiveness Indicators** • The agency's diversity program intent and processes are communicated to all employees. • Surveys and/or interviews show that the workforce is aware of, and generally supports, diversity program efforts.

DIVERSITY MANAGEMENT	
Key Elements	**Suggested Performance Indicators**
	• The agency develops and implements diversity programs to improve diversity within the agency including: —A recruitment strategy to reach diverse populations at colleges/universities, minority-focused professional organizations, and other organizations representing women, veterans, people with disabilities, and other groups, as part of the agency's overall outreach strategy. —Encouragement of the participation of diverse groups in occupation-focused and leadership training and development programs. —Family-friendly policies relating to work schedules, telework, and other workplace flexibilities. • The agency's diversity program is inclusive of all groups and is based on analysis of representation of various groups including people with disabilities, various minority groups, and women. • The diversity program is actively endorsed and supported by agency senior leadership through policy, budget allocation, and personal endorsements. • The agency supports forums and activities for recognized interest groups to provide ways to communicate with the workforce about the importance of diversity. • Managers, supervisors, and employees receive training from an agency-developed, diversity-related training curriculum. • The respect for diversity index score from OPM's Federal Human Capital Survey indicates employees perceive that their organization respects and welcomes the diversity that makes up the Federal workforce. • Data on human resources program and system decisions/actions (e.g., complaints, personnel actions such as selections, promotions, and disciplinary actions) are analyzed in the context of empirical information about the agency's employment practices, to verify that discrimination is not occurring. • The agency provides resources in accessible formats. **Compliance Indicators** • The Federal Equal Opportunity Recruitment Program (FEORP) [5 CFR 720.205], the Disabled Veterans Affirmative Action Program (DVAAP) [5 CFR 720.304], and other outreach programs are implemented in accordance with 5 U.S.C. 7201 and the following Federal Equal Employment Opportunity (EEO) laws: —Title VII of the Civil Rights Act of 1964 (Title VII) —Equal Pay Act of 1963 (EPA) —Age Discrimination in Employment Act of 1967 (ADEA) —Title I and Title V of the Americans with Disabilities Act of 1990 (ADA) —Sections 501 and 505 of the Rehabilitation Act of 1973 —Civil Rights Act of 1991. [**Note:** The Equal Employment Opportunity Commission is the jurisdictional authority for the EEO laws listed immediately above, not OPM. These legal citations are listed for human capital practitioners' reference because agencies are subject to them.] • The agency has published up-to-date policies indicating zero tolerance for sexual harassment and discrimination in the workplace in accordance with EEOC guidelines, including 29 CFR 1604. [**Note:** This indicator is also under the jurisdiction of the EEOC.]

SECTION IV—Results-Oriented Performance Culture System	The Results-Oriented Performance Culture System
	Communication
	Performance Appraisal
	Awards
	Pay for Performance
	Diversity Management
	Labor/Management Relations

Results: Labor/Management Relations.	When the key elements of the critical success factor Labor/Management Relations are effectively implemented, agencies will realize the following results: **Effectiveness Result** • Managers effectively administer contractual and statutory provisions to accomplish agency goals; workplace conflicts are resolved fairly, promptly, and effectively; and managers, union officials, and employees work together to accomplish the agency's mission through effective communication and problem solving. **Compliance Result** • The agency recognizes the right of employees to organize, bargain collectively, and participate through labor organizations in accordance with chapter 71 of title 5, U.S. Code. The following page provides key elements and suggested performance indicators for this critical success factor.

LABOR/MANAGEMENT RELATIONS

Key Elements	Suggested Performance Indicators
The agency has a labor/management relations system that: • Provides a process that encourages labor and management to jointly develop successful plans to accomplish organizational goals and to develop effective solutions to workplace challenges. • Sets the stage for effectively working through human capital issues. • Ensures management is aware of and properly applies collective bargaining agreements and satisfies statutory labor-management relations obligations.	**Effectiveness Indicators** • Data on complaints, grievances, and unfair labor practices are gathered, analyzed, and acted upon as appropriate. Data indicate that problems are usually resolved at the lowest practicable level and that management is complying with contractual and statutory requirements. • Management works to resolve conflicts promptly and in a manner that enhances agency performance. • The agency implements an alternative dispute resolution program to resolve employee/labor relations issues. The program achieves documented results in resolving problem situations. **Compliance Indicator** • Recognized labor organizations are afforded the rights established in 5 U.S.C. 7101 or other congressionally-mandated enabling legislation.

SECTION V—Talent Management System	**The Talent Management System**
	Recruitment
	Retention

The Talent Management System.	This section contains information specific to the Talent Management system, which focuses on agencies having quality people with the appropriate competencies in mission-critical activities.
Definition	A system that addresses competency gaps, particularly in mission-critical occupations, by implementing and maintaining programs to attract, acquire, develop, promote, and retain quality talent.
Standard	The agency has closed skills, knowledge, and competency gaps/deficiencies in mission-critical occupations, and has made meaningful progress toward closing skills, knowledge, and competency gaps/deficiencies in all occupations used in the agency.
Critical Success Factors	The Talent Management system is comprised of two critical success factors that work together to ensure that agencies have people with the right skills, in the right places, at the right times. Addressing the critical success factors helps eliminate gaps and deficiencies in the skills, knowledge, and competencies of employees of mission-critical occupations in the current and future workforce. The two success factors usually work together. • *Recruitment:* The workforce plan drives the aggressive and strategic recruitment of diverse and qualified candidates for the agency's workforce. • *Retention:* Leaders, managers, and supervisors create and sustain effective working relationships with employees. The workplace is characterized by: —A motivated and skilled workforce. —Attractive and flexible working arrangements. —Compensation packages and other programs used to hire and retain employees who possess mission-critical skills, knowledge, and competencies.
Applicable Merit System Principles.	The following merit system principles are especially relevant to the Talent Management system (5 U.S.C. 2301): • Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity. (5 U.S.C. 2301(b)(1)) • All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights. (5 U.S.C. 2301(b)(2))
Required Outcome Metrics.	The following are required outcome metrics for the Talent Management system.

Required Metric	Description	Purpose
Organization Metric: Competency Gaps Closed for Mission-Critical Occupations.	Difference between competencies needed and competencies possessed by employees in mission-critical occupations.	To determine how the agency should target its recruitment, retention, and development efforts to bring the competencies of its workforce into alignment with the agency's current and future needs.
Employee Perspective Metric: Questions from Annual Employee Survey about Organizational Capacity.	Items from Annual Employee Survey	To determine the extent to which employees think the organization has talent necessary to achieve organizational goals.
Employee Perspective Metric: Questions from Annual Employee Survey about Employee Satisfaction.	Items from Annual Employee Survey	To determine the extent to which employees are satisfied with their jobs and various aspects thereof.
Merit System Compliance Metric: Merit-Based Execution of the Talent Management System.	An assessment of compliance with merit system principles and related laws, rules, and regulations governing the Talent Management system.	To determine that decisions, policies, processes, and practices executed under the Talent Management system comply with the merit system principles and related laws, rules, and regulations.

Suggested Metrics	*In addition to the required outcome metrics, the following metrics associated with the Talent Management system are suggested.*

Suggested Metric	Description	Purpose
Turnover of Employees in Mission-Critical Occupations.	Percent of turnover	To track turnover of Federal employees in mission-critical occupations by reason for leaving.
Turnover of Employees in Mission-Critical Occupations during Probationary Period.	Percent of turnover among those serving in their probationary period.	To determine how many new Federal employees in mission-critical occupations leave Federal service during their probationary period of employment and to determine whether their exit was voluntary or involuntary.
Time To Hire	Average time from date vacancy closes to date offer is extended (expressed in working days).	To determine the efficiency of a critical phase of the Federal hiring process.
Management Satisfaction with the Hiring Process.	Management responses to items from Annual Employee Survey.	To determine if hiring managers believe the recruitment and selection process achieves recruitment and retention goals.
Applicant Satisfaction with the Hiring Process ...	A questionnaire that is published on OPM's USAJobs Web site.	To determine if applicants have a favorable impression of the recruitment and selection process.

SECTION V—Talent Management System	The Talent Management System
	Recruitment
	Retention

Results: Recruitment	When the key elements of the critical success factor Recruitment are effectively implemented, agencies will realize the following results: **Effectiveness Results** • Workforce competency gaps are closed through the use of effective recruitment and retention strategies, creating a workforce that is capable of excellent performance in the service of the American people. • Senior leaders and managers are involved in strategic recruitment and retention initiatives, which ensures that the necessary organizational focus and resources are allocated to achieve recruitment and retention goals. • Recruitment strategies are appropriately aggressive and multi-faceted to ensure a sufficient flow of quality applicants to meet staffing needs identified in the workforce plan, positioning the agency for successful program accomplishment. • Flexible compensation strategies are used as needed to attract and retain quality employees who possess mission-critical competencies. • Quality of work/life programs are provided and obstacles to recruitment and retention of a quality workforce have been addressed, positioning the agency to be successful in acquiring and retaining the talent needed for program goals and objectives. **Compliance Result** • Recruitment, hiring, and merit promotion processes adhere to the merit system principles in 5 U.S.C. 2301 and follow other pertinent legal and regulatory guidance (including but not limited to 5 U.S.C. 3101, 3102, 3301, 3302, 3308–3318, 3319, 3502, 3503; as well as 5 CFR 315, 316, 317, 330, 332, 335, 337, 338, 550; and other congressionally-mandated enabling legislation). The Recruitment and Retention systems work together to produce many of these results.

The following pages provide key elements and suggested performance indicators for this critical success factor.

RECRUITMENT

Key Elements	Suggested Performance Indicators
The agency has a recruitment system that: • Identifies the challenges involved in attracting a high-quality workforce. • Establishes competency gap reduction goals and develops action plans to address current and future competency gaps. • Uses appropriate hiring flexibilities and tools. • Attracts and hires applicants who possess needed mission-critical competencies.	**Effectiveness Indicators** • The goals of recruiting for mission-critical occupations and competency gap reduction are established and documented in the agency's strategic planning (or strategic human capital planning) process and tracked through the agency's accountability system. • Recruitment strategies are created to maintain mission-critical competencies at the desired level using business forecasting and workforce analysis results. • Statistical data are analyzed related to the relative success of various types of appointments and recruitment flexibilities. • The agency conducts "lessons learned" or other evaluation activities and uses the findings to make improvements. • New hire follow-up (e.g., supervisory assessment of the employee's productivity, adjustment to the job, and adjustment to the work environment) is conducted. **Compliance Indicators** • The agency closes skill gaps in mission-critical occupations in accordance with the Chief Human Capital Officers Act (CHCO Act) (5 U.S.C. 1304). • When OPM delegates examining or other personnel management authorities to the agency under the auspices of 5 U.S.C. 1104, the agency complies with the standards established by OPM and with merit system principles.
The agency has a recruitment system that: • Involves senior leaders and managers in recruitment planning and the implementation of strategic recruitment initiatives to attract talent.	**Effectiveness Indicators** • Adequate staff with the requisite competencies are allocated to the recruitment and hiring process commensurate with workload. • Senior leaders and managers manage resources and participate in job analysis and in the planning, communication, and evaluation of recruitment strategies. Information is provided to senior managers on a regular basis including: —Actual versus budgeted staffing levels. —Recruitment effectiveness based on an assessment of the quality of hires, timeliness in filling positions (e.g., use of 45-day model, 30-day model for Senior Executive Service (SES), or similar hiring model), and diversity statistics. —Turnover rate for mission-critical occupations by grade/pay band and location. • Senior leaders and managers assist human resources (HR) staff in implementing strategic recruitment initiatives, including participation in such activities as recruitment fairs and outreach programs and visits to schools. • Training classes, intranet, and other forms of guidance provide information to senior leaders and managers on available staffing options. **Compliance Indicator** • As prescribed by the CHCO Act (5 U.S.C. 1304), the agency holds managers accountable for effective and efficient human resources management that supports the mission in accordance with merit system principles.

RECRUITMENT

Key Elements	Suggested Performance Indicators
• Utilizes strategies that are both aggressive and multi-faceted when competing for desired talent.	**Effectiveness Indicators** • The agency's recruitment strategies include assessment of sources, such as professional organizations, colleges/universities, veterans' organizations, state and private disability and rehabilitation offices, and community groups that are likely to yield high quality and diverse candidates. • Recruitment strategies have been developed based on an analysis of the primary sources for qualified applicants. • Ongoing relationships are established and maintained with recruitment sources such as: —Colleges and universities, outplacement organizations, professional associations. —Veterans' organizations and special programs for veterans (e.g., Veterans Invitational Program (VIP)). —Recuritment fairs (e.g., fairs sponsored by the Office of Personnel Management (OPM or special interest groups). —Special programs/organizations that support people with disabilities (e.g., Department of Defense (DoD) Computer/Electronic Accommodation Program (CAP), deaf and hard of hearing in Government, rehabilitation institutions, vocational rehabilitation). —Recruitment flexibilities and appointing authorities authorized by OPM (e.g., direct hire, category rating, language expertise) are publicized widely throughout the agency and are used to enhance recruitment scope and timeliness. • Additional recruitment flexibilities are requested if needed and are justified by a human capital business case. Necessary funding is provided to support implementation of the flexibilities. • Managers are able to make valid selections from lists of high-quality candidates.
• Reviews recruitment, hiring, and merit promotion programs to ensure fair hiring and assess overall results.	**Effectiveness Indicators** • Recruitment activities are evaluated to assess factors such as: —Return on investment. —Cost effectiveness of various media and other recruitment sources in generating qualified and available applicants. —Quality and quantity of applicants. —Timely notification of applicants throughout the selection process regarding the status of their resumé/application. —Timeliness (e.g., use of 45-day model, 30-day model for SES, or similar hiring models). —Applicant and manager satisfaction with the application process. —Reasons for declination of job offers. —Recruitment strategies and flexibilities that are most effective in meeting agency needs. —Reasons (e.g., poor fit between the employee and job requirements) for resignations and separations within the first year after appointment. • Managers and HR staff are trained on the merit system principles, legal requirements, and other policies governing Federal employment. • Audit and evaluation results (e.g., OPM, Government Accountability Office (GAO), and Inspector General (IG)) are used to drive process changes when systemic problems are identified. **Compliance Indicators** • The agency examines (when authorized by OPM delegation), appoints, promotes, and reassigns employees consistent with merit system principles (5 U.S.C. 2301) and other pertinent laws, rules, and regulations (e.g., the Uniform Guidelines in 5 CFR 300.103). • The agency's annual self-audit of delegated examining operations demonstrates that operations are accomplished in accordance with OPM procedural requirements as delegated under the authority of 5 U.S.C. 1104.

RECRUITMENT

Key Elements	Suggested Performance Indicators
• Ensures that application and decision-making processes are not unduly burdensome or time consuming.	**Effectiveness Indicators** • The agency establishes an "applicant friendly" process for applying for jobs that includes: —Vacancy announcements, application instructions, recruitment brochures, and marketing products that target the desired applicant pool(s) and are clearly written in plain language, attractive, and informative; are easily accessible; and highlight benefits (e.g., work/life flexibilities, Federal Employees Health Benefits, Employee Assistance Program, Flexible Spending Accounts, defined-benefit pension plan, Thrift Savings Plan, life insurance, and long-term care insurance). —Regular communication about the status of an individual's resume/application as well as answers to applicant questions (as evidenced by correspondence records). —A timely decision-making process. • Data from applicant surveys and entrance interviews reflect a positive experience for applicants. • Length of time to hire is consistent with recommended hiring models.

SECTION V—Talent Management System	The Talent Management System
	Recruitment
	Retention

Results: Retention	When the key elements of the critical success factor Retention are effectively implemented, agencies will realize the following results: **Effectiveness Results** • Workforce competency gaps are closed through the use of effective recruitment and retention strategies, creating a workforce that is capable of excellent performance in the service of the American people. • Senior leaders and managers are involved in strategic recruitment and retention initiatives, which ensures that the necessary organizational focus and resources are allocated to achieve recruitment and retention goals. • Flexible compensation strategies are used as needed to attract and retain quality employees who possess mission-critical competencies. • Quality of work/life programs are provided and obstacles to recruitment and retention of a quality workforce have been addressed, positioning the agency to be successful in acquiring and retaining the talent needed for program goals and objectives. **Compliance Result** • Retention policies and practices adhere to merit system principles set forth in 5 U.S.C. 2301 and other Federal laws, rules, and regulations (e.g., 5 U.S.C. 5301 and 5706; the Federal Workforce Flexibility Act of 2004; 5 CFR 531, 550, and 575; etc.). The Recruitment and Retention systems work together to produce many of these results. The following pages provide key elements and suggested performance indicators for this critical success factor.

RETENTION

Key Elements	Suggested Performance Indicators
The agency has a retention system that: • Utilizes flexible compensation strategies to retain employees who possess mission-critical competencies.	**Effectiveness Indicators** • The agency's strategic, performance, and/or strategic human capital plans and policies promote appropriate use of compensation flexibilities (e.g., recruitment bonuses, relocation bonuses, retention allowances) to attract and retain high-quality employees who possess mission-critical competencies. The agency also makes a successful case to support funding. • Written policies and procedures describe guidelines for use of compensation flexibilities in meeting the agency's need for highly qualified employees consistent with legal requirements governing the use of the flexibilities. Managers have been informed about and use available compensation flexibilities where justified. • Incentive and recognition programs are established, budgeted, and implemented to focus on retention of high performing employees with mission-critical competencies. • Use of compensation flexibilities and awards is analyzed to determine that there is a discernable relationship between the use of the flexibilities and successful recruitment and retention of high-quality employees in mission-critical occupations. The analysis includes consideration of retention and exit interview information.

RETENTION

Key Elements	Suggested Performance Indicators
	Compliance Indicator • When OPM delegates examining or other personnel management authorities to the agency under the auspices of 5 U.S.C. 1104, the agency complies with the standards established by OPM and merit system principles.
• Develops short- and long-term strategies and targeted investments in current employees to eliminate competency gaps in mission-critical occupations. • Trains the current workforce in mission-critical competencies that are needed by the agency.	**Effectiveness Indicators** • Strategies are developed and implemented for reducing competency gaps through training, development, or alternative sources (e.g., intern program, contractor outsourcing). • Staffing, training, and performance data indicate success in closing competency gaps.
• Documents planned and completed retention activities, including requested budget funding, staff allocation, and management accountability.	**Effectiveness Indicators** • Retention trends are tracked and analyzed by the appropriate management level. • Exit interviews are conducted and data/information are analyzed at the appropriate level to allow supervisors and managers to address retention. • Senior leaders and managers manage resources and participate in the planning, communication, and evaluation of retention strategies. Senior leaders and managers and first-line supervisors implement strategic retention initiatives in partnership with HR. • Appropriate metrics, as defined by OPM guidance or developed by the agency, are reported to senior managers and human resource executives to assess the outcomes from retention strategies. • Policies and procedures are established indicating how retention activities are evaluated.
• Creates a productive, supportive work environment through a variety of programs, such as telework, childcare assistance, fitness centers, health assessments, safety seminars, employee assistance programs, parking facilities, and transit subsidies.	**Effectiveness Indicators** • The agency has determined which quality of work/life programs meet the needs of the workforce and has implemented programs to promote flexible working arrangements and to sustain a productive, supportive work environment. • Senior leaders and managers promote the use of quality of work/life programs and provide resources necessary to establish and sustain these programs to create an effective environment. • Policies and procedures describe guidelines for flexible working arrangements, including: —Temporary, term, and seasonal appointments. —Flexible and/or part-time work schedules. —Telework, including technology required to support it, where appropriate. • Policies and procedures describe guidelines for sustaining a productive, supportive work environment, including: —Ergonomic work stations. —Reasonable accommodation. —Child care/elder care assistance. —Wellness programs (e.g., fitness centers, health assessments). —Employee Assistance Program. —Safety inspections and education. —Parking facilities and transit subsidies. —Benefits (e.g., Federal Employees Health Benefits, Thrift Savings Plan, Flexible Spending Accounts, defined-benefit pension plan, life insurance, and long-term care insurance). • These policies and procedures have been communicated to the workforce and prospective applicants via Web pages, letters from the CHCO, recruitment materials, vacancy announcements, job fair announcements, or other methods. • The cost and benefits of quality of work/life programs are evaluated (e.g., surveys, entrance and exit interviews) to determine if they are perceived by employees as creating a positive work environment, are meeting an identified workforce need, and are contributing to recruitment and retention goals. **Compliance Indicators** • The agency operates work/life programs in accordance with governing laws, rules, and regulations (e.g., telework (Public Law No. 106–346, Section 359), flexible work schedules (5 CFR 610), transit subsidies (Executive Order 13150)). • On-the-job injury and other Workers' Compensation claims are filed in accordance with 5 U.S.C. 8102, 20 CFR parts 1-25, and other guidelines of the Office of Workers Compensation Programs (OWCP).

RETENTION	
Key Elements	**Suggested Performance Indicators**
	• The agency has an emergency preparedness plan in place in accordance with OPM's requirements for individual agencies, as outlines in OPM's Federal Manager's/Decision Maker's Emergency Guide and in accordance with GSA's guidance on occupant emergency plans (Executive Orders 12656 and 12472).

SECTION VI—Accountability System	The Accountability System
The Accountability System.	This section contains information specific to the Accountability system. The Accountability system provides consistent means to monitor and analyze agency performance on all aspects of human capital management policies, programs, and activities, which must themselves support mission accomplishment and be effective, efficient, and in compliance with merit system principles.
Definition	A system that contributes to agency performance by monitoring and evaluating the results of its human capital management policies, programs, and activities; by analyzing compliance with merit system principles; and by identifying and monitoring necessary improvements.
Standard	Agency human capital management decisions are guided by a data-driven, results-oriented planning and accountability system. Results of the agency Accountability system must inform the development of the human capital goals and objectives, in conjunction with the agency's strategic planning and performance budgets. Effective application of the Accountability system contributes to agencies' practice of effective human capital management in accordance with the merit system principles and in compliance with Federal laws, rules, and regulations.
Applicable Merit System Principles.	The following merit system principle is especially relevant to the Accountability system: • All employees should maintain high standards of integrity, conduct, and concern for the public interest. (5 U.S.C. 2301(b)(4))
Metrics	This system is assessed based on documented evidence of a Human Capital Accountability System that provides for annual assessment of agency human capital management progress and results including compliance with relevant laws, rules, and regulations. The system will: • Be formal, documented, and approved by OPM. • Be supported and resourced by agency leadership. • Measure and assess all human capital management systems for mission alignment, effectiveness, efficiency, and compliance with merit system principles, laws, and regulations. • Include an independent audit process with periodic review of human resources transactions to insure legal and regulatory compliance. • Ensure that action is taken to improve human capital programs and processes and correct deficiencies. • Ensure results are analyzed and reported to agency management and OPM. **Agencies are required under 5 CFR 250.203 to submit the Agency Human Capital Accountability Report described by this system to OPM for review and approval on an annual basis. This Accountability Report supports the systems of oversight prescribed by 5 CFR 250.102.**
Results	When the key elements of the Accountability system are effectively implemented, agencies will realize the following results: **Effectiveness Results** • The agency has documented its human capital management processes, measures, and results; evaluated its accomplishments; and reported findings to agency decisionmakers and other stakeholders. • Agency leadership demonstrates commitment to the accountability system, based on OPM's standards, through its actions and allocation of appropriate resources. • The agency conducts a continuous assessment of its human capital practices to ensure they are sound, produce results, and adhere to merit systems principles, laws, and regulations. The agency provides an annual report, which identifies areas needing improvement. A process is in place that assigns responsibility for taking corrective action that results in improved human capital strategies and program integrity. **Compliance Results** • In accordance with Civil Service Rule X, the agency has established and maintains a system of accountability that meets OPM's standards for a sound human capital accountability system, measures effectiveness in meeting the standards, and corrects deficiencies in meeting the standards. • As provided in the Chief Human Capital Officers Act of 2002 (CHCO Act) (5 U.S.C. 1304), the agency holds managers and human resources officers accountable for efficient and effective human resources management in support of the agency's mission, in accordance with merit system principles. • Human capital programs, activities, and practices are evaluated in accordance with law, regulation, and public policy within the Leadership and Knowledge Management, Results-Oriented Performance Culture, and Talent Management systems. The following pages provide key elements and suggested performance indicators for this system.

ACCOUNTABILITY SYSTEM	
Key Elements	**Suggested Performance Indicators**
To ensure that the agency's human capital practices support its mission and are based on merit system principles, the agency has an accountability system that:	

ACCOUNTABILITY SYSTEM

Key Elements	Suggested Performance Indicators
• Is designed and conducted in accordance with OPM requirements. • Is formal and clearly documented, including description of agency system, statement of agency policy, key responsibilities, outcomes and measures, milestones, and results. • Is fully supported by top management, including review and approval of the system and allocation of sufficient resources to promote and support the system. • Ensures that managers are held accountable for their human capital and human resources decisions and actions. • Evaluates human capital results vis-à-vis agency mission goals and objectives and measures; assesses compliance of HC programs and decisions with laws, rules, and regulations; and identifies and resolves significant problems. The system should cover all human capital systems and include the following: —Measures identified to address: • Success in supporting agency mission accomplishment. • Effectiveness of human resources (HR) programs. • Efficiency of HR processes. • Programmatic and transactional compliance with laws, rules, and regulations. —Data collection and analysis processes to support the measures. —Periodic review of HR transactions to ensure compliance with legal, regulatory, and specific agency requirements; corrective action taken in cases of noncompliance. —An independent audit (i.e., one conducted by individual(s) outside of the operations management chain of command) to obtain and objectively evaluate evidence. —Results used to improve human capital programs and the human capital accountability system. • Evaluates specific human resources programs (recruitment and staffing, performance management, training, awards, other, etc.) • Provides for evaluation of human capital and human resources activities throughout the organization (e.g., component/geographic), including individual HR transactions. • Ensures human capital results and merit system compliance are determined and reported to management and OPM. • Evaluates the effectiveness of the accountability system itself. • Promotes continuous improvement, which is reflected in updates to the strategic human capital plan.	**Effectiveness Indicators** • Human capital program management guidelines, authorities, processes, measures, and accountabilities are issued via agency policy and procedural issuances and are accessible to agency managers, supervisors, and employees. • Key leaders and subordinate managers and supervisors throughout the agency have at least one performance element that relates to achieving human capital outcomes. • Human capital risks are tracked, documented, and reported to a central advisory or management board, and action is taken to mitigate high-risk areas. • Program and initiative implementation efforts include published plans that clearly outline roles, responsibilities, reviews, and desired outcomes. • Accountability for implementing improvement strategies for each initiative or program is assigned and resources are provided to accomplish the resulting actions. • Assessment results are provided to senior management and action is taken to communicate best practices, improve current practices, and correct problem areas. • A process is in place which identifies problems that pose high risk to organizational integrity including: —Financial or legal threats. —Systemic violations of employee protections or veterans' preference. —Potential loss of integrity in the public eye. • Analysis of workforce survey results related to the effectiveness of the Leadership and Knowledge Management, Results-Oriented Performance Culture, and Talent Management systems indicates that employees perceive their agencies as high-performing workplaces where their skills and abilities are used well. • Human capital data are current and accurate as indicated by documentation. • OPM evaluations, agency reviews, and/or other human capital assessments indicate that: —Programs and processes are efficient, effective, and compliant. —The agency meets measures of success as reflected in strategic human capital plans. • Individual human capital programs that do the following are developed and implemented: —Establish clear responsibility for the program. —Establish clear authority for enacting and evaluating the program. —Clarify consequences of success or failure. —Identify baseline performance. —Set program goals. —Set program milestones. —Identify key measures. —Collect appropriate data. —Track progress. —Develop and implement an ongoing evaluation plan. —Evaluate program results. —Identify opportunities for program improvement. —Implement improvements. —Monitor success of improvements. —Provide progress reports on schedule. **Compliance Indicators** • In accordance with Civil Service Rule X, the agency has established and maintains a system of accountability that meets OPM's standards for a sound human capital accountability system, measures effectiveness in meeting the standards, and corrects deficiencies in meeting the standards. In accordance with the Executive Performance and Accountability Interim Rule (5 CFR 430 and 1330), the agency's appraisal system for senior executives provides for balance so that, in addition to expected results, the performance expectations for individual senior employees include: —Appropriate measures or indicators of employee and/or customer/stakeholder feedback. —Quality, quantity, timeliness, and cost effectiveness measures.

ACCOUNTABILITY SYSTEM	
Key Elements	**Suggested Performance Indicators**
	• As provided in the CHCO Act (5 U.S.C. 1304), the agency holds managers and human resources officers accountable for efficient and effective human resources management in support of the agency's mission, in accordance with merit system principles.

[FR Doc. E8–8661 Filed 4–25–08; 8:45 am]
BILLING CODE 6325–43–P

Federal Register

Monday,
April 28, 2008

Part III

Department of Housing and Urban Development

Notice of Funding Availability (NOFA) for Fiscal Year 2008; Rural Housing and Economic Development Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5200–N–04]

Notice of Funding Availability (NOFA) for Fiscal Year 2008; Rural Housing and Economic Development Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2008 Rural Housing and Economic Development Program (RHED).

SUMMARY: Today's publication establishes the funding criteria for the FY2008 Rural Housing and Economic Development Program. Because HUD is required by statute to competitively award RHED assistance by September 1, 2008, HUD has decided to publish this NOFA separately and in advance of its FY2008 Notice of Funding Availability for HUD's Discretionary Programs (SuperNOFA). Publishing the RHED NOFA separately will permit potential applicants additional time to prepare and submit their applications. Today's publication is governed by the information and instructions found in the Notice of HUD's Fiscal Year 2008 Notice of Funding Availability (NOFA) Policy Requirements and General Section (General Section) to the SuperNOFA that HUD published on March 19, 2008 and the FY 2008 Opportunity to Register Early and Other Important Information for Electronic Application Submission Via Grants.gov (FY2008 Early Registration Notice) that was published on March 10, 2008.

Application Deadline Date: The application deadline date is May 30, 2008. Applications submitted through *http://www.grants.gov* must be received and validated by Grants.gov no later than 11:59:59 Eastern time on the application deadline date. The validation process may take up to 72 hours. Please be sure to read the General Section, published March 19, 2008 (73 FR 14882), for electronic application submission and receipt requirements.

FOR FURTHER INFORMATION CONTACT: The agency contact listed in Section VII of today's publication. Questions regarding the General Section or the FY 2008 Early Registration Notice, should be directed to the Office of Departmental Grants Management and Oversight at (202) 708–0667 (this is not a toll-free number) or the NOFA Information Center at (800) HUD–8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. Eastern time, Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: Today's publication establishes the funding criteria for the FY2008 RHED Program. HUD had originally planned to include the RHED NOFA in its FY2008 Notice of Funding Availability for HUD's Discretionary Programs (SuperNOFA), which will be published in the **Federal Register** later this spring. However, the **Federal Register** was unable to accommodate HUD's publication schedule. Since HUD is required by statute to competitively award RHED assistance by September 1, 2008, HUD has decided to publish RHED NOFA separately and in advance of its FY2008 SuperNOFA. Publishing the RHED NOFA separately will permit potential applicants additional time to prepare and submit their applications. Applicants should note that today's publication, and not the version that will be published with HUD's FY2008 SuperNOFA, establishes the legal requirements for the FY2008 RHED competition. Applicants should take particular note of the "Application Deadline Date" of May 30, 2008, established by today's publication.

Today's publication is governed by the information and instructions found in the General Section (published on March 19, 2008) and the FY2008 Early Registration Notice (published on March 10, 2008). Applicants are encouraged to carefully review these two publications when preparing their applications.

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development, Community Planning and Development, Office of Rural Housing and Economic Development.

B. *Funding Opportunity Title:* Rural Housing and Economic Development (RHED) program.

C. *Announcement Type:* Initial Announcement.

D. *Funding Opportunity Number:* FR–5200–N–04, OMB Approval Number 2506–0169.

E. *Catalog of Federal Domestic Assistance (CFDA) Numbers:* 14.250, Rural Housing and Economic Development.

F. *Application Date:* The application deadline date is May 30, 2008. Applications submitted through *http://www.grants.gov* must be received and validated by Grants.gov no later than 11:59:59 Eastern time on the application deadline date. The validation process may take up to 72 hours. Please be sure to read the General Section, published March 19, 2008 (73 FR 14882), for electronic application submission and receipt requirements.

G. *Optional, Additional Overview Information:*

Purpose of Program: The purpose of the Rural Housing and Economic Development program is to provide support for innovative housing and economic development activities in rural areas. The funds made available under this program will be awarded competitively through a selection process conducted by HUD in accordance with the HUD Reform Act.

Full Text of Announcement

I. Funding Opportunity Description

A. Background

There has been a growing national recognition of the need to provide support for local rural nonprofit organizations, community development corporations, federally recognized Indian tribes, state housing finance agencies (HFAs), and state economic development and community development agencies to expand the supply of affordable housing and to engage in economic development activities in rural areas. A number of resources are available from the federal government to address these problems, including programs of the U.S. Department of Agriculture (USDA), the Economic Development Administration (EDA), the Appalachian Regional Commission (ARC), the Department of Interior (for Indian tribes), and HUD. The Rural Housing and Economic Development program was developed to supplement these resources and to focus specifically on promoting innovative approaches to housing and economic development in rural areas. In administering these funds, HUD encourages you to coordinate your activities with those supported by any of the agencies listed above.

B. Definitions

1. *Appalachia's Distressed Counties* means those counties in Appalachia that the Appalachian Regional Commission (ARC) has determined to have unemployment and poverty rates that are 150 percent of the respective U.S. rates and a per capita income that is less than 67 percent of the U.S. per capita income, and have counties with 200 percent of the U.S. poverty rate and one other indicator, such as the percentage of overcrowded housing. Refer to *http://www.arc.gov* for a list of ARC-distressed counties and more information.

2. *Colonia* means any identifiable, rural community that:

a. Is located in the state of Arizona, California, New Mexico, or Texas;

b. Is within 150 miles of the border between the United States and Mexico; and

c. Is determined to be a colonia on the basis of objective need criteria, including a lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, sanitary, and accessible housing.

3. *Farm Worker* means a farm employee of an owner, tenant, labor contractor, or other operator raising or harvesting agricultural or aquacultural commodities, or a worker who, in the employment of a farm operator, engages in handling, planting, drying, packing, grading, storing, delivering to storage or market, or carrying to market agricultural or aquacultural commodities produced by the operator. Seasonal farm workers are those farm employees who typically do not have a constant year-round salary.

4. *Firm Commitment* means a letter of commitment from a partner by which an applicant's partner agrees to perform an activity specified in the application, demonstrates the financial capacity to deliver the resources necessary to carry out the activity, and commits the resources to the activity, either in cash or through in-kind contributions. It is irrevocable, subject only to approval and receipt of a fiscal year FY2008 Rural Housing and Economic Development grant. Each letter of commitment must include the organization's name and applicant's name, reference the Rural Housing and Economic Development program, and describe the proposed total level of commitment and responsibilities, expressed in dollar value for cash or in-kind contributions, as they relate to the proposed program. The commitment must be written on the letterhead of the participating organization, must be signed by an official of the organization legally able to make commitments on behalf of the organization, and must be dated no earlier than the date of publication of this NOFA. In documenting a firm commitment, the applicant's partner must:

a. Specify the authority by which the commitment is made, the amount of the commitment, the proposed use of funds, and the relationship of the commitment to the proposed investment. If the committed activity is to be self-financed, the applicant's partner must demonstrate its financial capability through a corporate or personal financial statement or other appropriate means. If any portion of the activity is to be financed through a lending institution, the participant must provide evidence of the institution's commitment to fund the loan; and

b. Affirm that the firm commitment is contingent only upon the receipt of FY 2008 Rural Housing and Economic Development funds and state a willingness on the part of the signatory to sign a legally binding agreement (conditioned upon HUD's environmental review and approval of a property, where applicable) upon award of the grant.

5. *Federally Recognized Indian tribe* means any tribal entity eligible to apply for funding and services from the Bureau of Indian Affairs by virtue of its status as an Indian tribe. The list of federally recognized tribes can be found in the notice published by the Department of the Interior on April 4, 2008 (73 FR 18553) and is also available from HUD.

6. *Innovative Housing Activities* means projects, techniques, methods, combinations of assistance, construction materials, energy efficiency improvements, or financing institutions or sources new to the eligible area or to its population. The innovative activities can also build upon and enhance a model that already exists.

7. *Local Rural Nonprofit Organization or Community Development Corporation* means either of the following:

a. Any private entity with tax-exempt status recognized by the Internal Revenue Service (IRS) that serves the eligible rural area identified in the application (including a local affiliate of a national organization that provides technical assistance in rural areas); or

b. Any public nonprofit entity such as a Council of Governments that will serve specific local nonprofit organizations in the eligible area.

8. *Lower Mississippi Delta Region* means the eight-state, 240-county/parish region defined by Congress in the Lower Mississippi Delta Development Act, Public Law 100–460. Refer to *http://www.dra.gov* for more information.

9. *Eligible Rural Area* means one of the following:

a. A non-urban place having fewer than 2,500 inhabitants (within or outside of metropolitan areas).

b. A county or parish with an urban population of 20,000 inhabitants or less.

c. Territory, including its persons and housing units, in the rural portions of "extended cities." The U.S. Census Bureau identifies the rural portions of extended cities.

d. Open country that is not part of or associated with an urban area. The USDA describes "open country" as a site separated by open space from any adjacent, densely populated urban area. Open space includes undeveloped land, agricultural land, or sparsely settled areas, but does not include physical barriers (such as rivers and canals), public parks, commercial and industrial developments, small areas reserved for recreational purposes, or open space set aside for future development.

e. Any place with a population of 20,000 or less and not located in a Metropolitan Statistical Area.

10. *State Community and/or Economic Development Agency* means any state agency whose primary purpose is promotion of economic development statewide or in a local community.

11. *State Housing Finance Agency* means any state agency created to assist local communities and housing providers with financing assistance for development of housing in rural areas, particularly for low- and moderate-income people.

II. Award Information

A. Amount Allocated

1. *Available Funds.* Approximately $17,000,000 in FY2008 funding (plus any additional funds available through recapture) are being made available through this NOFA.

2. *Funding Award Amount.* HUD will award up to approximately $17,000,000 on a competitive basis for Support for Innovative Housing and Economic Development Activities to federally recognized Indian tribes, state housing finance agencies (HFAs), state community and/or economic development agencies, local rural nonprofit organizations, and community development corporations to support innovative housing and economic development activities in rural areas. The maximum amount awarded to a successful applicant will be $300,000.

B. Grant Amount

In the event, you, the applicant, are awarded a grant that has been reduced (e.g., the application contained some activities that were ineligible or budget information did not support the request), you will be required to modify your project plans and application to conform to the terms of HUD's approval before execution of the grant agreement.

HUD reserves the right to reduce or deobligate the award if suitable modifications to the proposed project are not submitted by the awardee within 90 days of the request. Any modifications must be within the scope of the original application. HUD reserves the right to not make awards under this NOFA.

C. Grant Period

Recipients will have 36 months from the date of the executed grant agreement to complete all project activities.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants for the Rural Housing and Economic Development program are local rural nonprofit organizations, community development corporations, federally recognized Indian tribes, state housing finance agencies, and state community and/or economic development agencies. Also, you must meet all of the applicable eligibility requirements described in section III.C of the General Section.

B. Cost Sharing or Matching

There is no match required under the Rural Housing and Economic Development program. Applicants that submit evidence of leveraging dollars under Rating Factor 4 will receive points according to the scale under that factor.

C. Other

1. Eligible Activities

The following are examples of eligible activities under the Rural Housing and Economic Development program.

Permissible activities may include, but are not limited to the following:

a. The cost of using new or innovative construction, energy efficiency, or other techniques that will result in the design or construction of innovative housing and economic development projects;

b. Preparation of plans or of architectural or engineering drawings;

c. Preparation of legal documents, government paperwork, and applications necessary for construction of housing and economic development activities to occur in the jurisdiction;

d. Acquisition of land and buildings;

e. Demolition of property to permit construction or rehabilitation activities to occur;

f. Purchase of construction materials;

g. Homeownership counseling, including on the subjects of fair housing counseling, credit counseling, budgeting, access to credit, and other federal assistance available, including features for persons with disabilities, such as full accessibility, visitability, and universal design;

h. Conducting conferences or meetings with other federal or state agencies, tribes, tribally designated housing entities (TDHE), or national or regional housing organizations, to inform residents of programs, rights, and responsibilities associated with homebuying opportunities (all meetings and conferences should be provided in alternative formats for persons with a variety of disabilities, as appropriate, and in applicable languages common in the community for limited English proficient (LEP) families);

i. Establishing Community Development Financial Institutions (CDFIs), lines of credit, revolving loan funds, microenterprises, and small business incubators; and

j. Provision of direct financial assistance to homeowners/businesses/developers, etc. This can be in the form of default reserves, pooling/securitization mechanisms, loans, grants, the funding of existing individual development accounts, or similar activities.

2. Statutory and Regulatory Requirements

To be eligible for funding under HUD NOFAs issued during FY2008, you, the applicant, must meet all statutory and regulatory requirements applicable to this NOFA as described in the General Section. HUD may also eliminate ineligible activities from funding consideration and reduce funding amounts accordingly.

3. General HUD Threshold Requirements

You must meet all threshold requirements described in the General Section.

a. *Ineligible Applicants.* HUD will not consider an application from an ineligible applicant.

b. *Economic Opportunities for Low- and Very Low-Income Persons (Section 3).*

(1) Recipients of assistance under this NOFA must comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects) and the HUD regulations at 24 CFR part 135, including the reporting requirements at subpart E. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, state and local laws and regulations, be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very-low income persons. Section 3 applies to training, employment, contracting, and other economic opportunities arising in connection with the expenditure of housing assistance (including Section 8 assistance, and including other housing assistance not administered by the Assistant Secretary of Housing) and community development assistance that is used for the following projects: (1) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding maintenance, repair and replacement); (2) Housing construction; and (3) Other public Construction. The Section 3 requirements apply to recipients where the amount of the assistance exceeds $200,000. Section 3 requirements apply to contractors and subcontractors performing work on Section 3 covered projects for which the amount of assistance exceeds $200,000 and the contract or subcontract exceeds $100,000. If a recipient receives Section 3 covered housing and community development assistance in excess of $200,000, but no contract exceeds $100,000, the Section 3 preference requirements only apply to the recipient. The Section 3 requirements apply to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the Section 3 activity is fully or partially funded with Section 3 covered assistance.

Applicants that propose Section 3 covered projects or activities must demonstrate that they will train and employ Section 3 residents and contract with Section 3 business concerns for economic opportunities generated in conjunction with the assisted project or activity. Recipients and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by providing training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns. Numerical goals established in 24 CFR 135.30(b)(2) may demonstrate compliance with the requirement by committing to employ Section 3 residents as 10 percent of the aggregate number of new hires for each year over the duration of the Section 3 project. Numerical goals set forth in paragraph (c) apply to contracts awarded in conjunction with all section 3 covered projects and all section 3 covered activities. Each contractor and subcontractor covered by the regulations, may demonstrate compliance with the requirements by committing to award to Section 3 business concerns: (1) At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public

construction; and (2) At least 3 percent of the total dollar amount of all other Section 3 covered contracts. A recipient that meets the minimum numerical goals set forth in this Section will be considered to have complied with the Section 3 preference requirements. In evaluation compliance, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it is not feasible to meet the numerical goals. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in 24 CFR part 135.40, which were provided in its efforts to comply with Section 3 requirements.

(2) Section 3 Reporting. Each recipient which receives directly from HUD financial assistance that is subject to Section 3 requirements, shall submit to the Assistant Secretary an annual report. If the program requires submission of an annual report, the section 3 report shall be submitted with the annual performance report. If the program does not require an annual report, the Section 3 report is to be submitted by January 10, of each year or within 10 days of project completion, whichever is earlier. Grantees are required to report on form HUD 60002. Section 3 shall also be reported using the RHED Logic Model. All reports are made available to the public.

See; 24 CFR part 135 and the General Section.

4. Program-Specific Threshold Requirements

a. The application must receive a minimum rating score of 75 points to be considered for funding.

b. HUD will only fund eligible applicants as defined in this NOFA under section III.A.

c. Applicants must serve an eligible rural area as defined in section I. of this NOFA.

d. Proposed activities must meet the objectives of the Rural Housing and Economic Development program.

e. Applicants must demonstrate that their activities will continue to serve populations that are in need and that beneficiaries will have a choice of innovative housing and economic development opportunities as a result of the activities.

IV. Application and Submission Information

A. Address To Request Application Package

This section describes how you may obtain application forms. Copies of the published Rural Housing and Economic Development NOFA and application forms may be downloaded from the Grants.gov Web site at *http://www.grants.gov/applicants/apply_for_grants.jsp*. You may call the Grants.gov support desk at 800–518–GRANTS, or e-mail the support desk at *Support@Grants.gov* for assistance in downloading the application.

B. Content and Form of Application Submission

1. *Application Submission Requirements.* Be sure to read and follow the application submission requirements carefully.

a. *Page Numbering.* All pages of the application must be numbered sequentially if you are submitting a paper copy application. For electronic application submission, you should follow the directions in the General Section.

b. *Application Items.* Your application must contain the items listed below.

(1) An abstract with the dollar amount requested, the category under which you qualify for "Demographics of Distress—Special Factors" under Rating Factor 2 (Need and Extent of the Problem), which of the five definitions of the term "rural area" set forth in section I B.9 of this NOFA applies to the proposed service area, and accompanying documentation as indicated on the SF–424 form.

(2) Table of Contents.

(3) A signed Application for Federal Assistance (SF–424) (application form).

(4) SF–424 Supplement Survey on Equal Opportunity for Applicants "Faith Based EEO Survey" (SF–424 SUPP) on Grants.gov (optional submission).

(5) Facsimile Transmittal (HUD–96011). (This must be used as the cover page to transmit third-party documents as part of your electronic application).

(6) Disclosure of Lobbying Activities (SF–LLL).

(7) Applicant/Recipient Disclosure/Update Report (HUD–2880) "HUD Applicant Recipient Disclosure Report" on Grants.gov.

(8) You Are Our Client! Grant Applicant Survey (HUD 2994–A) (Optional).

(9) Program Outcome Logic Model (HUD–96010).

(10) A budget for all funds (federal and non-federal including the Detailed Budget Form (HUD–424–CB) and the Grant Application Detailed Budget Worksheet (HUD 424–CBW).

(11) Certification of Consistency with RC/EZ/EC–II Strategic Plan (HUD–2990), if applicable.

(12) Certification of Consistency with the Consolidated Plan (HUD–2991), if applicable.

(13) Documentation of funds pledged in support of Rating Factor 4—"Leveraging Resources." This documentation, which will not be counted in the 15-page limitation, must be in the form of a "firm commitment" as defined in section I.B.4 of this NOFA.

(14) If you are a private nonprofit organization, a copy of your organization's IRS ruling providing tax-exempt status under section 501 of the Internal Revenue Code of 1986, as amended.

(15) Narrative response to Factors for Award. The total narrative response to all factors should not exceed 15 pages and should be submitted on 8.5 x 11 inch single-sided paper, with 12-point font and double lined spacing. Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider or review the information on any excess pages, and if you place key information on those pages, you may fail to meet a threshold requirement. In addition, applicants should be aware that additional pages increase the size of the application and the length of time it will take to electronically submit the document and have it electronically received by Grants.gov.

(16) Questionnaire for HUD's Initiative on Removal of Regulatory Barriers (Form HUD–27300) "HUD Communities Initiative Form" on Grants.gov. To get the points for this policy priority, you must include the documentation or references to Web site links where the information can be found.

All applicants are required to use the following format in their 15 page narrative responses to the rating factors included in the program NOFA:

Factor 1—Relevant Organizational Experience;

Factor 2—Need and Extent of the Problem;

Factor 3—Soundness of Approach;

Factor 4—Leveraging Resources; and

Factor 5—Achieving Results and Program Evaluation.

See section V. of this NOFA for further details.

(17) Per the General Section successful applicants engaged in housing or housing related activities are obliged to affirmatively further fair housing including taking reasonable steps to overcome barriers to fair housing choice in its service area such as:

(a) Identify Barriers—Applicants must submit a description of barriers to fair

housing in their jurisdiction or service area (based on the applicable state or local Consolidated Plan and Analysis of Impediments or other source of information on impediments to fair housing). See *http://www.hud.gov/offices/fheo/promotingfh.cfm* for further information.

(b) Specify Activities to Affirmatively Further Fair Housing—Applicants must describe how they will address barriers to fair housing, including specifying applicable and eligible uses of RHED funds—for example, housing counseling to make persons aware of discriminatory practices, innovative housing design or construction to increase access for persons with disabilities, language assistance services to persons with limited English proficiency (on the basis of national origin), affirmative fair housing marketing, or location of new or rehabilitated housing in a manner that provides greater housing choice or mobility for persons in classes protected by the Fair Housing Act.

(c) Reporting—Applicants are obliged to maintain records of their activities to affirmatively further fair housing and describe how they plan to document such activities, as well as maintaining records on the race, ethnicity, disability status, and family status of the beneficiaries of RHED programs.

C. Submission Dates and Times

1. Electronic Application Submission. Applications for the Rural Housing and Economic Development program must be received and validated by Grants.gov no later than 11:59:59 p.m. Eastern Time on May 30, 2008, the application deadline date. Applicants are advised to submit their applications at least 48 to 72 hours in advance of the deadline date and when the Grants.gov help desk is open so that any issues can be addressed prior to the deadline date and time. Please note that validation may take up to 72 hours. You will receive an acknowledgement of receipt from Grants.gov when your application has been successfully received, and later that it has been validated or rejected. Please see the General Section for more detailed information. If you do not receive the validation or rejection notice within 24 to 48 hours, contact the Grants.gov help desk.

2. Applicants are advised to carefully read the application submission and timely receipt requirements in the General Section since they have changed from previous years.

3. Only one application will be accepted from any given organization. If more than one application is submitted electronically, the last application received and validated before the deadline date will be the one reviewed by HUD. HUD will not accept application addendums after the deadline unless HUD has specifically asked the applicant for a correction to a technical deficiency in the application. Responses to technical deficiencies must be received by HUD within the time allocated to cure the deficiency and must be submitted by facsimile using the form Facsimile Transmittal (HUD 96011) submitted to the 800–894–4047 and (215) 825–8796 fax numbers. Applicants must use the Facsimile Transmittal form submitted with the last application that was received and validated by Grants.gov prior to the deadline. This will ensure that your technical cure will be electronically associated to your previously submitted application. Failure to follow these instructions may result in your information being misdirected. The request for a technical cure will also contain instructions for when the cure must be received by the Department and other pertinent information.

D. Intergovernmental Agency Review

Intergovernmental agency review is not required for this program.

E. Funding Restrictions

1. *Administrative Costs.* Administrative costs for assistance under the Rural Housing and Economic Development program may not exceed 15 percent of the total HUD Rural Housing and Economic Development grant award.

2. *Ineligible Activities.* RHED funds cannot be used for the following activities:

a. Income payments to subsidize individuals or families;

b. Political activities;

c. General governmental expenses other than expenses related to the administrative cost of the grant; or

d. Projects or activities intended for personal gain or private use.

HUD reserves the right to reduce or deobligate the award if suitable modifications to the proposed project are not submitted by the awardee within 90 days of a request from HUD. Any modification must be within the scope of the original application. HUD reserves the right not to make awards under this NOFA.

F. Other Submission Requirements

Carefully review the procedures presented in Section IV of the FY2008 General Section because HUD will only accept electronic applications submitted through *http://www.grants.gov/applicants/apply_for_grants.jsp.* Applicants may request a waiver of the electronic submission requirement. Paper applications will not be accepted unless the applicant has received a waiver to the electronic submission requirement. Applicants should submit their waiver requests in writing in the form of a letter. Waiver requests must be submitted no later than 15 days prior to the application deadline date and should be submitted to the Office of Rural Housing and Economic Development, 451 7th Street, SW., Room 7137, Washington, DC 20410. Instructions regarding the number of copies to submit and to what address will be contained in the approval to the waiver request. Paper submissions must be received at the appropriate HUD office(s) no later than the deadline date.

V. Application Review Information

A. Criteria

Carefully review all the Application Review procedures in Section V of the General Section. In addition, the following Rating Factors will be used to rate your application.

1. Rating Factor 1—Capacity of the Applicant and Relevant Organizational Experience (25 Points)

This rating factor addresses the extent to which you have the organizational resources necessary to successfully implement your proposed workplan, as further described in Rating Factor 3, within the 36-month award period.

a. *Team members, composition, and experience* (10 points). HUD will evaluate the experience (including for recentness and relevancy) of your project director, core staff, and any outside consultant, contractor, subrecipient, or project partner as it relates to innovative housing and economic development and to the implementation of the activities in your work plan. HUD also will assess the services that consultants or other parties will provide to fill gaps in your staffing structure to enable you to carry out the proposed work plan; the experience of your project director in managing projects of similar size, scope, and dollar amount; the lines of authority and procedures that you have in place for ensuring that work plan goals and objectives will be met, that consultants and other project partners will perform as planned, and that beneficiaries will be adequately served. In judging your response to this factor, HUD will only consider work experience gained within the last 7 years. When responding, please be sure to provide the dates, job titles, and relevancy of the past experience to the work to be undertaken

by the employee or contractor under your proposed Rural Housing and Economic Development award. The more recent, relevant, and successful the experience of your team members is in relationship to the work plan activities, the greater the number of points you will receive. Please do not include the Social Security Numbers (SSN) of any staff members.

b. *Organizational structure and management capacity* (15 points). HUD will evaluate the extent to which you can demonstrate your organization's ability to manage a workforce composed of full-time or part-time staff, as well as any consultant staff, and your ability to work with community-based groups or organizations in resolving issues related to affordable housing and economic development. In evaluating this subfactor, HUD will take into account your experience in working with community-based organizations to design and implement programs that address the identified housing and economic development issues. The more recent, relevant, and successful the experience of your organization and any participating entity, the greater the number of points you will receive.

c. *Experience with performance based funding requirements.* HUD will evaluate your performance in any previous grant program undertaken with HUD funds or other federal, state, local, or nonprofit or for-profit organization funds. (Note: Previous HUD performance-based experience will be verified through HUD's field offices as needed. Other relevant past performance information should be included as part of the application.) In assessing points for this sub-factor, HUD reserves the right to take into account your past performance in meeting performance and reporting goals for any previous HUD award, in particular whether the program achieved its outcomes.

HUD reserves the right to give zero points for Rating Factor 1, if the applicant has been determined to have a pattern or practice of any or all of the following activities related to the management and operation of previous grant awards: (1) Mismanagement of funds, including the inability to account for funds appropriately; (2) untimely use of funds received either from HUD or other federal, state, or local programs; and (3) significant and consistent failure to measure performance outcomes. Among the specific outcomes to be measured are the increases in program accomplishments as a result of capacity building assistance and the increase in organizational resources as a result of assistance.

Applicants who have been awarded Rural Housing and Economic Development program funds prior to FY 2008 must indicate in their response to Rating Factor 1 the fiscal year and funding amount. HUD field offices may be consulted to verify information submitted by the applicant as a part of the review of applications.

2. Rating Factor 2—Need and Extent of the Problem (20 Points)

The Rural Housing and Economic Development program is designed to address the problems of rural poverty, inadequate housing, and lack of economic opportunity. This factor addresses the extent to which there is a need for funding the proposed activities based on levels of distress, and the urgency of meeting the need/distress in the applicant's target area. In responding to this factor, applications will be evaluated on the extent to which the level of need for the proposed activity and the urgency in meeting the need are documented and compared to target area and national data.

a. In applying this factor, HUD will compare the current levels of need in the area (i.e., Census Tract(s) or Block Group(s)) immediately surrounding the project site or the target area to be served by the proposed project to national levels of need. This means that an application that provides data that show levels of need in the project area at a percent greater than the national average will be rated higher under this factor. Applicants should provide data that address indicators of need as follows:

(1) *Poverty Rate* (5 points)—Data should be provided in both absolute and percentage form (i.e., whole numbers and percents) for the target area(s). An application that compares the local poverty rate in the following manner to the national average at the time of submission will receive points under this section as follows:

(a) Less than the national average = 0 points;

(b) Equal to but less than twice the national average = 1 point;

(c) Twice but less than three times the national average = 3 points;

(d) Three or more times the national average = 5 points.

(2) *Unemployment* (5 points)—for the target area:

(a) Less than the national average = 0 points;

(b) Equal to but less than twice the national average = 1 point;

(c) Twice but less than three times the national average = 2 points;

(d) Three but less than four times the national average = 3 points;

(e) Four but less than five times the national average= 4 points;

(f) Five or more times the national average = 5 points.

(3) *Other indicators of social or economic decline that best capture the applicant's local situation* (5 points).

(a) Data that could be provided under this section are information on the community's stagnant or falling tax base, including recent commercial or industrial closings; housing conditions, such as the number and percentage of substandard or overcrowded units; rent burden (defined as average housing cost divided by average income) for the target area; and local crime statistics, falling property values, etc. To the extent that the applicant's statewide or local Consolidated Plan, its Analysis of Impediments to Fair Housing Choice (AI), its Indian housing plan, or its anti-poverty strategy identify the level of distress in the community and the neighborhood in which the project is to be carried out, references to such documents should be included in preparing the response to this factor.

(b) In rating applications under this factor, HUD reserves the right to consider sources of available objective data other than or in addition to those provided by applicants, and to compare such data to those provided by applicants for the project site. These may include U.S. Census data.

(c) HUD requires use of sound, verifiable, and reliable data (e.g., U.S. Census data, state statistical reports, university studies/reports, or Home Mortgage Disclosure Act or Community Reinvestment Act databases) to support distress levels cited in each application. See *http://www.ffiec.gov/* or *http://www.ffiec.gov/webcensus/ffieccensus.htm* for census data. A source for all information along with the publication or origination date must also be provided.

(d) Updated Census data are available for the following indicators:

(i) Unemployment rate—estimated monthly for counties/parishes, with a 2-month lag;

(ii) Population—estimated for incorporated places and counties/parishes, through 2000;

(iii) Poverty rate—through 2000.

(4) *Demographics of Distress—Special Factors (5 points).* Because HUD is concerned with meeting the needs of certain underserved areas, you will be awarded a total of five points if you are located in or propose to serve one or more of the following populations, or if your application demonstrates that 100 percent of the beneficiaries supported by Rural Housing and Economic Development funds are in one or more

of the following populations. You must also specifically identify how each population will be served and that the proposed service area meet the definition of "eligible rural area" in section I of this NOFA:

(a) Areas with very small populations in non-urban areas (2,500 population or less);

(b) Seasonal farm workers;

(c) Federally recognized Indian tribes;

(d) Colonias;

(e) Appalachia's Distressed Counties; or

(f) The Lower Mississippi Delta Region (eight states and 240 counties/parishes).

For these underserved areas, you should ensure that the populations that you serve and the documentation that you provide are consistent with the information described in the above paragraph under this rating factor.

3. Rating Factor 3—Soundness of Approach (21 Points)

This factor addresses the overall quality of your proposed work plan, taking into account the project and the activities proposed to be undertaken; the cost-effectiveness of your proposed program; and the linkages between identified needs, the purposes of this program, and your proposed activities and tasks. In addition, this factor addresses your ability to ensure that a clear linkage exists between innovative rural housing and economic development. In assessing cost-effectiveness, HUD will take into account your staffing levels, beneficiaries to be served, and your timetable for the achievement of program outcomes, the delivery of products and reports, and any anticipated outcome or product. You will receive a greater number of points if your work plan is consistent with the purpose of the Rural Housing and Economic Development program, your program goals, and the resources provided.

a. *Management Plan* (13 points). A clearly defined management plan should be submitted that: identifies each of the projects and activities you will carry out to further the objectives of this program; describes the linkage between rural housing and economic development activities; and addresses the needs identified in Factor 2, including needs that previously were identified in a statewide or local Analysis of Impediments to Fair Housing Choice (AI) or Consolidated Plan. The populations that were described in Rating Factor 2 for the purpose of documenting need should be the same populations that will receive the primary benefit of the activities, both immediately and over the long term. The benefits should be affirmatively marketed to those populations least likely to apply for and receive these benefits without such marketing. Your timetable should address the measurable short-term and long-term goals and objectives to be achieved through the proposed activities based on annual benchmarks; the method you will use for evaluating and monitoring program progress with respect to those activities; and the method you will use to ensure that the activities will be completed on time and within your proposed budget estimates. Your management plan should also include the budget for your program, broken out by line item. Documented projected cost estimates from outside sources are also required. Applicants should submit their work plan on a spreadsheet showing each project to be undertaken and the tasks (to the extent necessary or appropriate) in your work plan to implement the project with your associated budget estimate for each activity/task. Your work plan should provide the rationale for your proposed activities and assumptions used in determining your project timeline and budget estimates. Failure to provide your rationale may result in your application receiving fewer points for lack of clarity in the proposed management plan.

This subfactor should include information that indicates the extent to which you have coordinated your activities with other known organizations (e.g., through letters of participation or coordination) that are not directly participating in your proposed work activities, but with which you share common goals and objectives and that are working toward meeting these objectives in a holistic and comprehensive manner. The goal of this coordination is to ensure that programs do not operate in isolation. Additionally, your application should demonstrate the extent to which your program has the potential to be financially self-sustaining by decreasing dependence on Rural Housing and Economic Development funding and relying more on state, local, and private funding. The goal of sustainability is to ensure that the activities proposed in your application can be continued after your grant award is complete.

b. *Policy Priorities* (8 Points). Policy priorities are outlined in detail in the General Section. You should document the extent to which HUD's policy priorities are advanced by the proposed activities. Applicants that include activities that can result in the achievement of the following departmental policy priorities will receive higher rating points in evaluating their application for funding. Seven departmental policy priorities are listed below. When you include policy priorities, describe in brief detail how those activities will be carried out and if selecting item (6), Removal of Barriers to Affordable Housing, be sure to include the required Points of Contact information and documentation or references to the documentation to receive points.

The point values for policy priorities are as follows:

(1) Providing increased homeownership and rental opportunities for low- and moderate-income persons, persons with disabilities, the elderly, minorities, and families with limited English proficiency = 1 point;

(2) Improving our nation's communities = 1 point;

(3) Encouraging accessible design features = 1 point;

(4) Providing full and equal access to grassroots faith-based and other community-based organizations in HUD program implementation = 1 point;

(5) Ending chronic homelessness = 1 point;

(6) Removal of regulatory barriers to affordable housing = 2 points; and

(7) Reducing energy costs = 1 point.

4. Rating Factor 4—Leveraging Resources (10 points)

This factor addresses the extent to which applicants have obtained firm commitments of financial or in-kind resources from other federal, state, local, and private sources. For every Rural Housing and Economic Development program dollar anticipated, you should provide the specific amount of dollars leveraged. In assigning points for this criterion, HUD will consider the level of outside resources obtained in the form of cash or in-kind goods or services that support activities proposed in your application. HUD will award a greater number of points based on a comparison of the extent of leveraged funds with the requested Rural Housing and Economic Development award. The level of outside resources for which commitments are obtained will be evaluated based on their importance to the total program. Your application must provide evidence of leveraging in the form of letters of firm commitment from any entity, including your own organization, that will be providing the leveraging funds to the project. Each commitment described in the narrative of this factor must be in accordance with the definition of "firm

commitment," as defined in section I.B. of this NOFA. The commitment letter must be on letterhead of the participating organization, must be signed by an official of the organization legally able to make commitments on behalf of the organization, and must not be dated earlier than the date this NOFA is published.

Points for this factor will be awarded based on the satisfactory provision of evidence of leveraging and financial sustainability, as described above, and the ratio of leveraged funds to requested HUD Rural Housing and Economic Development funds as follows:

a. 50 percent or more of requested HUD Rural Housing and Economic Development funds = 10 points;

b. 49–40 percent of requested HUD Rural Housing and Economic Development funds = 8 points;

c. 39–30 percent of requested HUD Rural Housing and Economic Development funds = 6 points;

d. 29–20 percent of requested HUD Rural Housing and Economic Development funds = 4 points;

e. 19–9 percent of requested HUD Rural Housing and Economic Development funds = 2 points;

f. Less than 9 percent of HUD requested Rural Housing and Economic Development funds = 0 points.

See the General Section for instructions for submitting third-party letters and other documents with your electronic application.

5. Rating Factor 5—Achieving Results and Program Evaluation (24 points)

This factor emphasizes HUD's commitment to ensure that applicants keep promises made in their application. This factor assesses their performance to ensure that rigorous and useful performance measures are used and goals are met. Achieving results means you, the applicant, have clearly identified the benefits or outcomes of your program. Outcomes are ultimate project end goals. Benchmarks or outputs are interim activities or products that lead to the ultimate achievement of your goals. Program evaluation requires that you, the applicant, identify program outcomes, interim products or benchmarks, and performance indicators that will allow you to measure your performance. Performance indicators should be objectively quantifiable and measure actual achievements against anticipated achievements. Your evaluation plan should identify what you are going to measure, how you are going to measure it, and the steps you have in place to make adjustments to your work plan if performance targets are not met within established time frames.

Applicants must also complete the "Logic Model" HUD Form (HUD–96010) included in the application instructions at *http://www.grants.gov/applicants/apply_for_grants.jsp* and submit the completed form with their application. HUD has provided an electronic Logic Model that will enable applicants to select from lists the appropriate needs statement(s), activities/outputs, and outcomes that the applicant is proposing in the application submission. The listing of the activities is referred to as the Master Logic Model List and each list is unique to the program funding opportunity. The application instructions found on *http://www.grants.gov/applicants/apply_for_grants.jsp* include the eLogic Model™ that you can complete and attach to your electronic application submission. Applicants who do not have Microsoft Excel software should contact the SuperNOFA Information Center at 800–HUD–8929. Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Applicants may select items from each column of the list that reflect their activity outputs and outcomes and copy and paste them into the appropriate column in the Logic Model form. In completing the Logic Model, applicants are expected to select from the lists of appropriate outputs and outcomes for their proposed work plan. The eLogic Model™ and Master Logic Model listing also identify the unit of measure that HUD is interested in collecting for the outputs and outcomes selected. In making the selections for each output and outcome, applicants are to complete the appropriate proposed number of units of measure to be accomplished. The space next to the output and outcome should be used to capture the anticipated units of measure. Multiple outputs and outcomes may be selected per project.

Under this rating factor, applicants will receive a maximum of 24 points. The rating will be in accordance with the matrix found in Attachment 1 of the General Section and how the applicant proposes to effectively address program goals and performance measures. HUD will evaluate and analyze how well an applicant implemented the required Rural Housing and Economic Development output and outcome goals and identified other stated benefits or outcomes of the applicant's program. In order to receive the highest number of points, applicants should present a clear plan to address the RHED output and outcome measures.

a. *Output Measures* are quantifiable. RHED outputs include: number of housing units constructed; number of housing units rehabilitated; number of jobs created; number of participants trained; number of new businesses created; and number of existing businesses assisted.

b. *Outcomes Measures* are benefits accruing to the program participants and/or communities during or after participation in the RHED program. RHED outcomes include: the number of housing units rehabilitated that will be made available to low-to-moderate-income participants; the percentage change in earnings as a result of employment for those participants; the percent of participants trained who find a job; annual estimated savings for low-income families as a result of energy efficiency improvements; and the increase in organizational resources as a result of assistance (e.g., dollars leveraged).

You must clearly identify the outcomes to be achieved and measured. Proposed program benefits should include program activities, benchmarks, and interim activities or performance indicators with timelines. Applications should include an evaluation plan that will effectively measure actual achievements against anticipated achievements.

c. *Logic Model.* HUD requires RHED applicants to develop an effective, quantifiable, outcome-oriented evaluation plan for measuring performance and determining whether goals have been met using the Master Logic Model for RHED. The model can be found in the download instructions portion of the application at *http://www.grants.gov/applicants/apply_for_grants.jsp.* In preparing your Logic Model, first open the Form HUD–96010 and go to the instruction tab and follow the directions in the tab. Your application must include the form to receive any points under this factor.

This rating factor reflects HUD's goal to embrace high standards of ethics, management, and accountability. HUD will hold a training broadcast via satellite for potential applicants to learn more about Rating Factor 5. For more information about the date and time of the broadcast, consult the HUD Web site at *http://www.hud.gov/grants/index.cfm.*

Although the following list is not all-inclusive, program outcomes for the Rural Housing and Economic Development program must include, where applicable:

(1) Total number of housing units constructed;

(2) Total number of housing units rehabilitated;

(3) Number of Housing units rehabilitated that will be made available to low- to moderate-income participants;

(4) Number of Housing units constructed that will be made available to low- to moderate-income participants;

(5) Number of jobs created;

(6) Percentage change in earnings as a result of employment for those participants;

(7) Number of participants trained;

(8) Percent of participants trained who find a job;

(9) Number of new businesses created;

(10) Number of existing businesses assisted;

(11) Annual estimated savings for low-income families as a result of energy efficiency improvements.

(12) Increase in program accomplishments as a result of capacity building assistance (e.g. the number of employees hired or retained, or the efficiency or effectiveness of services provided); and

(13) Increase in organizational resources as a result of assistance (e.g., dollars leveraged).

If you receive an award of funds, you will be required to use the Logic Model to report progress against the proposed outcomes in your approved application and award agreement.

The applicant's proposed budget must reflect a breakdown of estimated dollar amount of the Rural Housing and Economic Development grant to be expended on each of the activities/outputs and the anticipated results included on the Form HUD–96010 and under the Rating Factor 5 narrative section of your application.

6. RC/EZ/EC–II Bonus Points (2 Points)

HUD will award two bonus points to all applications that include documentation stating that the proposed eligible activities/projects will be located in and serve federally designated renewal communities (RCs), empowerment zones (EZs), or enterprise communities (ECs) designated by the U.S. Department of Agriculture (USDA) in round II RC/EZ/EC. A listing of federally designated RC/EZ/EC–II is available on the Internet at *http://www.hud.gov/crlocator.*

This notice contains a certification (Form HUD–2990) that must be completed for the applicant to be considered for Rural EZ/Round II EC bonus points.

B. Review and Selection Process

1. Application Selection Process

a. *Rating and Ranking.*

(1) *General.* To review and rate applications, HUD may establish panels that may include outside experts or consultants to obtain certain expertise and outside points of view, including views from other federal agencies.

(2) *Rating.* All applicants for funding will be evaluated against applicable criteria. In evaluating applications for funding, HUD will take into account an applicant's past performance in managing funds, including the ability to account for funds appropriately, the applicant's timely use of funds received either from HUD or other federal, state, or local programs; its success in meeting performance targets for completion of activities; and the number of persons to be served or targeted for assistance. HUD may use information relating to these items based on information at hand or available from public sources such as newspapers, HUD Inspector General or Government Accountability Office reports or findings, or hotline complaints that have been found to have merit, or other such sources of information. In evaluating past performance, HUD will deduct points from rating scores as specified under Rating Factor 1.

(3) *Ranking.* Applicants will be selected for funding in accordance with their rank order. An application must receive a minimum score of 75 points to be eligible for funding. If two or more applications are rated fundable and have the same score, but there are insufficient funds to fund all of them, the application(s) with the highest score for Rating Factor 2 will be selected. If applications still have the same score, the highest score in the following factors will be selected sequentially until one highest score can be determined: Rating Factor 3, Rating Factor 1, Rating Factor 5, and Rating Factor 4.

b. *Initial screening.* During the period immediately following the application deadline, HUD will screen each application to determine eligibility. Applications will be rejected if they:

(1) Are submitted by ineligible applicants;

(2) Do not serve an eligible rural area as defined in section III of this NOFA;

(3) Do not meet the objectives of the Rural Housing and Economic Development program; or

(4) Propose a project for which the majority of the activities are ineligible.

c. *Rating Factors for Award Used To Evaluate and Rate Applications.* The factors for rating and ranking applicants and the maximum points for each factor are provided above. The maximum number of points for this program is 102. This includes 100 points for all five rating factors and two RC/EZ/EC–II bonus points, as described above.

d. *Environmental Review.* Each application constitutes an assurance that the applicant agrees to assist HUD in complying with the provisions set forth in 24 CFR part 50. Selection for award does not constitute approval of any proposed site. Following selection for award, HUD will perform an environmental review of activities proposed for assistance under this part, in accordance with 24 CFR part 50. The results of the environmental review may require that proposed activities be modified or that proposed sites be rejected. Applicants are particularly cautioned not to undertake or commit HUD funds for acquisition or development of proposed properties (including establishing lines of credit that permit financing of such activities or making commitments for loans that would finance such activities from a revolving loan fund capitalized by funds under this NOFA) prior to HUD approval of specific properties or areas. Each application constitutes an assurance that you, the applicant, will, assist HUD in complying with part 50; will supply HUD with all available relevant information to perform an environmental review for each proposed property; will carry out mitigating measures required by HUD or select alternate property; and will not acquire, rehabilitate, convert, demolish, lease, repair, or construct property, or commit or expend HUD or local funds for these program activities with respect to any eligible property until HUD approval of the property is received. In supplying HUD with environmental information, grantees must use the guidance provided in Notice CPD 05–07, entitled "Field Environmental Review Processing for Rural Housing and Economic Development (RHED) Grants," issued August 30, 2005, which can be found at *http://www.hud.gov/offices/cpd/energyenviron/environment/lawsandregs/notices.cfm.* HUD's funding commitment is contingent on HUD's site approval following an environmental review.

e. *Adjustments to Funding.*

(1) HUD will not fund any portion of your application that is ineligible for funding and does not meet the requirements of this NOFA, or is duplicative of other funded programs or activities from prior year awards or other selected applicants. Only the eligible non-duplicative portions of your application will be funded.

(2) HUD reserves the right to utilize this year's funding to fund previous years' errors prior to rating and ranking this year's applications.

(3) If a balance remains, HUD reserves the right to utilize those funds toward the following year's awards.

(4) Please see the section VI.A.2 and 3 of the General Section for more information about funding.

(5) Performance and Compliance Actions of Funding Recipients. HUD will measure and address the performance and compliance actions of funding recipients in accordance with the applicable standards and sanctions of the Rural Housing and Economic Development program.

f. *Corrections to Deficient Applications.* After the application deadline date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. See section V.B.4. of the General Section for more detailed information on this topic.

VI. Award Administration Information

A. Award Notice

1. HUD will notify you whether or not you have been selected for an award. If you are selected, HUD's notice to you concerning the amount of the grant award (based on the approved application) will constitute HUD's conditional approval, subject to negotiation and execution of a grant agreement by HUD. Successful Rural Housing and Economic Development program applicants will be notified of grant award and will receive post-award instructions by mail.

2. Debriefing. See the General Section for information on how to obtain a debriefing on your application review and evaluation.

B. Administrative and National Policy Requirements

In addition to the requirements listed below, please review all requirements in section III of the General Section.

1. *Lead-Based Paint Hazard Control.* All property assisted under the Rural Housing and Economic Development program is covered by the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 *et seq.*), and HUD's implementing regulations at 24 CFR part 35.

2. *Procurement of Recovered Materials.* See the General Section for further information.

3. *Executive Order 13202,* "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects." (See the General Section for further information.)

4. *Audit Requirements.* Any grantee that expends $500,000 or more in federal financial assistance in a single year (this can be program year or fiscal year) must meet the audit requirements established in 24 CFR parts 84 and 85 in accordance with OMB A–133.

5. *Accounting System Requirements.* The Rural Housing and Economic Development program requires that successful applicants have in place an accounting system that meets the policies, guidance, and requirements described in the following applicable OMB Circulars and Code of Federal Regulations:

a. OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments);

b. OMB Circular A–122 (Cost Principles for Non-Profit Organizations);

c. OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations);

d. 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations); and

e. 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments).

C. Reporting

1. *Reporting Requirements* Reporting documents apply to the award, acceptance and use of assistance under the Rural Housing and Economic Development program and to the remedies for noncompliance, except when inconsistent with HUD's Appropriation Act, or other federal statutes or the provisions of this NOFA.

For each semi-annual reporting period, as part of your required report to HUD, grantees must include a completed Logic Model (Form HUD 96010), which identifies output and outcome achievements. For FY2008, HUD is considering a new concept for the Logic Model. The new concept is a Return on Investment statement. HUD will be publishing a separate notice on the ROI concept. If you are reporting race and ethnic data, you must use Form HUD–27061, Race and Ethnic Data Reporting Form.

2. *Racial and Ethnic Data.* HUD requires that funded recipients collect racial and ethnic beneficiary data. It has adopted the Office of Management and Budget's Standards for the Collection of Racial and Ethnic Data. In view of these requirements, you should use Form HUD–27061, Racial and Ethnic Data Reporting Form (instructions for its use), found on *http://www.HUDclips.org*, a comparable program form, or a comparable electronic data system for this purpose.

VII. Agency Contact(s)

Further Information and Technical Assistance. For information concerning the HUD Rural Housing and Economic Development program, contact Ms. Linda Streets, Community Planning and Development Specialist, Ms. Monica Wallace, Community Planning and Development Specialist, Mr. James Hedrick, Presidential Management Fellow, or Ms. Nikki Bowser, Community Planning and Development Specialist, Office of Rural Housing and Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7137, Washington, DC 20410–7000; telephone 202–708–2290 (this is not a toll-free number) or 1–877–787–2526 (this is a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Prior to the application deadline, staff will be available at the above number to provide general guidance and clarification of the NOFA, but not guidance in actually preparing your application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD.

VIII. Other Information

A. Satellite Broadcast

HUD will hold an information webcast via satellite for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of this webcast, consult the HUD Web site at *http://www.hud.gov.*

B. The Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or

sponsor and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 100 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, semi-annual reports, and final report. The information will be used for grantee selection and monitoring the administration of funds.

Dated: April 23, 2008.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E8–9273 Filed 4–25–08; 8:45 am]

BILLING CODE 4210–67–P

Reader Aids

Federal Register

Vol. 73, No. 82

Monday, April 28, 2008

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

17241–17880 1
17881–18148 2
18149–18432 3
18433–18700 4
18701–18942 7
18943–19138 8
19139–19388 9
19389–19742 10
19743–19958 11
19959–20148 14
20149–20524 15
20525–20778 16
20779–21016 17
21017–21214 18
21215–21518 21
21519–21806 22
21807–22048 23
22049–22270 24
22271–22784 25
22785–23062 28

CFR PARTS AFFECTED DURING APRIL

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.

3 CFR

Proclamations:
7746 (See 8228) 18141
7747 (See 8228) 18141
7987 (See 8228) 18141
8097 (See 8228) 18141
8097 (See 8240) 21515
8114 (See 8240) 21515
8214 (See 8228) 18141
8228 18141
8229 18425
8230 18427
8231 18429
8232 18431
8233 19387
8234 19953
8235 19955
8236 20147
8237 20521
8238 21017
8239 21213
8240 21515
8241 21805
8242 22269
8243 22779
8244 22781
8245 22783
Executive Orders:
11651 (See Proclamation 8228) 18141
12302 (See Proclamation 8240) 21515
13389 (Amended by 13463) 22047
13390 (Amended by 13463) 22047
13463 22047
Administrative Orders:
Memorandums:
Memorandum of March 28, 2008 19957
Memorandum of April 10, 2008 20523
Presidential Determinations:
No. 2008-15 of March 19, 2008 17241
No. 2008-17 of March 28, 2008 17879
No. 2008-16 of March 24, 2008 18147
No. 2008-18 of April 10, 20008 22265

5 CFR

250 23012
630 18943
731 20149
1201 ..... 21019, 21415
1210 21019
1215 21019
1601 22049
7401 18944
Proposed Rules:
351 20180

7 CFR

1 18433
246 21807
301 ..... 18701, 22785
457 17243
959 21023
983 18703
985 ..... 19743, 21215
1150 19959
Proposed Rules:
28 20842
301 17930
319 17930
920 20002
989 21551
1980 19443

8 CFR

212 18384
214 18944
235 18384
274a 18944
Proposed Rules:
103 21260
214 21260
215 22065
217 22065
231 22065
235 22065

9 CFR

77 19139
94 ..... 17881, 20366
Proposed Rules:
201 21286

10 CFR

2 22786
26 21690
50 22786
51 22786
52 22786
100 22786
Proposed Rules:
20 19749
32 19749
50 19443
431 18858
820 19761

12 CFR

1 22216
2 22216
3 22216
4 22216
5 22216

7.....22216
9.....22216
10.....22216
11.....22216
12.....22216
16.....22216
19.....22216
21.....22216
22.....22216
23.....22216
24.....22216
26.....22216
27.....22216
28.....22216
31.....22216
32.....22216
34.....22216
37.....22216
40.....22216
208.....21690
218.....20779
225.....21690
268.....17885
325.....21690
559.....21690
560.....21690
563.....21690
567.....21690

Proposed Rules:

701.....22836
705.....22836
740.....22839
792.....22289
951.....20552

14 CFR

23.....19746, 22271
39 .....18433, 18706, 19961, 19963, 19967, 19968, 19971, 19973, 19975, 19977, 19979, 19982, 19983, 19986, 19989, 19993, 20159, 20367, 20525, 21220, 21222, 21225, 21227, 21229, 21231, 21233, 21235, 21237, 21240, 21242, 21244, 21519, 21521, 21523, 21526, 21811, 22787, 22789, 22791, 22793, 22795
61.....17243
71 .....17887, 17888, 18151, 18436, 18437, 18438, 18439, 18956, 18957, 19143, 19995, 19997, 19998, 20161, 20162, 20163, 20526, 20527, 20780, 20781, 21813
73.....21246
97 .....18152, 19998, 20527, 20528
135.....20164
250.....21026

Proposed Rules:

25.....21286, 21289
39 .....17258, 17260, 17935, 17937, 18220, 18461, 18719, 18721, 18722, 18725, 19015, 19017, 19766, 19768, 19770, 19772, 19775, 21072, 21074, 21553, 21556, 21851, 21853, 21855, 22088, 22090, 22840, 22845
43.....20181
61.....20181
71 .....18222, 19019, 19174, 19777, 20843, 20844, 21857, 21858
91.....20181
93.....20846
141.....20181

15 CFR

748.....21035
774.....21035

Proposed Rules:

736.....21076
740.....21076
742.....21076
744.....21076
748.....21076
752.....21076
760.....21076
772.....21076
922.....20869

16 CFR

Proposed Rules:

23.....22848
303.....18727
305.....17263

17 CFR

200.....17810
230.....20367
232.....20367
239 .....17810, 20367, 20512
240 .....17810, 20782, 22017
247.....20779
249.....20782, 22017

18 CFR

35.....17246
39.....21814
158.....19389
260.....19389

Proposed Rules:

38.....22849
40.....21859, 22856
382.....22867

19 CFR

12.....20782
113.....20782
163.....20782

Proposed Rules:

4.....22065
122.....22065

20 CFR

655.....19944

Proposed Rules:

404.....20564. 22871
416.....20564

21 CFR

189.....20785
210.....18440
211.....18440
312.....22800
510.....18441
520.....18441
522 .....17890, 21041, 21042, 21819
526.....18441
556.....21819
558 .....18441, 18958, 19432
589.....22720
700.....20785

Proposed Rules:

872.....22877
1300.....22294
1308.....19175

22 CFR

41.....18384
53.....18384
304.....21528
309.....18154

Proposed Rules:

121.....19778

23 CFR

Proposed Rules:

924.....22092

25 CFR

Proposed Rules:

26.....19179
27.....19179

26 CFR

1 .....18159, 18160, 18708, 18709, 19350
54.....20794
301 .....18442, 19350, 21415
602.....18709

Proposed Rules:

1 .....18729, 19450, 19451, 19942, 20201, 20203, 20367, 21860, 21861, 22300
20.....22300
26.....20870
31.....18729
54.....20203
301 .....20870, 20877, 22879

27 CFR

4.....22816
9.....22273
24.....22816
27.....22816

Proposed Rules:

9.....22883

28 CFR

Proposed Rules:

28.....21083

29 CFR

4022.....20164
4044.....20164

Proposed Rules:

1926.....21292

30 CFR

75.....21182
250.....20166, 20170
270.....20170
281.....20170
282.....20170
756.....17247
946.....21819

Proposed Rules:

916.....22887
930.....21087
938.....17268

31 CFR

Proposed Rules:

103 .....19452, 21179, 22101
800.....21861

32 CFR

Proposed Rules:

199.....17271
1900.....20882

33 CFR

100.....21824
117 .....17249, 17250, 18960, 18961, 19746, 20172, 21043, 22277
165 .....18961, 20173, 20797, 21247, 21880, 21883
325.....19594
332.....19594

Proposed Rules:

100.....22303
117.....21090
150.....19780
165 .....18222, 18225, 19780, 20220, 20223, 21294, 22108
168.....20232
334.....21296

34 CFR

200.....22020

36 CFR

219.....21468
242.....18710, 19433
1253.....18160

Proposed Rules:

13.....22890
242.....20884, 20887
1190.....21092
1191.....21092
1280.....18462

37 CFR

Proposed Rules:

2.....22894

38 CFR

17.....20530
75.....19747

Proposed Rules:

3.....20566, 20571
5.....19021, 20136
17.....20579
20.....20571
53.....19785

39 CFR

111.....20532

Proposed Rules:

111.....21297

40 CFR

49.....18161
51.....21528
52 .....17890, 17893, 17896, 18963, 19144, 20175, 20177, 20549, 21418, 21538, 21540, 21546, 22057, 22818
60.....18162
61.....18162
62.....18968
63 .....17252, 18169, 18970, 21825
79.....22277
81.....17897
180 .....17906, 17910, 17914, 17918, 19147, 19150, 19154, 21043, 21834, 21839, 22823
230.....19594
264.....18970
266.....18970
271 .....17924, 18172, 21843
300.....22828
721.....21249
745.....21692, 21769

Proposed Rules:

52 .....17289, 17939, 18466, 19034, 20002, 20234, 20236,

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 APRIL 28, 2008

DEFENSE DEPARTMENT
Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education; published 3-28-08

ENVIRONMENTAL PROTECTION AGENCY
Completeness Findings for Section 110(a) State Implementation Plans; 8-Hour Ozone NAAQS; published 3-27-08
Metconazole; Pesticide Tolerances; published 4-28-08
Withdrawal of Federal Implementation Plans for Clean Air Interstate Rule in 12 States; published 4-28-08

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Chafee National Youth in Transition Database; published 2-26-08

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge Operations:
Cape Fear River, Wilmington, NC; published 4-15-08

MERIT SYSTEMS PROTECTION BOARD
Implementation of Electronic Filing; published 2-26-08

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Cross-Waiver of Liability; published 2-26-08

NUCLEAR REGULATORY COMMISSION
Limited Work Authorizations for Nuclear Power Plants; Correction; published 4-28-08

SECURITIES AND EXCHANGE COMMISSION
Proposed Rule Changes of Self-Regulatory Organizations; published 3-27-08

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness Directives:
Eurocopter France Model EC130 B4 Helicopters; published 3-24-08
Goodrich Evacuation Systems Approved Under Technical Standard Orders, Installed on Various Boeing, McDonnel Douglas, and Airbus Transport Category Airplanes; published 3-24-08

TRANSPORTATION DEPARTMENT
Pipeline and Hazardous Materials Safety Administration
Pipeline Safety: Administrative Procedures, Address Updates, and Technical Amendments; published 3-28-08

COMMENTS DUE NEXT WEEK

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and Threatened Species:
Critical Habitat for Threatened Elkhorn and Staghorn Corals; comments due by 5-6-08; published 2-6-08 [FR 08-00497]
Endangered and Threatened Wildlife and Designating Critical Habitat Listing:
90-Day Finding for a Petition to Reclassify Loggerhead Turtles in Western North Atlantic Ocean; comments due by 5-5-08; published 3-5-08 [FR E8-04231]
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Atlantic Coast Red Drum Fishery Off the Atlantic States; Transfer of Management Authority; comments due by 5-5-08; published 4-3-08 [FR E8-06955]
Fisheries of the Economic Exclusive Zone Off Alaska:
Pacific Cod in the Bering Sea and Aleutian Islands; comments due by 5-8-08; published 4-24-08 [FR E8-09006]
International Fisheries; Atlantic Highly Migratory Species; comments due by 5-5-08; published 4-4-08 [FR E8-07068]
National Marine Sanctuaries Regulations; comments due by 5-9-08; published 3-27-08 [FR E8-06189]

DEFENSE DEPARTMENT
Federal Acquisition Regulation:
Socioeconomic Program Parity; comments due by 5-9-08; published 3-10-08 [FR E8-04561]

EDUCATION DEPARTMENT
Family Educational Rights and Privacy; comments due by 5-8-08; published 3-24-08 [FR E8-05790]

ENVIRONMENTAL PROTECTION AGENCY
Pesticide Tolerance:
Acetic Acid; comments due by 5-5-08; published 3-5-08 [FR E8-04023]
Pesticide Tolerances and Time-Limited Pesticide Tolerances:
Methoxyfenozide; comments due by 5-5-08; published 3-5-08 [FR E8-04027]
Approval and Promulgation of Implementation Plans Florida:
Prevention of Significant Deterioration; comments due by 5-5-08; published 4-4-08 [FR E8-07073]
Approval and Promulgation of Implementation Plans:
North Carolina; 1-Hour Ozone Maintenance Plan for Raleigh/Durham, Greensboro/Winston-Salem/High Point Areas; Revisions; comments due by 5-8-08; published 4-8-08 [FR E8-07186]
Authorization of State Hazardous Waste Management Program Revisions:
Virginia; comments due by 5-5-08; published 4-3-08 [FR E8-06675]
Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; NV; comments due by 5-5-08; published 4-3-08 [FR E8-06919]
Delegation of National Emission Standards for Hazardous Air Pollutants, NV; comments due by 5-5-08; published 4-3-08 [FR E8-06920]
Environmental Statements; Notice of Intent:
Coastal Nonpoint Pollution Control Programs; States and Territories—
Florida and South Carolina; open for comments until further notice; published 2-11-08 [FR 08-00596]
Final Authorization of State Hazardous Waste Management Program Revision; Virginia; comments due by 5-5-08; published 4-3-08 [FR E8-06724]
National Emission Standards for Hazardous Air Pollutants:
Area Source Standards for Nine Metal Fabrication and Finishing Source Categories; comments due by 5-5-08; published 4-3-08 [FR E8-06411]
Pesticide Tolerance:
Bifenazate; comments due by 5-5-08; published 3-5-08 [FR E8-04142]
Flumioxazin; comments due by 5-5-08; published 3-5-08 [FR E8-04102]

FEDERAL TRADE COMMISSION
Textile Fiber Products Identification Act; Rules and Regulations; comments due by 5-5-08; published 4-7-08 [FR E8-07179]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation:
Socioeconomic Program Parity; comments due by 5-9-08; published 3-10-08 [FR E8-04561]

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
State Systems Advance Planning Document Process; comments due by 5-6-08; published 3-7-08 [FR E8-04009]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Devices:
General Hospital and Personal Use Devices; Reclassification of Medical Device Data System; comments due by 5-8-08; published 2-8-08 [FR E8-02325]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels and Deepwater Ports); comments due by 5-5-08; published 2-5-08 [FR E8-01516]
Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability (Vessels and Deepwater Ports); Correction; comments due

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

S. 1858/P.L. 110–204

Newborn Screening Saves Lives Act of 2007 (Apr. 24, 2008; 122 Stat. 705)

S. 2903/P.L. 110–205

To amend Public Law 110-196 to provide for a temporary extension of programs authorized by the Farm Security and Rural Investment Act of 2002 beyond April 25, 2008. (Apr. 25, 2008; 122 Stat. 713)

Last List April 25, 2008

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.gpoaccess.gov/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $1499.00 domestic, $599.60 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250.**

Title	Stock Number	Price	Revision Date
1	(869-062-00001-4)	5.00	[4] Jan. 1, 2007
2	(869-064-00002-5)	8.00	Jan. 1, 2008
3 (2006 Compilation and Parts 100 and 102)	(869-062-00003-1)	35.00	[1] Jan. 1, 2007
4	(869-064-00004-1)	13.00	Jan. 1, 2008
5 Parts:			
1-699	(869-064-00005-0)	63.00	Jan. 1, 2008
700-1199	(869-064-00006-8)	53.00	Jan. 1, 2008
*1200-End	(869-064-00007-6)	64.00	Jan. 1, 2008
6	(869-062-00008-1)	10.50	Jan. 1, 2007
7 Parts:			
1-26	(869-064-00009-2)	47.00	Jan. 1, 2008
27-52	(869-064-00010-6)	52.00	Jan. 1, 2008
53-209	(869-064-00011-4)	40.00	Jan. 1, 2008
210-299	(869-064-00012-2)	65.00	Jan. 1, 2008
300-399	(869-064-00013-1)	49.00	Jan. 1, 2008
400-699	(869-064-00014-9)	45.00	Jan. 1, 2008
700-899	(869-064-00015-7)	46.00	Jan. 1, 2008
900-999	(869-062-00016-2)	60.00	Jan. 1, 2007
1000-1199	(869-064-00017-3)	22.00	Jan. 1, 2008
1200-1599	(869-064-00018-1)	64.00	Jan. 1, 2008
1600-1899	(869-064-00019-0)	67.00	Jan. 1, 2008
1900-1939	(869-064-00020-3)	31.00	Jan. 1, 2008
1940-1949	(869-064-00021-1)	50.00	Jan. 1, 2008
1950-1999	(869-062-00022-7)	46.00	Jan. 1, 2007
*2000-End	(869-064-00023-8)	53.00	Jan. 1, 2008
8	(869-062-00024-3)	63.00	Jan. 1, 2007
9 Parts:			
*1-199	(869-064-00025-4)	64.00	Jan. 1, 2008
200-End	(869-064-00026-2)	61.00	Jan. 1, 2008
10 Parts:			
*1-50	(869-064-00027-1)	64.00	Jan. 1, 2008
51-199	(869-062-00028-6)	58.00	Jan. 1, 2007
200-499	(869-064-00029-7)	46.00	Jan. 1, 2008
500-End	(869-064-00030-1)	65.00	Jan. 1, 2008
11	(869-064-00031-9)	44.00	Jan. 1, 2008
12 Parts:			
1-199	(869-064-00032-7)	37.00	Jan. 1, 2008
200-219	(869-064-00033-5)	40.00	Jan. 1, 2008
*220-299	(869-064-00034-3)	64.00	Jan. 1, 2008
300-499	(869-064-00035-1)	47.00	Jan. 1, 2008
500-599	(869-064-00036-0)	42.00	Jan. 1, 2008
600-899	(869-064-00037-8)	59.00	Jan. 1, 2008
900-End	(869-064-00038-6)	53.00	Jan. 1, 2008
13	(869-064-00039-4)	58.00	Jan. 1, 2008
14 Parts:			
1-59	(869-062-00040-5)	63.00	Jan. 1, 2007
60-139	(869-064-00041-6)	61.00	Jan. 1, 2008
140-199	(869-064-00042-4)	33.00	Jan. 1, 2008
*200-1199	(869-064-00043-2)	53.00	Jan. 1, 2008
1200-End	(869-064-00044-1)	48.00	Jan. 1, 2008
15 Parts:			
0-299	(869-064-00045-9)	43.00	Jan. 1, 2008
300-799	(869-064-00046-7)	63.00	Jan. 1, 2008
800-End	(869-064-00047-5)	45.00	Jan. 1, 2008
16 Parts:			
0-999	(869-064-00048-3)	53.00	Jan. 1, 2008
1000-End	(869-064-00049-1)	63.00	Jan. 1, 2008
17 Parts:			
1-199	(869-062-00051-1)	50.00	Apr. 1, 2007
200-239	(869-062-00052-9)	60.00	Apr. 1, 2007
240-End	(869-062-00053-7)	62.00	Apr. 1, 2007
18 Parts:			
1-399	(869-062-00054-5)	62.00	Apr. 1, 2007
400-End	(869-062-00055-3)	26.00	Apr. 1, 2007
19 Parts:			
1-140	(869-062-00056-1)	61.00	Apr. 1, 2007
141-199	(869-062-00057-0)	58.00	Apr. 1, 2007
200-End	(869-062-00058-8)	31.00	Apr. 1, 2007
20 Parts:			
1-399	(869-062-00059-6)	50.00	Apr. 1, 2007
400-499	(869-062-00060-0)	64.00	Apr. 1, 2007
500-End	(869-062-00061-8)	63.00	Apr. 1, 2007
21 Parts:			
1-99	(869-062-00062-6)	40.00	Apr. 1, 2007
100-169	(869-062-00063-4)	49.00	Apr. 1, 2007
170-199	(869-062-00064-2)	50.00	Apr. 1, 2007
200-299	(869-062-00065-1)	17.00	Apr. 1, 2007
300-499	(869-062-00066-9)	30.00	Apr. 1, 2007
500-599	(869-062-00067-7)	47.00	Apr. 1, 2007
600-799	(869-062-00068-5)	17.00	Apr. 1, 2007
800-1299	(869-062-00069-3)	60.00	Apr. 1, 2007
1300-End	(869-062-00070-7)	25.00	Apr. 1, 2007
22 Parts:			
1-299	(869-062-00071-5)	63.00	Apr. 1, 2007
300-End	(869-062-00072-3)	45.00	Apr. 1, 2007
23	(869-062-00073-7)	45.00	Apr. 1, 2007
24 Parts:			
0-199	(869-062-00074-0)	60.00	Apr. 1, 2007
200-499	(869-062-00075-8)	50.00	Apr. 1, 2007
500-699	(869-062-00076-6)	30.00	Apr. 1, 2007
700-1699	(869-062-00077-4)	61.00	Apr. 1, 2007
1700-End	(869-062-00078-2)	30.00	Apr. 1, 2007
25	(869-062-00079-1)	64.00	Apr. 1, 2007
26 Parts:			
§§ 1.0-1-1.60	(869-062-00080-4)	49.00	Apr. 1, 2007
§§ 1.61-1.169	(869-062-00081-2)	63.00	Apr. 1, 2007
§§ 1.170-1.300	(869-062-00082-1)	60.00	Apr. 1, 2007
§§ 1.301-1.400	(869-062-00083-9)	47.00	Apr. 1, 2007
§§ 1.401-1.440	(869-062-00084-7)	56.00	Apr. 1, 2007
§§ 1.441-1.500	(869-062-00085-5)	58.00	Apr. 1, 2007
§§ 1.501-1.640	(869-062-00086-3)	49.00	Apr. 1, 2007
§§ 1.641-1.850	(869-062-00087-1)	61.00	Apr. 1, 2007
§§ 1.851-1.907	(869-062-00088-0)	61.00	Apr. 1, 2007
§§ 1.908-1.1000	(869-062-00089-8)	60.00	Apr. 1, 2007
§§ 1.1001-1.1400	(869-062-00090-1)	61.00	Apr. 1, 2007
§§ 1.1401-1.1550	(869-062-00091-0)	58.00	Apr. 1, 2007
§§ 1.1551-End	(869-062-00092-8)	50.00	Apr. 1, 2007
2-29	(869-062-00093-6)	60.00	Apr. 1, 2007
30-39	(869-062-00094-4)	41.00	Apr. 1, 2007
40-49	(869-062-00095-2)	28.00	[6] Apr. 1, 2007
50-299	(869-062-00096-1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date
300–499	(869–062–00097–9)	61.00	Apr. 1, 2007
500–599	(869–062–00098–7)	12.00	[5] Apr. 1, 2007
600–End	(869–062–00099–5)	17.00	Apr. 1, 2007
27 Parts:			
1–39	(869–062–00100–2)	64.00	Apr. 1, 2007
40–399	(869–062–00101–1)	64.00	Apr. 1, 2007
400–End	(869–062–00102–9)	18.00	Apr. 1, 2007
28 Parts:			
0–42	(869–062–00103–7)	61.00	July 1, 2007
43–End	(869–062–00104–5)	60.00	July 1, 2007
29 Parts:			
0–99	(869–062–00105–3)	50.00	[7] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[7] July 1, 2007
900–1899	(869–062–00108–8)	36.00	July 1, 2007
1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–062–00119–3)	62.00	July 1, 2007
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–062–00121–5)	63.00	July 1, 2007
400–629	(869–062–00122–3)	61.00	July 1, 2007
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[7] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[7] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–062–00222–0)	31.00	Oct. 1, 2007
660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,499.00	2008
Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
Complete set (one-time mailing)		332.00	2007
Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

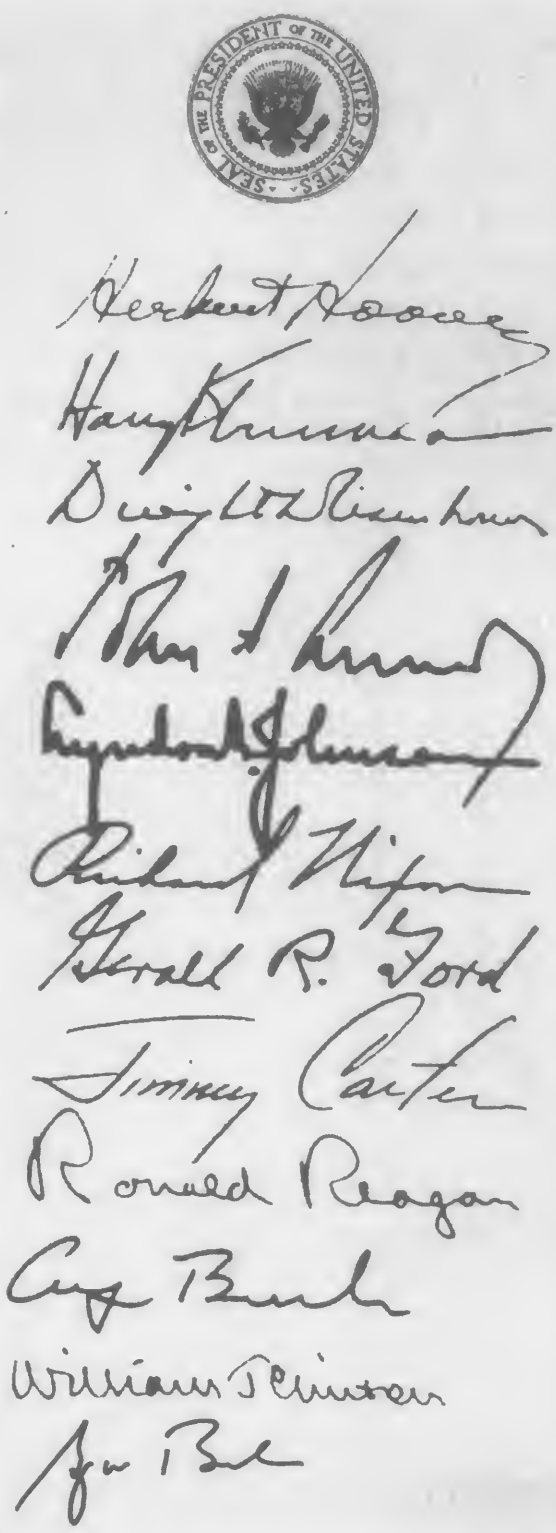
[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.



Public Papers of the Presidents of the United States

William J. Clinton

1997
(Book I) $69.00
(Book II) $78.00

1998
(Book I) $74.00
(Book II) $75.00

1999
(Book I) $71.00
(Book II) $75.00

2000–2001
(Book I) $68.50
(Book II) $63.00
(Book III) $75.00

George W. Bush

2001
(Book I) $70.00
(Book II) $65.00

2002
(Book I) $72.00
(Book II) $79.00

2003
(Book I) $66.00
(Book II) $69.00

2004
(Book I) $80.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954
(Rev 08/07)

Printed on recycled paper